



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: PA/08919/2019 (V)

THE IMMIGRATION ACTS

Heard at Field House (remotely by Skype)
On 25 September 2020

Decision & Reasons Promulgated
On 06 October 2020

Before

UPPER TRIBUNAL JUDGE JACKSON

Between

SIMBARASHE [M]
(ANONYMITY DIRECTION NOT MADE)

Appellant

And

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr Tapfumaneyi, legal representative

For the Respondent: Mr A Tan, Senior Home Office Presenting Officer

DECISION AND REASONS

1. This has been a remote hearing which has not been objected to by the parties. The form of remote hearing was by video, using Skype. A face to face hearing was not held to take precautions against the spread of Covid-19 and as all issues could be determined by remote means. The documents were available in paper format on the court file.
2. In a decision promulgated on 5 March 2020, Upper Tribunal Judge Kekic found an error of law in the decision of First-tier Tribunal Judge Joshi promulgated on 26

November 2019 allowing the Appellant's appeal on human rights grounds. The Appellant's protection appeal was dismissed and there has been no further challenge to that aspect of the decision of the First-tier Tribunal, which stands. The hearing before me was to remake the Appellant's appeal against the Respondent's refusal of his human rights claim, in the context of deportation, dated 4 September 2019.

3. The Appellant is a national of Zimbabwe, born on 28 August 1989, who first arrived in the United Kingdom at the age of 13 on 17 October 2002, as the dependent of his mother, a work permit holder. The Appellant was granted further leave to remain on 10 August 2005 and indefinite leave to remain on 30 November 2005.
4. On 7 February 2009, the Appellant was cautioned for taking a motor vehicle without consent. On 19 April 2010, the Appellant was convicted of possession of a class B controlled drug, for which he was subsequently sentenced to a supervision requirement and community order including an unpaid work requirement, subsequently varied to include an additional work requirement and curfew due to a failure to comply with a community rehabilitation order.
5. On 26 April 2010, the Appellant was convicted of burglary and theft of a non-dwelling, to which he was sentenced to a community order, to pay compensation and an unpaid work requirement; subsequently varied to add an additional work requirement and a curfew with electronic tagging, due to a failure to comply with the community rehabilitation order.
6. On 19 September 2012, the Appellant was convicted of using a vehicle whilst uninsured and driving without a licence, for which he was fined, required to pay a victim surcharge and his licence was endorsed with penalty points.
7. On 3 September 2013, the Appellant was convicted of possession of a controlled class B drug, further to which he received a conditional discharge for two years.
8. On 16 April 2014, the Appellant was convicted of two counts of possessing a class A controlled drug, for which he was sentenced to 2 years' imprisonment. This was the index offence which triggered deportation action by the Respondent.
9. On 25 April 2018, the Appellant was convicted of driving whilst disqualified, using a vehicle while uninsured and possession of a class B controlled drug. He received a suspended sentence of six-weeks' imprisonment for the first offence and no separate penalty for the others.
10. The Respondent served the Appellant with a notification of liability to deportation on 16 June 2014, followed by a decision to deport served on 31 October 2014. The Appellant made human rights representations in response and also responded to the section 72 letter; both of which were refused in the decision dated 4 September 2019 which is the subject of this appeal.
11. The Respondent refused the Appellant's protection claim (upon which the appeal has been finally determined and no further detail is needed in relation to that aspect) and

also his human rights claim. In relation to the family life exceptions to deportation, the Respondent was not satisfied that the Appellant had a genuine and subsisting relationship either with a partner or any dependent children in the United Kingdom, there being a lack of evidence of either.

12. In relation to the private life exception in paragraph 399A of the Immigration Rules, the Respondent accepted that the Appellant had been lawfully resident in the United Kingdom for most of his life, but it was not accepted that he was socially and culturally integrated in United Kingdom, nor that there would be very significant obstacles to his reintegration on return to Zimbabwe. In particular, the Appellant's criminal history of 12 offences being committed between 2010 and 2018 indicated a lack of integration which was not outweighed by any evidence of a positive contribution to British society such as voluntary work or any contribution to his local community. On reintegration, the Respondent referred to the Appellant's information given in the context of his OASys assessment that he has extended family Zimbabwe, spent most of 2011 there and in addition it was considered that he has substantial knowledge of life in Zimbabwe having lived there to the age of 13 and would be able to secure employment on return.
13. Finally, the Respondent considered whether there were any very compelling circumstances to outweigh the significant public interest in the Appellant's deportation but having considered the Appellant's criminal convictions, his family relationships, his length of residence in United Kingdom, his age on arrival and the perceived strength of connections that he has both to the United Kingdom and Zimbabwe; none were found.

