



Upper Tribunal  
(Immigration and Asylum Chamber)

Appeal Number: PA/09578/2017

**THE IMMIGRATION ACTS**

Heard at Field House  
On 19 August 2020

Decision & Reasons Promulgated  
On 01 September 2020

Before

UPPER TRIBUNAL JUDGE O'CALLAGHAN

Between

H. H. Z.  
(ANONYMITY DIRECTION MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

**Representation:**

For the Appellant: In Person

For the Respondent: Mr. T Lindsay, Senior Presenting Officer

**DECISION AND REASONS**

**Introduction**

1. The appellant is a national of Iraq and asserts that he is presently aged 31. He appealed against a decision of the respondent not to grant him leave to remain on protection or human rights grounds and to seek to deport him. The respondent's decision is dated 13 September 2017.

2. The appellant's appeal was initially founded upon international protection and human rights (articles 3 and 8) grounds. It was initially considered by Judge of the First-tier Tribunal Rai who dismissed the appeal by a decision dated 14 October 2019.
3. The appellant was granted permission to appeal and the Tribunal (Chamberlain J and UTJ O'Callaghan) dismissed the appeal on international protection and human rights (article 3) grounds but allowed the appeal on human rights (article 8) grounds to the extent that the Tribunal would remake the decision. The Tribunal's decision was sent to the parties on 11 February 2020 and is annexed to this decision.
4. This matter was listed before me on 19 August 2020 for the resumed hearing. The appellant was represented by Arora Lodhi Heath Solicitors until at least 10 August 2020 when the firm filed and served a paginated supplementary bundle, including a further witness statement from EC. I was informed by the appellant at the hearing that he was content to proceed in the absence of legal representation.
5. The parties were in agreement that the appellant's bundle being relied upon was that filed under cover of a letter from Arora Lodhi Heath Solicitors, dated 4 July 2019, which runs to 188 pages. A further supplementary bundle running to 16 pages was filed under cover of the letter of 10 August 2020, detailed above.
6. The appellant and EC relied upon their witness statements and gave evidence before me. By agreement with the appellant, EC presented closing submissions on his behalf. I take this opportunity to observe that the submissions were eloquent and of a high calibre.

### **Anonymity Direction**

7. The Tribunal issued an anonymity direction by its decision dated 11 February 2020 and there was no request by either party to set it aside. For the reasons detailed by the previous decision I remain satisfied that an anonymity direction is appropriate in this matter and I extend the direction to cover the appellant's witness, EC, because I am satisfied that her identification would quickly lead to the appellant's identification.
8. The direction is detailed at the conclusion of this decision.

### **Background**

9. The appellant is an ethnic Kurd who asserts that he is from Kirkuk. By a decision dated 8 February 2007 the Asylum and Immigration Tribunal (Immigration Judge Kamara) found the appellant to be from Sulemaniya, at [21]: (AA/12399/2006).
10. He arrived in this country in 2005 and claimed asylum. The respondent refused the application and the Asylum and Immigration Tribunal dismissed the appellant's appeal by its decision dated 8 February 2007. Immigration Judge Kamara (as she then was) concluded that the appellant had sought to mislead the respondent as to his age and that rather than being a youth of 17, he was a 'confident individual well into his

twenties', at [19]. The Judge further found that she could not accept the appellant to be a witness of truth there being a significant number of discrepancies between his oral evidence, his witness statement and his screening interview, such as that when taken cumulatively the asylum claim was found to be a 'work of fiction from beginning to end', at [21].

11. In July 2010 the appellant was granted indefinite leave to remain in this country outside of the Immigration Rules. A subsequent application for naturalisation as a British citizen was refused by the respondent in December 2011 on good character grounds.

#### *Criminal convictions*

12. The appellant has several criminal convictions in this country. In 2008 he was convicted of driving whilst disqualified, drink-driving and using a car without insurance for which he received a sentence of 56 days' imprisonment, suspended for 12 months. He also received 200 hours of unpaid work and £60 costs. The OASys assessment records at page 9 [AB 82] that the appellant appears not to recognise the seriousness of his actions in relation to this conviction.
13. In 2015 he was convicted of theft (shoplifting) and possession of a knife, for which he received a 12-week custodial sentence, suspended for 12 months with £780 costs (as amended on appeal). The OASys assessment records, at [AB 82], that the appellant walked out of a SuperDry store wearing a jumper he had not paid for. He stated that he had forgotten that he was wearing it. As for the Stanley knife in his possession he detailed that he was on his lunch break from work.
14. In 2016 he was convicted of two counts of theft and sentenced to 10 weeks' imprisonment suspended for 18 months with £330 costs. As recorded at [AB 82] the appellant states that he paid for a television, but the cashier forgot to scan it and verify the purchase. He was arrested when he walked out of the store without paying.
15. The OASys assessment observes at [AB 82] that the appellant '*maintains his innocence as to the theft charges. With regards to all his offending history, he has justifications and is able to provide an excuse as to why they occurred, none of which involve them being his fault.*' For the sake of completeness, the explanations as to the theft offences are considered by the Tribunal to be hopeless and that the appellant continues to advance them, despite having been convicted on the criminal standard of proof following trials on all four counts, is strongly suggestive as to his personal detachment from his criminal activity and his willingness not to accept his behaviour as being contrary to societal norms.
16. On 3 February 2017 the appellant was convicted at Isleworth Crown Court of possession/control of identity documents with intent and sentenced to 12 months' imprisonment. At the same time a suspended sentence of 2 months was activated, to be served consecutively.

17. The nature of the offence is detailed within the OASys report, at [AB 80]:

'On Tuesday 20 October 2016 at 14.30pm [the appellant] coerced his partner [EC] to enter NatWest Bank in Fulham Broadway, with false documents (bank card and driving licence) to try to reopen a bank account which belonged to [AJ]. When the cashier asked [EC] to enter the PIN number a stop warning came up on the screen. The cashier then took all the documents that [EC] had handed over and took it to her manager who called the police. [The appellant] was standing outside the bank throughout.

During this time, [EC] wandered out of the bank speaking occasionally with [the appellant] who was standing outside. [EC] became anxious and walked away, while [the appellant] remained standing outside the bank. It was only when the police arrived he walked away. He was later arrested outside the bank. [EC] was arrested in a nearby estate. She stated that her partner [the appellant] had threatened to harm her if she did not go into the bank with the documents. At the scene [the appellant] denied knowing [EC], then they later spoke to each other in custody and gave the same home address (... Finborough Road ...).

A police search was conducted at the address, where the original driving licence of [EC] was found. In the printer, a copy of the same licence was found with the name changed to [AJ] and a different address. This altered version was the same as used by [EC] in the NatWest Bank. Further personal documents were found belonging to [AJ] at the address.

[AJ] was located to be living in New Jersey, USA, during the offence. She provided a statement which detailed how [the appellant] had coerced her into providing him her driving licence and allowing him the use to open a bank account in her name, for the purposes of transferring money.