The appeal

Applicable law

14. The requirements where a person claims that their deportation would be contrary to the United Kingdom's obligations under Article 8 of the European convention on Human rights in so far as they are set out in the Immigration Rules and relate to this appeal are:

"398. Where a person claims that their deportation would be contrary to the UK's obligations under Article 8 of the Human Rights Convention, and

- (a) ...
- (b) *the deportation of the person from the UK is conducive to the public good because they have been convicted of an offence for which they have been sentenced to a period of imprisonment of less than 4 years but at least 12 months; or*
- (c) *... the Secretary of State in assessing that claim will consider whether paragraph 399 or 399A applies and, if it does not, the public interest in deportation will only be outweighed by other factors where there are very compelling circumstances over and above those described in paragraphs 399 and 399A.*

399. This paragraph applies where paragraph 398(b) or (c) applies if –

- (a) *the person has a genuine and subsisting parental relationship with a child under the age of 18 years who is in the UK, and*
 - (i) *the child is a British Citizen; or*
 - (ii) *the child has lived in the UK continuously for at least the 7 years immediately preceding the date of the immigration decision; and in either case*
 - (a) *it would be unduly harsh for the child to live in the country to which the person is to be deported; and*
 - (b) *it would be unduly harsh for the child to remain in the UK without the person who is to be deported; or*
- (b) *the person has a genuine and subsisting relationship with a partner who is in the UK and is a British Citizen or settled in the UK, and*
 - (i) *the relationship was formed at a time when the person (deportee) was in the UK lawfully and their immigration status was not precarious; and*
 - (ii) *it would be unduly harsh for that partner to live in the country to which the person is to be deported, because of compelling circumstances over and above those described in paragraph EX.2 of Appendix FM; and*
 - (iii) *it would be unduly harsh for that partner to remain in the UK without the person who is to be deported.*

399A. *This paragraph applies where paragraph 398(b) or (c) applies if –*

- (a) *the person has been lawfully resident in the UK for most of his life; and*
- (b) *he is socially and culturally integrated in the UK; and*
- (c) *there would be very significant obstacles to his integration into the country to which it is proposed he is deported."*

15. By virtue of section 117A of the Nationality, Immigration and Asylum Act 2002, Part V of that Act applies where a court or tribunal is required to determine whether a decision made under the Immigration Acts breaches Article 8 of the European Convention on Human Rights and as a result would be unlawful under section 6 of the Human Rights Act 1998.

16. Section 117A applies to the public interest considerations in all cases and section 117C applies additional considerations to cases involving foreign criminals. So far as relevant to this appeal, section 117B sets out factors to be considered in all cases and the additional consideration in cases involving foreign criminals provides as follows:

"117C. Article 8: additional considerations in cases involving foreign criminals

- (1) *The deportation of foreign criminals is in the public interest.*
- (2) *The more serious the offence committed by a foreign criminal, the greater is the public interest in deportation of the criminal.*

- (3) *In the case of a foreign criminal (“C”) who has not been sentenced to a period of imprisonment of four years or more, the public interest requires C’s deportation unless Exception 1 or Exception 2 applies.*
- (4) *Exception 1 applies where –*
 - (a) *C has been lawfully resident in the United Kingdom for most of C’s life,*
 - (b) *C is socially and culturally integrated in the United Kingdom, and*
 - (c) *there would be very significant obstacles to C’s integration into the country to which C is proposed to be deported.*
- (5) *Exception 2 applies where C has a genuine and subsisting relationship with a qualifying partner, or a genuine and subsisting parental relationship with a qualifying child, and the effect of C’s deportation on the partner or child would be unduly harsh.”*

17. In KO (Nigeria) v Secretary of State for the Home Department [2018] UKSC 53, the Supreme Court considered the test for and factors to be taken into account when assessing the meaning of ‘unduly harsh’ in paragraph 399A of the Immigration Rules and section 117C(5) of the Nationality, Immigration and Asylum Act 2002. In paragraph 23, Lord Carnworth held as follows:

“On the other hand the expression “unduly harsh” seems clearly intended to introduce a higher hurdle than that of “reasonableness” under section 117B(6), taking account of the public interest in the deportation of foreign criminals. Further the word “unduly” implies an element of comparison. It assumes that there is a “due” level of “harshness”, that is a level which may be acceptable or justifiable in the relevant context. “Unduly” implies something going beyond that level. The relevant context is that set by section 117C(1), that is the public interest in the deportation of foreign criminals. One is looking for a degree of harshness going beyond what would necessarily be involved for any child faced with the deportation of a parent. What it does not require in my view (and subject to the discussion of the cases in the next section) is a balancing of the relative levels of severity of the parent’s offence, other than is inherent in the distinction drawn by the section itself by reference to length of sentence. Nor (contrary to the view of the Court of Appeal in IT (Jamaica) v Secretary of State for the Home Department [2016] EWCA Civ 932, [2017] 1 WLR 240, paras 55, 64) can it be equated with the requirement to show “very compelling reasons”. That would be in effect to replicate the additional test applied by section 117C(6) with respect to sentences of four years or more.”

18. Within the Supreme Court’s consideration of the specific appeal in KO, further reference is made to the authoritative guidance on the meaning of unduly harsh given in MK (Sierra Leone) v Secretary of State for the Home Department [2015] UKUT 223 (IAC), which held in paragraph 46:

“By way of self-direction, we are mindful that ‘unduly harsh’ does not equate with uncomfortable, inconvenient, undesirable or merely difficult. Rather, it poses a considerably more elevated threshold. ‘Harsh’ in this context, denotes something more severe, or bleak. It is the antithesis of pleasant and comfortable.

Furthermore, the addition of the adverb 'unduly' raises an already elevated standard still higher."

19. In HA (Iraq) v Secretary of State for the Home Department [2020] EWCA Civ 1176, Lord Justice Underhill cautioned against a literal reading of paragraph 23 in KO (Nigeria) due to the difficulty in defining the level of harshness that would "necessarily" be suffered by "any" child and emphasises that the underlying concept is of an enhanced degree of harshness sufficient to outweigh the public interest in deportation of foreign criminals in the medium offender category. Further guidance is given in paragraphs 50 to 53 below follows:

"50. What light do those passages shed on the meaning of "unduly harsh (beyond the conclusion on the relative seriousness issue)?

51. The essential point is that the criterion of undue harshness sets a bar which is "elevated" and carries a "much stronger emphasis" than mere undesirability: see para. 27 of Lord Carnwath's judgment, approving the UT's self-direction in MK (Sierra Leone), and para. 35. The UT's self-direction uses a battery of synonyms and antonyms: although these should not be allowed to become a substitute for the statutory language, tribunals may find them of some assistance as a reminder of the elevated nature of the test. The reason why some degree of harshness is acceptable is that there is a strong public interest in the deportation of foreign criminals (including medium offenders): see para. 23. The underlying question for tribunals is whether the harshness which the deportation will cause for the partner and/or child is of a sufficiently elevated degree to outweigh that public interest.

52. However, while recognising the "elevated" nature of the statutory test, it is important not to lose sight of the fact that the hurdle which it sets is not as high as that set by the test of "very compelling circumstances" in section 117C (6). As Lord Carnwath points out in the second part of para. 23 of his judgment, disapproving IT (Jamaica), if that were so the position of medium offenders and their families would be no better than that of serious offenders. It follows that the observations in the case-law to the effect that it will be rare for the test of "very compelling circumstances" to be satisfied have no application in this context (I have already made this point – see para. 34 above). The statutory intention is evidently that the hurdle representing the unacceptable impact on a partner or child should be set somewhere between the (low) level applying in the case of persons who are liable to ordinary immigration removal (see Lord Carnwath's reference to section 117B (6) at the start of para. 23) and the (very high) level applying to serious offenders.

53. Observations of that kind are, I hope, helpful, but they cannot identify an objectively measurable standard. It is inherent in the nature of an exercise of the kind required by section 117C (5) that Parliament intended that tribunals should in each case make an informed evaluative assessment of whether the effect of the deportation of the parent or partner on their child or partner would be "unduly harsh" in the context of the strong public interest in the deportation of foreign criminals; and further exposition of that phrase will never be of more than limited value."

20. In Kamara v Secretary of State for the Home Department [2016] EWCA Civ 813; [2016] 4 WLR 152, Sales LJ commented on the “very significant obstacles” test, for the purposes of the third limb of the private life exception to deportation at paragraph 14 as follows:

“In my view, the concept of a foreign criminal's "integration" into the country to which it is proposed that he be deported, as set out in section 117C(4)(c)... is a broad one. It is not confined to the mere ability to find a job or to sustain life while living in the other country. It is not appropriate to treat the statutory language as subject to some gloss and it will usually be sufficient for a court or tribunal simply to direct itself in the terms that Parliament has chosen to use. The idea of "integration" calls for a broad evaluative judgment to be made as to whether the individual will be enough of an insider in terms of understanding how life in the society in that other country is carried on and a capacity to participate in it, so as to have a reasonable opportunity to be accepted there, to be able to operate on a day-to-day basis in that society and to build up within a reasonable time a variety of human relationships to give substance to the individual's private or family life.”