[EC] during police interview discussed how she was coerced into committing the offence and was in fear of what may happen to her. [The appellant] stated that he was also under duress during the commission of the offence. He reported that a 'Romanian gang' had threatened him to carry about [sic] the frauds and had been under threat for several months. He names a member with the nickname 'Bully'. [The appellant] also during police interviews, was informed of what [EC] had said, where he conceded that he has made her do it.'

18. HHJ Denniss observed by his sentencing remarks, *inter alia*:

'You've pleaded guilty to a serious offence of possessing an identification document with improper intention. It's an offence which is aggravated by the fact that you were involved in fabricating a fraudulent driving licence and had the equipment to do so and clearly the knowledge to do so.

Secondly, it is aggravated by the fact that you were using a young woman, [EC], as a stooge to you - to go into a bank, whereas you were avoiding any element of being caught, so you may well have thought, by simply being in the background. You accept in your interview that you applied duress to that young woman. I don't know what will happen to her, the matter appears to be pending at the moment, but it's no concern of mine and it would not inhibit me from sentencing today. The third aggravating feature are your antecedents. You have dishonesty in the reasonably recent past and this offence was in breach of a suspended sentence.'

19. No reference is made by HHJ Denniss as to the appellant relying in mitigation upon his having been threatened by a gang of Romanian nationals to undertake the offence.
20. The respondent signed a deportation order on 10 September 2017 and subsequently on 19 September 2019 served a supplementary decision refusing the appellant's claim for international protection and refusing to grant him leave on human rights grounds.

### **Decision**

21. Section 32(4) of the UK Borders Act 2007 sets out the clear proposition that deportation of a foreign criminal, namely any foreign person whose criminal conduct resulted in a sentence of 12 months' imprisonment or more, is conducive to the public good.
22. Judge Rai has previously found that section 72 of the Nationality, Immigration and Asylum Act 2002 ('the 2002 Act') does not apply in this matter and the respondent has not challenged this element of her decision.
23. The appellant relies upon the exception to the public interest in his being deported established by section 117C(5) of the 2002 Act, namely that he has a genuine and subsisting relationship with a qualifying partner and the effect of his deportation on the partner would be unduly harsh. Under the statutory provision, this is known as 'Exception 2'.
24. The burden is upon the appellant to establish that there has been an interference with his protected human rights. Upon establishing such interference, the respondent must show that deporting the appellant to Iraq will not result in a breach of his protected rights. The standard of proof to be applied is the civil standard, though it is a flexible one in its application.

### *Preliminary issues*

25. I detail from the outset that on at least two occasions the appellant sought to respond to questions from Mr. Lindsay by challenging him to answer a question put by the appellant. Such behaviour is consistent with that adopted by the appellant before Judge Kamara and noted at [19] of her decision. I confirmed with the appellant on both occasions that such behaviour was inappropriate but that I would not take it into account in my assessment. For the benefit of the appellant I confirm that I have not given any weight to such behaviour.
26. Further, during cross-examination EC addressed her personal history of being subjected to domestic violence by the appellant. During this evidence, the appellant pulled a face, then laughed and pointed at EC, who was sitting in the row of seats in front of him, before holding his hands up in the air in what I perceived to be a manner exhibiting exasperation. I again informed the appellant that such behaviour was inappropriate but confirmed that I would not take it into account in my

assessment. For the benefit of the appellant I confirm that I have not given any weight to such behaviour.

### *Vulnerability*

27. The appellant's bundle contains a witness statement from EC, dated 1 August 2018, that references her suffering with anxiety. No medical evidence is relied upon to corroborate the true position as to EC's health. The only medical document relied upon is a one-page letter from Community Living Well, Central and North West London NHS, dated May 2018 which is concerned with the appellant managing his low mood. The Tribunal observes that the appellant has been represented for several months by a well-respected firm of solicitors and so proceeds on the basis that the omission of medical evidence was intentional.
28. At the beginning of her evidence, EC displayed outward emotions of defensiveness and tearfulness. Whilst being mindful of the lack of medical evidence before me I decided, with no objection from Mr. Lindsay, to consider EC to be a vulnerable witness on the basis of anxiety. The lack of corroborating medical evidence results in my not being able to make a determinative finding of fact that EC suffers anxiety, and I observe at this juncture that EC is employed in a professional field, but for the purposes of the hearing and this decision I find that she suffers from anxiety.
29. Having reached such conclusion and found EC to be a witness with a disability in the form of anxiety, I informed the parties as to my recognition that she may find the court environment stressful. I recognised that she may find it difficult to concentrate and recall matters and that there may be communication barriers consequent to anxiety. Throughout the hearing I was mindful of the Joint Presidential Guidance Note No 2 of 2010: 'Child, vulnerable adult and sensitive appellant guidance' and the guidance offered by the Court of Appeal in *AM (Afghanistan) v Secretary of State for the Home Department* [2017] EWCA Civ 1123; [2018] 2 All E.R. 350.
30. I observe that there is no specific section addressing anxiety in the Equal Treatment Bench Book (March 2020 revision). However, having noted EC's reference to anxiety in her witness statement I had taken the opportunity to consider Chapter 2 and 4 prior to the commencement of the hearing and further read the section on panic attacks in appendix B as I considered this helpful by analogy.
31. EC confirmed her wish to give evidence on the appellant's behalf. Being mindful that her welfare was to be protected, and to enable her to participate by giving oral evidence as she requested, the process of cross-examination was amended, and Mr. Lindsay made no objection to such amendment. Mr. Lindsay's cross-examination was broken down into sections, and at the commencement of each section I explained why Mr. Lindsay might be asking questions on this topic and explained circumstances where the appellant may have given inconsistent or unclear evidence in relation to this issue so that EC was aware that she may be expected to comment. I adopted a flexible approach, noting at the beginning of cross-examination that EC exhibited clear upset at being asked questions on an issue and only then being informed that the appellant had given contradictory evidence. I decided that the

process of such discussion as to individual elements of evidence to be addressed would calm EC and I am satisfied that it did.

32. At the conclusion of the hearing I was satisfied that this course of action enabled EC to engage fully in proceedings and, on several occasions, she thanked me for adopting this course. I also permitted EC to take breaks when she felt they were required and for as long as she wished.

*Withdrawal of concession*

33. The Tribunal noted in its decision of 11 February 2020, at [24]:

‘As to ground 2, Mr. Bramble accepted on behalf of the respondent that the Judge materially erred in law in not noting the concession made by the presenting officer, Mr. Ojo, at the hearing that the appellant’s relationship with EC was genuine. The Judge was not required to accept the presenting officer’s concession. She was, however, required to give reasons if she chose to reject it. We further note that there was a failure by the Judge to record EC’s evidence as to why she did not wish to relocate to Iraq or be separated from the appellant. We are satisfied that such errors were material, because they might have affected the application of s.177C(5) of the 2002 Act in the appellant’s case.’