The Appellant's evidence

21. In his written statement, dated 25 October 2019, the Appellant sets out his immigration and criminal history. In relation to Zimbabwe, the Appellant states that he cannot remember where he used to live there, has no family or friends there and does not eat the staple food in Zimbabwe. The Appellant states that there are no rehabilitation facilities in Zimbabwe which may cause him to return to criminal activities, contrary to having built up an excellent relationship with probation services in the United Kingdom. Further, there is a 90% unemployment rate in Zimbabwe and no opportunities for work. There are also widespread human rights violations in Zimbabwe. The Appellant sets out his fear on return to Zimbabwe, which was rejected by the Respondent and his appeal on this point dismissed by the First-tier Tribunal.
22. The Appellant sets out his relationship with his partner, a British citizen and her son, born in January 2014, also a British citizen. The Appellant states that it would be impossible for them to live in Zimbabwe and would face difficulties in not speaking the language or having any knowledge of the culture there. The Appellant's mother and brother are in the United Kingdom and are also both British citizens.
23. The Appellant attended the oral hearing, remotely by Skype, confirmed his details and adopted his written statement. In his oral evidence, he stated that he was unable to live in Zimbabwe because he had no relatives there, would not know where to begin, how to get a job and he would have no support. His family would face obstacles on return there because they only speak English, they would need accommodation and to organise education for the children and the Appellant does not know how he would support his family.

24. The Appellant has been in the United Kingdom for 18 years, went to school and college here, studying for a BTEC diploma in IT and is gaining further IT qualifications through the Zenos Academy. The Appellant has been employed as a waiter for about a year, he has worked in a warehouse and as a driver for ING removals. Throughout his time in the United Kingdom, he has made close friends, has god sons from two different friends who are a significant part of his life and his friends provide him with continuous support.
25. The Appellant had a daughter with his partner who is now four months old and the couple are engaged to be married.
26. In the United Kingdom, the Appellant has a close relationship with both his mother and brother, who support each other and have pursued a family business venture together.
27. When asked about his convictions, the Appellant stated that he was previously in a bad place, he was young, not in a good place mentally and he is now trying to grow and become a better person for his family and leave that part of his life behind.
28. In cross-examination, the Appellant stated that on paper he lives apart from his partner and children, but they have all been residing at his mother's address since their daughter was born and pending a planned move to his partner's father's address. The Appellant said that he is not currently working in the United Kingdom and his partner is a receptionist. She has wider family in the United Kingdom, including her mother, siblings, cousins, aunties and uncles. Both the maternal and paternal grandmother's help out with the children.
29. The Appellant was asked about his employment and business ventures the basis that there was discrepancies between what is contained in his CV and evidence today compared with what he told his offender manager for the purposes of the OAYSys report. The Appellant stated that he wasn't aware of previously having said that his employment was only short-term in the past and he doesn't mention his gardening business on his CV because although it was something he was trying to do with his partner, it was a flop and never happened.
30. As to the convictions in 2018, the Appellant stated that he accepts he shouldn't have been driving without insurance, but there was a job he needed to do, he needed to go and get shopping so used a car. As to the drugs offence, he stated that he used to smoke a lot but this is something that he has been working on. He accepted that he had been disqualified from driving at the time when he offended. He refers to the convictions being a moment of poor decision-making but that he is trying not to continue making mistakes and to improve as a person and as a father.
31. The Appellant's partner has never been to Zimbabwe and his mother last went in 2011 for his father's funeral. The Appellant's partner's oldest child's father is also from Zimbabwe, whom the Appellant is on good terms with but he has not asked if he could assist him if he were to return there.

32. I asked further questions of the Appellant given that there were a number of areas relevant to my consideration of the exceptions to deportation which had not been covered by his evidence in chief. The Appellant was in prison between February 2014 and July 2015, during which time he kept in touch with friends and family who visited him. Since his release from prison, he has been helping his mum with her business, which is running a nursing agency and more recently setting up an agency for live in care, for which she gives him some money. He has also been helping a friend in his business as a driver's mate when he does deliveries, for which he is also given some money. The Appellant has been living with his mother and brother since his release.
33. I asked the Appellant what he thought the impact would be on his partner and the two children if they remained in the United Kingdom without him. He stated that he and his partner support each other and the children and he does not know how his partner would manage as a single mum without him. He is also just beginning to enjoy being a father and cannot imagine a day without seeing his daughter. When asked if they could visit him in the future in Zimbabwe, he stated that it would be difficult at the moment because of restrictions due to Covid-19 and he thinks that only those with a Zimbabwean passport are currently allowed into the country.
34. Neither the Appellant's partner, nor the children have any health conditions. The older child has regular contact with his biological father, staying with him every other weekend. The Appellant's family in the United Kingdom would help him however they could if he returned to Zimbabwe, but it might be difficult for them to do so.
35. The Appellant is no longer using drugs and last used them in 2019. He undertook drug and alcohol awareness courses in prison but has not done anything similar following his release.

The Appellant's partner's evidence

36. In her written statement signed and dated 25 October 2019, the Appellant's partner details her family members in the United Kingdom, who are all British citizens, including her son born in January 2014. She is employed on a part-time basis as an administrator and relies mainly on benefits for herself and her son.
37. The relationship between the Appellant and his partner began in May 2016 and she has now moved in with him at his mother's address. The Appellant has been in her son's life since he was two years old and they have a close relationship, with the Appellant dropping off and picking up from school, taking him to swimming and football. It is said that two share a special bond.
38. The Appellant's partner attended the oral hearing remotely by Skype, confirmed her details and adopted her written statement. She stated that she would be unable to relocate to Zimbabwe because she is not familiar with the language or culture there, because of the poor economic situation in the country and because she did not know how she would be able to find employment. Further, her two children only speak

English and the older child is in primary school with regular contact with his biological father and his father's family in the United Kingdom and it would be very difficult for her to adjust to a new country and the education system. If the Appellant were to be deported to Zimbabwe, it would have an adverse impact on the Appellant's partner and on the children because he is an active father who makes some financial contribution to the family and it would present real challenges for her as a single mother to continue to be able to work part-time without the Appellant here. The Appellant's partner has extended family in the United Kingdom and she is employed here as a receptionist/administrator in the NHS.

39. In cross-examination, the Appellant's partner stated that her older child sees his biological father once a fortnight for the weekend, his father being originally from Zimbabwe and with extended family there.
40. The Appellant and his partner started their relationship after he had been served with deportation papers and his partner was aware of the chance of him being deported. The Appellant had promised his partner that he would not be in trouble again and that he was in trying to improve. She was disappointed after his conviction in 2018 but stated that he had not used drugs since that conviction. When challenged by his evidence on this point that his last drug use was in 2019, she stated that maybe he had had a couple of relapses but was not using drugs to the same extent as before.

The documentary evidence

41. Written witness statements were also available from the Appellant's mother and brother, who previously gave oral evidence before the First-tier Tribunal but not before me. Those statements deal with the protection aspects of the Appellant's claim and also confirm details of the Appellant's history in the United Kingdom and the support he gives his family. There were also a number of character references from friends in the United Kingdom, including the parents for whom the Appellant is a god parent to their children. The Appellant's evidence also included a number of photographs with family and friends.
42. On the day of the hearing the Appellant submitted further documentary evidence, including his CV and birth certificates for his daughter and stepson.

Closing submissions

43. In closing on behalf of the Respondent, Mr Tan relied on the reasons for refusal letter and also the adverse credibility findings in relation to both the Appellant and some of his family members in relation to his protection claim. The Appellant has an extensive criminal history between 2010 and 2018, including driving and drugs offences as well as the index offence in 2014. It was submitted that it is clear that his extensive dealings with the criminal justice system have not been a deterrent to prevent future offending, nor has his relationship which predates his last offence in 2018.

44. On behalf of the Respondent it was accepted that the Appellant was in a genuine and subsisting relationship with his partner, his stepchild and daughter even though there was limited documentary evidence about these relationships. It was also submitted that there was limited detail about any of the relationships and it would be difficult to submit that the family could relocate to Zimbabwe without it being unduly harsh, such that the focus of the submissions was that it would not be unduly harsh on any of the family members to remain in the United Kingdom if the Appellant were deported. There was before the Tribunal very limited evidence of the consequences of deportation and in particular it was highlighted that there were no medical issues for any family members, the Appellant's partner has employment and accommodation and the family unit are supported by extended family members on both sides. There was no compelling evidence of dependence by or on the Appellant with his own extended family members.
45. In relation to private life, the Respondent accepts that the Appellant has been residing in the United Kingdom lawfully for most of his life but it was not accepted that he was socially and culturally integrated here given his history of repeat offending, all committed as an adult and even with family support and following being in a relationship. There was inconsistent evidence of the Appellant's employment history, in particular between the CV relied upon and the information given in the OASys report. The Appellant had continued to offend in April 2018 despite making promises previously not to do so and despite already being aware of the prospect of his deportation from the United Kingdom. The character letters relied upon by the Appellant failed to make any reference to his offending and therefore were of little assistance.
46. It was also not accepted by the Respondent that the Appellant would face very significant obstacles to reintegration in Zimbabwe, a country where he has extended family links, where he grew up and where he spent a long period of time in 2011. The Appellant could benefit from continuing family support from the United Kingdom and would be returning to a country where English is widely spoken. There are some remaining links to Zimbabwe and the Appellant would not be an alien on return there.
47. Finally, essentially the same submissions were made in relation to whether there were very compelling circumstances over and above the exceptions to outweigh the significant public interest in the Appellant's deportation. The only additional factor which it was anticipated the Appellant may rely on is his extended family in the United Kingdom, but there is a lack of evidence of any degree of dependence between them and of any adverse consequences on them of the Appellant being deported and again it was noted that his family was not a factor to prevent his offending.
48. On behalf of the Appellant, Mr Tupfumaneyi relied on written submissions made immediately prior to the hearing and in addition relied on what he described as a plethora of evidence before the First-tier Tribunal on the contacts and family life of the Appellant in the United Kingdom which evidenced a close relationship to which