34. The concession made before Judge Rai is recorded on the record of proceedings as Mr. Ojo accepting that that the appellant is in a genuine relationship with EC and such concession is noted in the grounds of appeal filed on behalf the appellant to this Tribunal by counsel who represented him at that hearing. No explanation is recorded in record as being provided by Mr Ojo as to the underlying reasons upon which the concession was made. It is implicit that Mr. Ojo was satisfied as to the genuineness of the relationship having heard oral evidence.
35. At the hearing before me, Mr. Lindsay confirmed the respondent wished to withdraw the concession, and observed that it remained for the appellant to establish to the relevant standard that he enjoyed a genuine and subsisting relationship with EC.
36. Both the appellant and EC expressed surprise at the withdrawal of the concession, having not been made aware that this was possible. I made no enquiries as to the advice they received from their former legal representatives as to do so would be inappropriate. However, I observe that they were on notice that Judge Rai had concluded at [73] of her decision that *‘the fact is even if the appellant and [EC] were in a relationship, or are still in a relationship, I have doubts as to the strength or that relationship, such that it could be considered genuine and subsisting in law’*.
37. At the hearing I explained to the appellant that a party could seek to withdraw a previously made concession. The Court of Appeal confirmed in *AM (Iran) v. Secretary of State for the Home Department* [2018] EWCA Civ 2706 that the party withdrawing a concession has to explain why it was mistaken and why it was now just and fair that they be allowed to withdraw it. In this matter the concession was made by a presenting officer, on behalf of the respondent, at a hearing at the conclusion of oral

evidence and with no reference to the available written documentation. Though implicit that Mr. Ojo believed the inconsistencies in the written documentation, as subsequently observed by Judge Rai, did not adversely impact upon the genuineness of the relationship he provided no reasons as to such implicit conclusion. The respondent is now able to consider the criticisms to the evidence identified by Judge Rai at [73] of her decision, including inconsistencies between the oral evidence and documentary evidence.

38. In *Secretary of State for the Home Department v. Davoodipannah* [2004] EWCA Civ 106, Kennedy LJ, giving the leading judgment, considered the approach to the withdrawal of a concession, at [22]:

“22. It is clear from the authorities that where a concession has been made before an adjudicator by either party the Immigration Appeal Tribunal can allow the concession to be withdrawn if it considers that there is good reason in all the circumstances to take that course. (See, for example, *Ivanauksieine v Secretary of State for the Home Department* [2001] EWCA.Civ 1271, and *Carrabuk v Secretary of State for the Home Department* (a decision of the Immigration Appeal Tribunal presided over by Mr Justice Collins on 18 May 2000)). Obviously if there will be prejudice to one of the parties if the withdrawal is allowed that will be relevant and matters such as the nature of the concession and the timing may also be relevant, but it is not essential to demonstrate prejudice before an application to withdraw a concession can be refused. What the tribunal must do is to try to obtain a fair and just result. In the absence of prejudice, if a Presenting Officer has made a concession which appears in retrospect to be a concession which he or she should not have made, then probably justice will require that the Secretary of State be allowed to withdraw that concession before the Immigration Appeal Tribunal. But, as I have said, everything depends on the circumstances, and each case must be considered on its own merits.”

39. In considering the application to withdraw the concession at the hearing, I was mindful as to the overriding objective to deal with a case fairly and justly: rule 2(1) of the Tribunal Procedure (Upper Tribunal) Rules 2008. I was satisfied that there was good reason for the respondent to withdraw the concession made on her behalf by Mr. Ojo. No reasons were provided by Mr Ojo for the concession, and no explanation was provided as to why inconsistencies in the evidence of the appellant and EC, both orally and in documentary form, were considered incapable of undermining the claimed genuineness of the relationship upon application of the relevant burden and standard of proof. I was further satisfied that though Mr. Bramble acknowledged the concession at the error of law stage he did not of his own volition commit the respondent to adhering to her concession at the resumed hearing. To do so would be beyond Mr. Bramble’s professional role.
40. In considering whether prejudice arose, I observe that the appellant and his previous legal representatives were on notice as to Judge Rai’s concerns as to inconsistencies in the evidence relating to the genuine and subsisting nature of the relationship and though the decision on the article 8 appeal was set aside, I am satisfied the appellant’s legal representatives would have been aware that the respondent would,



at the very least, reconsider her position as to the concession. In such circumstances I permitted the respondent to withdraw her concession.

41. I considered the appellant's position as to continuing with the hearing or seeking an adjournment. Though no adjournment request was made, I was mindful that the appellant appeared before me without legal representation. The original appeal bundle had been prepared on the basis that the appellant was required to establish the genuine and subsisting nature of the relationship and so was prepared in order to address the issue pre-concession. I discussed with the appellant and EC as to whether they would wish to file any further documentary evidence to corroborate their relationship, and if they so wished the hearing could be adjourned part heard. I permitted the appellant and EC to leave the hearing room and discuss their position for several minutes. Upon their return, they indicated a wish to rely upon photographs. I confirmed that I accepted that, as a minimum, that they were friends and the photographs were unlikely to confirm more than that they had known each other for a period of time. The appellant and EC were content with this observation and did not request an adjournment so that they could file and serve photographs. Upon further discussion between each other the appellant and EC confirmed that there were no further documents they wished to rely upon and that the hearing could proceed to its conclusion on the day.

*Statutory provisions*

42. The appellant relies upon section 117C(5) of the 2002 Act:

'(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.

...

(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.'

43. This statutory provision falls within Part 5A of the 2002 Act concerned with public interest considerations and article 8. I observe section 117A which details the application of Part 5A:

'(1) This Part applies where a court or tribunal is required to determine whether a decision made under the Immigration Acts –

(a) breaches a person's right to respect for private and family life under Article 8, and

(b) as a result would be unlawful under section 6 of the Human Rights Act 1998.

(2) In considering the public interest question, the court or tribunal must (in particular) have regard –

(a) in all cases, to the considerations listed in section 117B, and

(b) in cases concerning the deportation of foreign criminals, to the considerations listed in section 117C.

(3) In subsection (2), “the public interest question” means the question of whether an interference with a person's right to respect for private and family life is justified under Article 8(2).’

44. Paragraph 339(b) of the Rules provides:

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

...

(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.’

45. Sales LJ (as he then was) confirmed in *El Gazzaz v. Secretary of State for the Home Department* [2018] EWCA Civ 532, at [25]:

‘25. The statutory provisions in Part 5A of the 2002 Act mirror the Immigration Rules in relation to foreign criminals which were brought into effect at the same time as Part 5A: see paras. 398 to 399A of the Immigration Rules as made in July 2014 ...’

46. For completeness, GEN.1.2. of Appendix FM to the Immigration Rules provides:

GEN.1.2. For the purposes of this Appendix “partner” means-

(i) the applicant’s spouse;

(ii) the applicant’s civil partner;

(iii) the applicant’s fiancé(e) or proposed civil partner; or

(iv) a person who has been living together with the applicant in a relationship akin to a marriage or civil partnership for at least two years prior to the date of application, unless a different meaning of partner applies elsewhere in this Appendix.