significant weight should be attached. It was further submitted that the adverse credibility findings made in relation to the protection claim are not relevant to an assessment of the human rights claim or exceptions to deportation, particularly when the Appellant has clearly been honest about his offending, not bolstered his claim and has accepted pressure points in his history in relation to drug use. He has been honest and sincere in addressing those problems and has been as clean as he can be since his last conviction in 2018.

49. The Appellant has had employment in the United Kingdom, which shows integration, on top of his education and training here, his friendships, his role as a god father and voluntary work within the church. The Appellant has had 18 years of lawful residence in the United Kingdom since the age of 13. Overall, it was submitted that he is socially and culturally integrated in the United Kingdom. The Appellant would face obstacles to reintegration in Zimbabwe because of the difficult economic situation there and lack of access to rehabilitation, which may cause the Appellant to return to drug use and offending behaviour. It is not realistic that the Appellant's step-son's father would be able to assist him in reintegration in Zimbabwe from within the United Kingdom. Mr Tupfumaneyi confirmed that the only background country evidence available was the UN Special Rapporteur report about civil and political issues, which was relied upon to show significant obstacles to the Appellant's reintegration.
50. In relation to the Appellant's family life, it was submitted that it would be unduly harsh for the Appellant's family to relocate to Zimbabwe with him and also unduly harsh them for them to remain in the United Kingdom without him. The best interests of two British citizen children, with whom the Appellant has a close relationship need to be taken into account and it was stated that the Appellant's removal would have a devastating impact on his partner who would be left as a single parent. The impact on her in particular would be unduly harsh because the Appellant would no longer be making a financial contribution to the United Kingdom and she would be unable to work without him providing care for the children such that she would have to have recourse to and be totally reliant on public funds. The situation and the impact of removal is made worse by the current restrictions caused by Covid-19 on the possibility of travel to and from Zimbabwe but also in relying on wider family members in the short term.
51. No additional submissions were made as to whether there were very compelling circumstances over and above the exceptions to deportation to outweigh the public interest, with reliance placed on essentially the same facts and obstacles already referred to.

Findings and reasons

52. The issues in this appeal are whether the Appellant meets either the private or family life exception to deportation set out in paragraphs 398 and following of the Immigration Rules and section 117C of the Nationality, Immigration and Asylum Act 2002; or whether in the alternative there are very compelling circumstances to

outweigh the significant public interest in his deportation to Zimbabwe. It is not in dispute between the parties that the Appellant is in a genuine and subsisting relationship with his partner, step-son and daughter; nor that he has been lawfully resident in the United Kingdom for the majority of his life.

53. The first issue is as to whether the Appellant meets the family life exception to deportation, either on the basis that his deportation would be unduly harsh on his partner and/or children if the family were to relocate together to Zimbabwe or if it would be unduly harsh on his partner and children to remain in the United Kingdom without him. There were no substantive submissions on behalf of the Respondent that it would not be unduly harsh for the family to relocate to Zimbabwe together and for the following reasons I find that it would be. The Appellant's partner and children are all British citizens and it is of significant weight that the children should be entitled to remain in the United Kingdom and benefit from their citizenship here for the purposes of education and healthcare, as well as to maintain relationships between the Appellant's step-son and his biological father, and for both children to maintain extended family relationships here. The Appellant's partner and children have never been to Zimbabwe, are unfamiliar with culture and society there and although English is widely spoken, they do not know any other local languages. The impact on the family members of relocating to Zimbabwe, a country with poor economic and human rights conditions would in the circumstances not only be harsh but unduly harsh.
54. However, to meet the exception it would also have to be unduly harsh on the Appellant's partner and/or children to remain in the United Kingdom without the Appellant. I consider both together as in reality, the Appellant's partner and children would not be separated from each other and would remain together in the United Kingdom (unless notwithstanding the assessment above and difficulties they have stated that they would encounter, they choose to relocate to Zimbabwe, which is of course a matter for them). Whilst there is no dispute that there are genuine and subsisting relationships between all of these family members, very recently involving cohabitation since the birth of the Appellant's daughter and it is not in dispute that the Appellant plays an active role as a father to both children; there is very little evidence of any substance going beyond the basic existence of family life between the Appellant, his partner and the two children and almost nothing as to the impact on them of the Appellant being deported.
55. It is trite that it is normally in the best interests of children to remain with both parents in the same country as a family unit and there is nothing to suggest on the facts of this case that that would not also be the case for these children, whose best interests would also be to remain in the United Kingdom for the reasons already set out above. Although not specified or detailed by or on behalf of the Appellant, it is reasonable to infer that there would be an adverse impact, particularly on the children, of the Appellant's deportation as it would deprive them of daily face-to-face contact with him. Although the relationship could be maintained to a lesser extent through modern means of communication and potentially through visits in the future (although I appreciate in the short term at least international travel is