*Is the appellant a partner?*

47. The Tribunal confirmed in *Buci (Part 5A: ‘partner’)* [2020] UKUT 00087 (IAC); [2020] I.N.L.R. 325 that the definition of ‘partner’ in GEN.1.2 of Appendix FM does not govern the way in which ‘partner’ is to be interpreted in Part 5A of the 2002 Act. The Tribunal held that a person who satisfies the definition in GEN 1.2 should, as a general matter, be regarded as being a partner for the purposes of Part 5A, Where,

however, a person does not fall within that definition, a judge will need to undertake a broad evaluative assessment of the relationship, bearing in mind that a 'partner' is a person to whom one has a genuine emotional attachment, of the same basic kind as one sees between spouses and civil partners, albeit not necessarily characterised by present cohabitation. A 'partner' is not the same as a friend; nor is an adolescent's or other young person's boyfriend or girlfriend necessarily a 'partner'.

48. I first consider as to whether there is a relationship existing between the appellant and EC capable of enjoying protection under article 8. When considering whether the appellant is the partner of EC for the purposes of Part 5A, I note the written evidence before me. The appellant relies upon his witness statement dated 23 July 2018 in which the sole reference to EC is detailed at para. 5:

'5. My partner is a British national. We have been together for over 7 years. I am engaged to be married to [EC], my partner. Unfortunately, she lost her baby while pregnant because of the ongoing situation and stress.'

49. Before me the appellant explained that the paucity of information in his witness statement as to his relationship with EC was because he wished to rely upon EC's witness statement.

50. EC relied upon two witness statements. The first is dated 1 August 2018. It initially details the appellant's friendship with two friends and proceeds to explain how the appellant helps EC with her anxiety and pain. She refers to his energy, his commitment to his business and his regular attendance at the gym or training. She refers to his 'mistake', the index offence, and details his regret as to his actions. She states that she cannot live without the appellant. By her second witness statement, dated 9 August 2020, EC details her love for the appellant and her fears over losing him. I observe that thought aware that this hearing is to consider family life rights, the appellant provided no addendum witness statement for the hearing before me to add to the one paragraph detailed above. I further observe that neither witness detailed their address on their statements and very limited detail is provided as to their day-to-day lives together.

51. I have also been provided with two short witness statements from friends who sought to attend an earlier adjourned hearing before the First-tier Tribunal but did not attend before Judge Rai. No explanation was given for their non-attendance before me.

52. Both the appellant and EC were asked to define their relationship status with each other. The appellant replied that the couple are close, detailing '*we are inseparable*'. EC said that they are in a relationship and that the appellant is her partner. Neither stated at the outset that they were engaged and only confirmed the same when Mr. Lindsay asked why they had not said they were engaged when asked as to the status of their relationship. Whilst being mindful as to EC's vulnerability, I place weight on the fact that neither the appellant or EC referred to their being engaged until the point was specifically raised by Mr. Lindsay. In so doing I am mindful that an

engagement is a significant personal state of affairs that is unlikely to be forgotten, as subsequently asserted by the appellant.

53. The appellant confirmed that the couple met soon after EC relocated to London and they were engaged in 2012. EC informed me that the relationship commenced in 2011 and they were engaged in 2013. Upon being informed that the appellant had detailed the engagement as being in 2012, she amended her evidence and asserted that the proposal was over the New Year festivities and so occurred at the end of 2012.
54. The appellant informed me that a video recording had been taken of the proposal, but he had lost it. He thought a friend had also recorded it but accepted he had taken no steps before the hearing to secure the recording.
55. Mr. Lindsay asked the appellant as to why EC was not wearing her engagement ring. He replied that he was '*not sure*' what had happened to the ring. When asked why she was not wearing the ring, EC informed Mr. Lindsay that the ring had been sold for money and that the appellant had told her that he will get her another ring. I have considered whether the appellant was embarrassed at having sold the ring and so was hesitant to say so. I have also borne in mind EC's vulnerability and the possible impact it may have upon recollection. However, when considering the evidence on this issue in the round I am not satisfied that the appellant comes close to establishing on balance that the couple are engaged. No detail was provided by EC as to when the ring was sold. When considering their financial circumstances, EC informed me that she was employed and so was the appellant. I have considered the documents before me to see if the appellant and/or EC had previously expressed concerns as to money troubles. I observe page 14 of the OASys report, at [AB 87] where the appellant reported earning a stable income, being paid relatively well and being satisfied with his income. He reported having a £17,000 debt owed to a friend, which he repaid monthly and was not being pressurised as to repayment. He reported to the interviewer that he had saving prior to custody and was building his savings back upon following release. On the same page of the assessment, no problems were identified as to the offender's financial situation or to his financial management. His offending was identified as being acquisitive in nature. I further observe that the appellant was keen to impress upon me that he had paid the deposit for the property at Kenton Mansions. It is not the appellant's case that he committed the index offence because of financial difficulties, rather it is because he was threatened by a Romanian criminal gang. Consequently, I am not satisfied that an engagement ring was sold for money.
56. Considering the evidence in the round I am satisfied that the appellant cannot meet the burden upon him to establish that he is engaged to EC.
57. I proceed to consider as to whether the appellant and EC are a cohabiting couple. For reasons that were well-ventilated at the hearing before me, there are numerous and significant inconsistencies in the evidence of the appellant and EC. However, the existence of such inconsistencies does not necessarily mean that the witnesses are

untruthful, and I continue to have in mind that care should be taken when assessing EC's evidence consequent to her accepted vulnerability.

58. EC was clear in her evidence that she cohabited with the appellant at Finborough Road for 8 years prior to their move to Kenton Mansions, save for the time the appellant spent firstly on remand and then serving his custodial sentence. She also detailed that there would be short periods apart, identified as days not weeks or months, when respite was required arising from her anxiety and desire for space. In contrast the OASys report records at page 11 [AB 84] the appellant's position as being '*occasionally spending the night at his partner's address, and vice versa*'. He is further recorded as stating that he lived with EC prior to the index offence but they had decided to live apart '*to give their relationship space*'.
59. The appellant accepted in his oral evidence that he had lived apart from EC '*for a short period*' after his release from prison, but they '*got back together*'. EC's evidence was that they continued to reside at Finborough Road. When informed as to the appellant's evidence that he had not returned to Finborough Road after his release, EC replied, '*I don't understand why he said that. He may be confused.*'
60. I again observe the OASys report [AB 84] which records that following the appellant's release from prison he was living rent-free at a friend's property in London W8. The appellant's friend permitted him to reside at the property for him to save money for a mortgage. I observe at this juncture that the friend's assertion to the interviewer as to the appellant saving for a mortgage is inconsistent to the circumstances asserted by EC. I further observe that the interviewer records no reference to the appellant intending to purchase a property with EC. I find that the appellant was discussing a future with his friend that did not involve EC.
61. As to where the couple presently reside, I observe the appellant's evidence that '*at the moment we do not live together, I have two addresses.*' He gave his first address as Finborough Road and the second address as Kenton Mansions. He stated that he had lived at Finborough Road for 8 years with EC and then they moved because EC wanted a larger property. He confirmed that they moved to Kenton Mansions 8 months ago. He then amended his position by stating that Finborough Road is not his home, he stays there with friends who are renting.
62. By her evidence EC confirmed that they reside at Kenton Mansions, an address to which they moved 12 months ago, and that the appellant resides there with her for the majority of the time. When informed as to the appellant's evidence on this issue, EC amended her position to '*majority of the week, most nights, more than half the week. Varies, Some weeks there all the time. Not set days. We are together, but once or twice a month he will go for respite.*' EC explained that sometimes she needs space because of her anxiety and so the appellant leaves the property for respite reasons. I observe that at no time has the appellant detailed that he moves out of Kenton Mansions for respite reasons. He provided no cogent explanation as to why he has two home properties when asserting that he moved into Kenton Mansions with EC.

63. EC accepted that the appellant has a flat elsewhere. She was adamant that it was not at Finborough Road and referenced having visited it on one or two occasions. It was in north-west London, possibly near Bayswater.
64. As to Finborough Road, she detailed that they moved out because she wanted somewhere larger to live. It is a multi-occupancy flat consisting of 2 studio flats and 4 bedrooms. The landlord lives in the property. When asked if any friends lived there, she stated the landlord and 'a Turkish girl called Elif'. She then amended her evidence and informed me that the landlord continues to allow the appellant to stay there because they are friends. When asked about the inconsistency both in her and the appellant's evidence EC reverted back to her previous position detailing that she did not know why the appellant had given Finborough Road as his address.
65. The appellant confirmed that he was not on the tenancy agreement at Kenton Mansions, but the tenancy agreement detailed that he was an occupier. He stated that he paid the deposit for Kenton Mansions. When discussing the possibility of further documents being filed, EC indicated that she could produce an email from the letting agency confirming that the appellant could be named as an occupant in the agreement but not as a tenant. I indicated that though the document was not before me, I was prepared to accept that the appellant was not named as a tenant but the landlord, through the letting agent, was prepared to name him as an occupier. Mr. Lindsay did not object to this approach. EC accepted that being named as an occupier did not necessarily mean that the appellant lived there. She was right to adopt this approach. The appellant has proven able in the past to secure rent-free accommodation from at least two other friends and his permitted occupation of Kenton Mansions does not by itself decide the issue. However, having accepted the existence of the email, it does carry some positive weight for the appellant in my assessment.
66. I again remind myself that the burden of establishing the relationship, and its substance, falls upon the appellant. I am satisfied that the appellant resides at a property away from Kenton Mansions. Both witnesses agreed on this issue, though not to the extent of time he spends away from Kenton Mansions. I am not satisfied, on balance, that the appellant is truthful that he resides at Finborough Road. EC's description of the property, consisting of 4 bedrooms and 2 studios, strongly suggests that it comprises 6 relatively small rooms. The appellant did not refer to his staying in a room with the landlord. If this were the case, it would be expected that he would refer to staying with the landlord rather than a friend. Rather, he refers to staying with friends who are renting. I note that it is not his evidence that he stays in a room of his own, rather he stays with 'friends'. EC identified only one friend as now residing at the property, a female. I am satisfied, on balance, that as a friend of EC this woman would not permit the appellant to share her bedroom or studio for several days every month. I accept to the appropriate standard EC's evidence that the appellant has a second property, but not at Finborough Road.
67. A question for me is why has the appellant lied on this matter? I have considered the appellant's evidence with care. His written evidence is minimal in substance. His oral

evidence is riddled with inconsistencies. I further observe that he was found to be someone prepared to present 'a work of fiction from beginning to end' by Judge Kamara and in relation to his international protection appeal before Judge Rai, which was not set aside by the Tribunal, his evidence was significantly inconsistent. I am satisfied that the appellant's efforts to hide his address in north-west London from both the Tribunal and the respondent is founded upon an effort to manipulate consequent to a desire to limit the Tribunal's knowledge as to core elements of his life. Over time the appellant has sought to be manipulative in a range of matters. This is evidenced by the index offence and his manipulation, through coercion, of EC and his coercive behaviour towards AJ. It is further evidenced by his engagement with the probation service where he sought to dictate the means by which probation inspected the property he wished to reside following release. I observe the OASys assessment at [AB 84]:

'[The appellant] proposed the address of [ ... Ongar Road ...] This was assessed as unsuitable by probation staff after a home visit was completed. Reasons for this were lots of contradictions within [the appellant's] description of the address (number of residents, description of residents), and what was witnessed at the address. [The appellant] made it clear that he didn't want the visiting officers to see the entire address nor did he wish for them to meet the elderly landlord, Desmond. Desmond presented as a potential vulnerable adult and someone who easily could be taken advantage of. Most concerning was that Desmond was unaware of [the appellant] being on probation and furthermore [the appellant] was residing at the address rent free.'

68. I have clearly in mind the evidence of EC when considering the evidence in the round. Whilst there are inconsistencies in her account, much of it arose in an effort to address the appellant's own inconsistent evidence. I accept that EC was endeavoring, naively, to repair what she believed were difficulties with the appellant's oral evidence and so lost sight of the need for me to consider her true evidence. This approach was exemplified by her recital of the domestic violence received at the hands of the appellant where she veered into stating that she had '*a better understanding of what happened*', that the appellant '*was experiencing vulnerability*' and that she was '*no angel*' when there were '*some physical moments*.' Upon my observing that her observations could be considered to minimise the appellant's behaviour, EC confirmed that that was not what she wanted to be understood by me and repeated that he had been physically violent to her. On the issue of domestic violence, I conclude that whilst EC wanted to support the appellant as best as she could in his appeal, upon reflection she did not wish to advance the notion that the appellant's violence towards her was justified by her own behaviour.
69. When considering the evidence in the round, I am satisfied that the appellant simply seeks to hide his true position from the Tribunal. When he lodged his appeal with the First-tier Tribunal in September 2017, and was represented by Alora Lodri Heath Solicitors, the appellant gave as his address a property situated in Coverdale Road, Willesden. This continued to be his address on record for 21 months during which time various directions and notices of hearing were sent to the address in October 2017, June 2018, August 2018, December 2018 and June 2019. I note that during such