subject to restrictions because of Covid-19). There is nothing to suggest that the frequently referred to adverse impact on children of the removal of a parent to another country would not apply to this family.

56. The impact of removal of a parent often has adverse financial consequences on the family income. However, in this case, the Appellant's partner is in receipt of public funds already to supplement her income from part-time employment and although there is reference to the Appellant making some financial contribution, this is not detailed or specified, nor is there any evidence as to the effect of loss of this on the family income. I find in circumstances where the Appellant has denied working at all at the moment (albeit also stating in evidence that he was given some money for helping out with his mother's and a friend's business) that any financial contribution from him is likely to be limited and marginal at best. I reject entirely the submission on behalf of the Appellant that his partner would no longer be able to work if he were deported to Zimbabwe, as no explanation has been given as to why he is the only person who can provide childcare to enable her to do so and neither party gave any evidence at all on this point. There is no reason as to why informal childcare from family or friends (given the evidence that the grandmothers already help out with the children now) or formal paid childcare could not be used.
57. There was in essence, no evidence from or on behalf of the Appellant about the consequences of his removal upon his partner or children beyond a vague reference to the difficulties encountered by single parents and specifically single parents who are in employment. There was no identification of any particular consequences on the Appellant's partner (save for in relation to employment dealt with above) or the children which could be described as harsh in accordance with the test set out above, let alone unduly harsh. There was no independent evidence or assessment of the family situation, no evidence of any medical or other needs and no evidence of any particular or strong dependence on the Appellant creating any specific difficulties for family members. Any adverse impact on family members is only what can be gleaned and inferred from what is generally known and accepted from numerous authorities about the likely consequences of deportation of a parent. That is not to say that any direct comparison is being made between this family and the impact on any other hypothetical family, it is simply that in this case there is an almost complete absence of any relevant evidence on behalf of the Appellant to show even a harsh impact as a consequence of his deportation and the burden is on him, on the balance of probabilities, to establish that the exception is met. In this case, the Appellant has failed to establish an unduly harsh impact on his family members, either his partner or his children, remaining in the United Kingdom if he were deported.
58. The second issue is whether the Appellant satisfies the three limbs of the private life exception. There is no dispute that he meets the first requirement, to have resided lawfully in the United Kingdom for most of his life. The Respondent does not accept that he meets the second requirement of being socially and culturally integrated in the United Kingdom, primarily due to his extensive criminal history but also that there is a lack of community or other positive engagement. However, I find that the

Appellant is socially and culturally integrated in the United Kingdom for the following reasons.

59. The Appellant arrived in the United Kingdom at the age of 13 in 2002 and has resided here for 18 years, including the majority of his adult life (save for an extended period in Zimbabwe in 2011). During that time he has completed secondary education and some further education by way of qualifications in IT and has had employment. Although the evidence of the Appellant's employment is inconsistent, both in terms of the duration for which he has been employed in particular roles (his CV stating longer periods of employment than either the Sentencing Remarks refer to or what the Appellant himself told his offender manager for the purposes of the OASys report) and as to the precise employment or business engaged in (again with inconsistencies between the information given for the purposes of the OASys report and the Appellant's CV; as well as his own oral evidence in which he stated first that he was not working at all but then later that he was being paid by his mother and a friend for work in their businesses); there is sufficient information to show that the Appellant has had at least some employment in the United Kingdom. Further, the Appellant has a network of friendships, including being a god parent to two children in different families, attested to by letters from those friends, as well as his family relationships in the United Kingdom.
60. I have taken into account the Appellant's criminal history as a factor against the Appellant's social and cultural integration and although extensive over a number of years and contrary to the values of society, it does not sufficiently undermine the matters set out immediately above. I have also considered whether the Appellant's period of imprisonment has broken his integration or detracts from it, but do not find that it has given that he maintained family relationships and friendships during this time and on release has been living with his mother and brother.
61. The third requirement for the private life exception is that the Appellant would face very significant obstacles to reintegration on return to Zimbabwe. The Appellant's case in this regard is that he would face such obstacles because of the length of time he has been away from Zimbabwe, that he has no family or connections there, that there is a lack of support for rehabilitation and poor economic conditions such that he would not be able to obtain employment.
62. There was no information before the Tribunal as to any rehabilitation or support for the Appellant on return to Zimbabwe for drug use or in relation to criminal offending, or, to the contrary, of the lack of such services. The Appellant's claim to need further support is also undermined by his evidence that he is no longer using drugs and his continued assertion that he will not offend again. For these reasons I attach no weight to this factor and do not find that it amounts to any obstacle to reintegration.
63. The only background country evidence relied upon by the Appellant about conditions in Zimbabwe was the UN Special Rapporteur report from 2019, specifically on the rights to freedom of peaceful assembly and of association; which

does not form any part of the Appellant's claim in relation to obstacles to reintegration. There is no evidence on the current economic situation in Zimbabwe, the availability of accommodation, employment or any other matters relevant to this Appellant's ability (or otherwise) to reintegrate on return.

64. The Appellant left Zimbabwe as a young teenager in 2002 and has resided in the United Kingdom, together with his mother and brother, since then; save for an extended period of time living in Zimbabwe in 2011. As such he is inevitably more familiar with the culture in the United Kingdom than that in Zimbabwe, but I do not find that he will have lost familiarity with the culture in Zimbabwe given he grew up there, has spent an extended period of time there as an adult in 2011 and has family members and friends in the United Kingdom from Zimbabwe. I also do not accept the Appellant's claim not to have any family or contacts remaining in Zimbabwe given that this is inconsistent with the information given to his offender manager for the purposes of his OASys report and is one of many examples of inconsistent evidence before me, in addition to the unchallenged adverse credibility findings made by the First-tier Tribunal in relation to the Appellant's protection claim; which overall undermines the Appellant's credibility.
65. The Appellant speaks English which is widely spoken in Zimbabwe, he has educational qualifications and work experience in the United Kingdom and there is no specific reason (particularly in the absence of background country evidence about Zimbabwe) as to why he would not be able to utilise those skills and experience to obtain employment on return. There was no evidence before me at all to suggest that the Appellant would not be able to find accommodation on return. Further, although he stated it may be difficult for them, the Appellant's evidence was that his family in the United Kingdom would continue to support him in Zimbabwe.
66. Taking all of these factors into account, I do not find that the Appellant has established that he would face very significant obstacles to reintegration on return to Zimbabwe. Although it is likely that the Appellant's return to Zimbabwe would present some challenges and a period of adjustment, he does have some familiarity with the country and experience of living there (including as an adult); has extended family there; faces no language barriers; has qualifications and work experience to use to obtain employment; has no medical problems; and is likely to receive at least some continuing support from family in the United Kingdom. In these circumstances, he would not only be able to maintain and support himself, but also has sufficient understanding and capacity to participate in and be accepted in society, to build up private and family life there. The Appellant has not therefore established that he meets the private life exception to deportation.
67. The final issue is whether the Appellant has established any very compelling circumstances over and above the exceptions to outweigh the significant public interest in his deportation to Zimbabwe. The Appellant did not rely on any distinct matters, individually or cumulatively over and above those already relied upon in relation to the family and private life exceptions to deportation.

68. The Appellant has an extensive criminal history in the United Kingdom, including drugs offences of a serious nature and which have a significant adverse impact on individuals and society as a whole. Although his convictions in 2018 were for offences which were not as serious as the index offences, they were still of a similar pattern of driving and drugs offences for which he had previously been convicted and were committed after the Appellant had made assertions to his family and offender manager about not committing further offences; at a time when he had entered into a relationship and had responsibility for a child and a time when he knew that he was subject to deportation action in the United Kingdom. It is clear from the Appellant's history that his convictions and time in prison, his family and even the threat of deportation has not been sufficient to prevent further offending.
69. In addition to the matters set out already in relation to the Appellant's private and family life in the context of the exceptions to deportation which are also of relevance to the final balancing exercise of whether there are very compelling circumstances; I have also taken into account the fact that the Appellant's relationship only began after the index offences and when both parties knew that the Appellant was subject to deportation action by the Respondent and that the relationship has only very recently involved cohabitation.
70. Although not expressly relied upon by the Appellant at the hearing before me, I have also taken into account in his favour his family relationships with his mother and brother in the United Kingdom and his wider network of friends established here.
71. Taking all of these matters into account, including the factors in section 117B of the Nationality, Immigration and Asylum Act 2002, I do not find that the Appellant has established that there are any very compelling circumstances (individually or cumulatively) to outweigh the significant public interest in his deportation.

Notice of Decision

The appeal is dismissed on protection grounds.

The appeal is dismissed on human rights grounds.

No anonymity direction is made.

Signed *G Jackson*

Date 1st October 2020

Upper Tribunal Judge Jackson