time EC asserts that the appellant was residing with her and not living elsewhere. I observe that the decision of Judge Rai was sent to the Willesden address and the First-tier Tribunal was only informed as to the change of address when the appeal notice was filed, consequent to this concern as to the appellant's home address being raised by Judge Rai, at [73] of her decision. I further observe that the London NW3 property was not subsequently addressed by the appellant who insisted before me that he resided only at Kenton Mansions and Finborough Road. I have considered EC's evidence that when she visited the appellant's second property - not Finborough Road - it was situated near Bayswater. I take judicial notice that Willesden is separated from Bayswater by Maida Hill, North Kensington, Kilburn and Mapesbury. They are therefore some distance apart. Giving the benefit of the doubt to EC and accepting that she confused Bayswater with Willesden, I am satisfied that following his release from prison the appellant resided at properties in London W8 (Kensington) and then Willesden and that he continues to reside at the address in Willesden. Whilst the probation service was satisfied that the appellant resided in London W8 rent free, I find that he has been paying rent at the property in Willesden since at least September 2017. I so conclude because the appellant has not stated that he resides at this property with a friend, indeed he makes no admission to living there, and on balance I find that no landlord would permit someone to live rent-free in a property for what is now three years. I further find that the appellant would not rent a property for three years simply to permit him, and EC, respite for as little as a couple of days a month. I therefore conclude that the reason the appellant seeks to hide his residence at a property in Willesden is because it undermines the façade that he lives with EC in Kenton Mansions.

70. I further find that the true position as to the appellant's residence prior to his arrest and imprisonment is that he lived in his own property, visiting EC on occasion and with EC visiting him on occasion. There may have been a relatively short period prior to his arrest where they resided together, but I find that it was through necessity on the appellant's part and at a time when he was subjecting EC to domestic violence and coercion.
71. Having considered the appellant's evidence with care and been willing to give the benefit of the doubt when appropriate, I find myself in agreement with Judge Kamara that the appellant is willing to present as his evidence works of fiction from beginning to end. I conclude that the truth is a stranger to him.
72. I therefore find that the appellant is not engaged to EC and they have not been living together in a relationship akin to marriage for at least two years. Consequently, the appellant is unable to meet the requirements of 'partner' under GEN.1.2 of Appendix FM. However, having found that the appellant does not fall within this definition I am required to undertake a broad evaluative assessment of the relationship, bearing in mind that a 'partner' is a person to whom one has a 'genuine emotional' attachment of the same kind that one sees between spouses and civil partners.
73. Having read EC's statements with care, I accept that they are a testimony to her genuine emotional commitment to the appellant. I find they were written with a



passion and a genuine desire to explain such commitment, no doubt with the undercurrent of seeking to explain her feelings in circumstances where the appellant's actions could well have led to her having a criminal record and losing her employment. I have read the statements several times over, as I have done with the key evidence in this appeal and accept that they are EC's genuine voice. She sees her future with the appellant and identifies him to be caring. She expresses her pride in some of his actions. She also takes time to identify the stress she is presently living under. I understand that she has concerns as to the justice system and only a favourable end will do for her. However, though I accept that EC has established that she possess genuine emotional commitment to the appellant, the statements are sparse as to day-to-day life together, and the absence of such information is noticeable in a relationship that is now said to be some nine years old. I conclude, on balance, that the sparse detail as to day-to-day life together is consequent to the periods of time when the appellant stays with EC being limited. I find that the appellant has his own life, and his visits to EC are limited. This is in line with the appellant's position when he was imprisoned and is consistent with him continuing to live apart from EC following his release from custody.

74. It is for the appellant to establish to the requisite standard that he has a genuine emotional commitment to EC. I am satisfied that the answer to my earlier question as to why the appellant lied as to living at Finborough Road is that he is aware that the true circumstances are insufficient to enable him to resist his deportation. He has, save for a brief period of time prior to his arrest, never lived with EC in the sense that he has no other property to return to elsewhere. As I have found above, the short period of time he solely resided with EC was punctuated with domestic violence and coercion. He is content to have his own life, living apart from EC, and visit her on occasion. I am satisfied that he is aware that establishing a relationship with EC, who continues to have a genuine emotional attachment to him despite being investigated for a serious criminal offence conducted at his instigation, is his last means of preventing deportation. The notification of his change of address to the Tribunal, confirming that he resides with EC, was undertaken after Judge Rai had noted the inconsistency in address. I am satisfied that this is another example of the appellant's manipulative behaviour. I accept EC's evidence that she has not been subject to domestic violence since the appellant's release from prison, but I observe that he has been subject to deportation proceedings since this time and seeking to prevent deportation is his core aim. I find that he is acutely aware of the adverse impact upon his efforts to stay in this country that would flow from losing EC's support consequent to further domestic violence, or from police attendance following such violence.
75. The appellant has denied domestic violence towards EC. I find that he has exercised such violence towards her in the past. He denied before me having threatened to harm EC if she did not attend the bank and commit a criminal offence. Such denial is contrary to the information he gave to the interviewer who noted his clear acceptance of such fact at page 16 of the OASys assessment, [AB 89]. I find that he threatened to harm her with a knife as recorded in the OASys assessment [AB 89]. I find that the appellant has been willing to speak derogatively of EC at probation supervision

meetings, for example stating that she is 'fat', at [AB 89]. I am satisfied, on balance, that such behavior exemplifies the low regard he has for EC. I note the concerns of the Probation Service that the appellant has '*questionable attitudes and actions towards*' EC and '*has also demonstrated a manipulative and predatory lifestyle with his attitude towards*' EC, at [AB 89] - [AB 90]. I further note the concerns that have been expressed as to the appellant's general attitude towards women: OASys assessment, at [AB 89].

76. I further observe that the appellant's written evidence as to EC consists of the three lines detailed at [48] above. He spoke with no warmth towards her in his oral evidence before me. His evidence was primarily denials as to his criminality, his violence, his coercive and manipulative behaviour. His lies lack any subtlety and their flimsiness have been seen through by numerous judges.
77. In the circumstances, and considering the evidence in the round, I find that the appellant is entirely incapable of meeting the burden placed upon him to establish that he has a genuine emotional commitment to EC. I conclude that he considers her solely as a means of avoiding deportation, and that he is as manipulative towards her as he has been towards others.
78. In the circumstances, the appellant is not the partner of EC for the purposes of Part 5A of the 2002 Act and therefore cannot seek to rely upon section 117C(5) of the 2002 Act. I will consider the appellant under section 117C(6) below.

*Section 117C(5) of the 2002 Act*

79. If I am wrong as to my conclusion as to the appellant's relationship with EC, I consider section 117C(5) in the alternative.
80. In order for Exception 2 to operate by means of section 117C(5), it must be shown that (i) it would be unduly harsh for EC to leave the United Kingdom and (ii) that it would be unduly harsh for EC to remain in this country without the physical presence of the appellant.
81. I indicated at the hearing my conclusion it would be unduly harsh for EC to relocate to Iraq with the appellant. She does not speak Arabic, Kurdish or Farsi. She would have significant difficulties in securing employment as a female with no relevant second language skills. She has secured relevant graduate qualifications permitting her to undertake her present employment and I accept that such qualifications are not transferrable to Iraq.
82. The true question is whether it would be unduly harsh for EC to remain in the United Kingdom upon the appellant being deported to Iraq.
83. In *LE (St Vincent and the Grenadines) v Secretary of State for the Home Department* [2020] EWCA Civ 505 Flaux LJ held at [16]:

"16. Subsequent decisions of this Court have emphasised that "unduly harsh" requires the court or tribunal to focus on whether the effects of deportation of a foreign criminal on a child or partner would go beyond the degree of

harshness which would necessarily be involved for any child or partner of any foreign criminal faced with deportation: see for example per Holroyde LJ at [34] of Secretary of State for the Home Department v PG (Jamaica) [2019] EWCA Civ 1213 . As Irwin LJ said in OH (Algeria) v Secretary of State for the Home Department [2019] EWCA Civ 1763 at [63]: "As a matter of language and logic, this is a very high bar indeed"."

84. On this issue, beyond EC's assertions as to how greatly she will miss the appellant, there is a dearth of cogent evidence to establish that her remaining in this country and being separated from him will be unduly harsh. She will suffer great distress, on her evidence, and her life may become more difficult for a period of time because of the perceived loss. However, these are the likely consequences of the deportation of any foreign criminal who has a genuine and subsisting relationship with a partner in this country. This alone does not go beyond the degree of harshness which is necessarily involved for the partner of a foreign criminal who is deported. As to the impact on her anxiety, the Tribunal has no cogent evidence to make an assessment as to whether her health will be adversely impacted. No medical evidence was filed concerning EC. I note that the appellant was imprisoned for several months and EC records no significant adverse impact to her health during this time. She does not report having to give up work or seek psychiatric treatment whilst the appellant was in prison. In the circumstances, the respondent has satisfied the burden upon her in establishing that the appellant's deportation would not cause undue harshness to EC. Consequently, I find that the respondent has established to the relevant standard that it would not be unduly harsh for EC to remain in this country without the physical presence of the appellant.
85. The appellant therefore cannot benefit from the exception identified by section 117C(5) of the 2002 Act.

*Section 117C(6) of the 2002 Act*

86. Section 117C(6) of the 2002 Act provides that the public interest requires deportation unless there are very compelling circumstances, over and above those described in section 117C(4) and (5). The test is a very stringent one: NA (Pakistan) v Secretary of State for the Home Department [2016] EWCA Civ 662; [2017] 1 WLR 20.
87. In Secretary of State for the Home Department v. Garzon [2018] EWCA Civ 1225, at [28] McFarlane LJ, giving judgment on behalf of the Court, approved the Tribunal's self-direction:
- "28. In its final paragraph, the tribunal refers to the phrase "very compelling circumstances", observes that "very" indicates a very high threshold and observes that the word "compelling" means circumstances which have a powerful, irresistible, and convincing effect. It is hard to contemplate how the tribunal could have demonstrated any greater focus on the public policy factors in favour of deportation."
88. The Tribunal confirmed in RA (s.117C: "unduly harsh"; offence: seriousness) Iraq [2019] UKUT 123 (IAC); [2019] Imm. A.R. 780 that section 117C(6) applies to both categories

of foreign criminals described by Lord Carnwath in paragraph 20 of *KO (Nigeria) v. Secretary of State for the Home Department* [2018] UKSC 53; [2018] 1 W.L.R. 5273, namely those who have not been sentenced to imprisonment of 4 years or more, and those who have. Determining the seriousness of the particular offence will normally be by reference to the length of sentence imposed and what the sentencing judge had to say about seriousness and mitigation; but the ultimate decision is for the tribunal deciding the deportation case.

89. There is not a closed list of what will constitute ‘very compelling circumstances’ and a flexible approach is required. Sir Ernest Ryder confirmed in *Akinyemi v Secretary of State for the Home Department (No. 2)* [2019] EWCA Civ 2098, at [39]:

“39. The correct approach to be taken to the ‘public interest’ in the balance to be undertaken by a tribunal is to recognise that the public interest in the deportation of foreign criminals has a moveable rather than fixed quality. It is necessary to approach the public interest flexibly, recognising that there will be cases where the person’s circumstances in the individual case reduce the legitimate and strong public interest in removal. The number of these cases will necessarily be very few i.e. they will be exceptional having regard to the legislation and the Rules.”

90. I am required to consider two alternatives under this section. The first consideration is on the basis that the appellant is not the partner of EC, as per [78] above. The second basis is that I have found that the appellant is the partner of EC, but the respondent has established that it would not be unduly harsh for EC to be separated from him, as per [84] above.

91. As to the first ground of consideration, the Tribunal confirmed in *Buci*, at [23]:

“23. Accordingly, where a relationship, relied upon by the foreign criminal to defeat deportation, is not treated by the Judge as falling within section 117C(5) because the other person is not categorised as the foreign criminal’s partner, it will nevertheless be necessary to consider the effect of deportation on that other person, in order to determine whether deportation would constitute a disproportionate interference with that other person’s article 8 rights (as well as those of the foreign criminal).”

92. For the reasons detailed above, I have considered the impact upon EC consequent to her separation from the appellant upon his deportation and have concluded that such consequences would not be unduly harsh. The appellant is unable to meet the requirements of Exception 2.

93. My assessment of the evidence beyond the appellant’s personal ties with EC are relevant to my consideration of the two alternatives.

94. An imposition of a custodial term of imprisonment is serious, though I observe that the imposition of a 12-month custodial term is towards the lower end of seriousness. I note that the conviction resulted in the activation of a suspended sentence, which is a factor going towards seriousness. Though rehabilitation does not ordinarily bear

material weight in favour of a foreign criminal, a lack of remorse may be an adverse factor particularly in circumstances where it identifies a lack of understanding and suggests a risk of future offending.

95. EC accepted before me that the appellant threatened to harm her before the index offence. She further accepted that he had been physically violent to her on previous occasions, but she identified this period of time as being a short period in or after 2015 when the appellant was experiencing difficulties through substance abuse. She described it as a bad patch, and it was during this time that he was abusive and committed his crimes. I observe that the appellant's conviction for shoplifting and possessing a bladed article relates to offences committed on 2 March 2015. The convictions for theft and shoplifting in March 2016 concern offences committed on 5 December 2015 and the index offence was committed on 20 December 2016, which is strongly suggestive of criminal activity occurring over a longer period than that identified by EC in her evidence.
96. EC further accepted that at the time of the index offence in December 2016 she did believe the appellant to be a controlling person, but she believes the appellant to have reformed since his release from prison. The appellant denied to me that he had ever been controlling to EC. I find his answer to me, in circumstances where he denied ever being violent or coercive towards EC, as striking. He stated that he *'helps her to be her'*. In the circumstances, and being mindful of the personal history in this matter, I find that this is continued evidence of the appellant exerting controlling behaviour.
97. As detailed above, the appellant denied before me that he threatened EC that he would harm her if she did not go to the bank for him. I find him to be untruthful on this issue. He continues to assert that it was members of the Romanian gang who threatened them both. His version of events is detailed at page 8 of the OASys assessment, [AB 81]:
- '[The appellant] claims that he was under duress as he had been threatened to carry out the frauds by a Romanian man called 'Bully'. [The appellant] reported that he had been under threat for several months and that 'Bully' had been in the area at the time of the fraud and that he feared for his safety. [The appellant] discussed meeting the gang at his local gym where they tried to recruit him. [The appellant] stated how he resisted and even engaged in physical fights with them. He then reports how he agreed to open a bank account for them, in order to end the tension between them.'
98. As noted by the interviewer at page 22 of the assessment, [AB 95], the appellant has enjoyed plenty of opportunity to report the Romanian gang to the police, should this be the truth. I note that he has not undertaken this step.
99. The interviewer further observes at pages 9 and 10 of the assessment, [AB 82, 83]:

'During interview [the appellant] stated that he only carried out the offence as he was under duress from 'Bully' who he claims threatened to stab him and his

partner. He is eager to justify and minimise his actions, by blaming the Romanian gang of which he was under duress.

He admits that he coerced [EC] to commit the offence but fails to take full responsibility as he says that his actions were the reaction of being under threat. Again, he is keen to justify his actions, even stating that it was necessary to threaten and intimidate [EC] in order for them to be safe from the Romanian gang.'

...

'[The appellant] is very eager to diffuse the responsibility of his actions in the index offence onto the 'Romanian gang'. He has admitted to being forceful with partner [EC] and threatening her to commit the offence on his behalf. [The appellant] justifies this by stating that he was also under duress. He is eager to portray himself as the victim and not acknowledge the harm he has caused, through his actions, to [AJ] nor his partner [EC]. [The appellant] expects sympathy and people to feel sorry for him being in his position as he is the victim.

This pattern is evident in all of [the appellant's] previous offending. He justifies his previous convictions as 'misunderstandings' and examples of him being in the 'wrong place at the wrong time'. It was put to [the appellant] that it is incredibly unlikely that all these offences were not his fault and encouraged him to take ownership of his actions, he acknowledged this but didn't elaborate more.'

100. When sentencing the appellant, HHJ Denniss, an experienced Crown Court Judge, makes no mention of the appellant having asserted duress due to a fear of a Romanian gang during his police interview, nor as to such duress being asserted as mitigation, not as a defence, during counsel's plea in mitigation. I am satisfied that this is because there was no Romanian gang threatening violence to the appellant. I find that this is a post-conviction story designed to cast the appellant as a victim and as a means of downplaying his coercive and criminal behaviour. It fits into the pattern exhibited in previous offences of the appellant seeking to portray himself as being unfortunate and not a criminal. That he sought to rely upon the Romanian gang before me strongly suggests that he is not remorseful for his actions, save only as to he has personal remorse for being caught. I find that the appellant remains capable and willing of using violence and coercion in relation to women, and as evidenced by his behaviour towards EC and AJ he remains capable and willing to use such coercion to involve women in acquisitive crime.
101. The appellant has sought to ensure that the true picture as to his relationship, and indeed his life, are not presented to the Tribunal. EC refers to the appellant having abused substances prior to his imprisonment, which led to a deterioration in his behaviour. The OASys assessment records the appellant denying having any connection to drugs, at [AB 91] and his problems with alcohol being historic, at [AB 92]. I find, on balance, that the appellant has a recent history of substance abuse for which he takes no personal responsibility.

102. Therefore, when undertaking a holistic proportionality balancing exercise, and adopting the balance sheet approach as encouraged by Lord Thomas in *Hesham Ali v. Secretary of State for the Home Department* [2016] UKSC 60; [2016] 1 W.L.R. 4799 I consider on the appellant's side that he has been present in this country for 15 years and lawfully present for 10 years. He has a history of employment and since his release from prison he has not been convicted for another criminal offence. He left his home country whilst a young man, though not as he asserts as a child. I further take into account the impact of his deportation upon EC, in the manner as considered above. I have noted the favourable comments contained within supporting statements, though limited weight is placed upon them as the authors did not attend the hearing before me and provided no reason for their non-attendance.
103. On the adverse side of the balance sheet I find that the appellant committed a serious crime in which women were targeted and coerced into aiding him, one of whom being subjected to a very serious threat of being harmed with a knife. I have found that he continues to hold manipulative and coercive views of women. He is not remorseful as to any of his criminal history, seeking either to downplay such offending or to portray himself as the victim. I have found that he has a history of substance abuse and he has shown no sign of understanding the difficulties that arise from such abuse. He has proven willing to engage in domestic violence, leading EC to require medical treatment on one occasion [AB 81]. I have found that he has sought to engage in manipulation within these appeal proceedings and has been willing to lie when he believes it aids him. I have found that the appellant does not possess a genuine emotional commitment to EC, but having considered this element of his claim in the alternative I have found that he cannot satisfy Exception 2 as established by section 117C(5) of the 2002 Act. He does not reside with EC and I have found that he only stays with her on occasion. He rents his own property some six miles from EC's home.
104. Upon considering the evidence in the round I find that the public interest in deportation has been clearly established and that the appellant's circumstances come nowhere close to meeting the high threshold of establishing very compelling circumstances outweighing the public interest under paragraph 117C(6) of the 2002 Act.
105. The respondent's decision to deport the appellant to Iraq has previously been found not to breach the appellant's rights established domestically in relation to the UN Convention Relating to the Status of Refugees or his protected article 3 rights. I find that his deportation would not breach his protected article 8 rights and so the respondent's decision is not unlawful under the Human Rights Act 1998.

### **Notice of decision**

106. By means of a decision dated 11 February 2020 this Tribunal set aside a decision of the First-tier Tribunal promulgated on 14 October 2019 on one issue alone, namely as to the consideration of the appellant's appeal against deportation on human rights

(article 8) grounds, pursuant to section 12(2)(a) of the Tribunal, Courts and Enforcement Act 2007 ('TCE').

107. The decision on the appellant's appeal against deportation on human rights (article 8) grounds is re-made, and the appeal is dismissed.

108. An anonymity direction is made.

**Direction Regarding Anonymity - Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008**

109. Unless the Upper Tribunal or a court directs otherwise, no reports of these proceedings or any form of publication thereof shall directly or indirectly identify the appellant or the witness 'EC'. This direction applies to, amongst others, the appellant, EC and the respondent. Any failure to comply with this direction could give rise to contempt of court proceedings. I make this direction in order to avoid a likelihood of serious harm arising to the appellant if the contents of his protection claim become publicly known.'

Signed: *D O'Callaghan*  
Upper Tribunal Judge O'Callaghan

Date: 25 August 2020

**To the Respondent**  
**Fee Award**

As no fee was paid there can be no fee award.

Signed: *D O'Callaghan*  
Upper Tribunal Judge O'Callaghan

Date: 25 August 2020