



**Upper Tribunal  
(Immigration and Asylum  
Chamber)**

**Appeal Number: UI-2022-000169**  
on appeal from HU/17742/2018

**THE IMMIGRATION ACTS**

**Heard at Field House  
On 20 September 2022**

**Decision & Reasons Promulgated  
On 20 November 2022**

**Before**

**UPPER TRIBUNAL JUDGE GLEESON  
DEPUTY UPPER TRIBUNAL JUDGE CHAMBERLAIN**

**Between**

**THE SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Appellant

**And**

**M V M (DRC)  
[ANONYMITY ORDER MADE]**

Respondent

Representation:

For the appellant: Mr Peter Deller, a Senior Home Office Presenting Officer

For the respondent: Ms Gemma Loughran of Counsel, instructed by Wilsons Solicitors LLP

**DECISION AND REASONS**

1. The Secretary of State appeals with permission from the decision of the First-tier Tribunal allowing the claimant's appeal against her decision on 18 August 2018 to make a deportation order pursuant to section 32(5) of the UK Borders Act 2007 and to refuse the claimant's human rights application. The appellant is a citizen of the Democratic Republic of the Congo (DRC).

2. **Anonymity order.** Pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008, the claimant has been granted anonymity. No-one shall publish or reveal any information, including the name or address of the claimant, likely to lead members of the public to identify the claimant or any member of his family. **Failure to comply with this order could amount to a contempt of court.**

## **Background**

3. The claimant was born in the UK in 1993 and has never lived in the DRC. His family's asylum claim was unsuccessful but they were granted exceptional leave to remain, indefinite leave to remain, and in due course most of his family were naturalised as British citizens, the claimant excluded.
4. The claimant has a bad criminal record. Beginning in October 2006, when he would have been just 13 years old, and continuing to 22 January 2016, he was convicted on 13 occasions for 23 offences, including one offence against the person, one against property, two fraud offences, five theft offences, four offences relating to police, courts or prisons, five drug offences and five shotguns and offensive weapons offences.
5. In 2008, a burning object was put through the letter box of the claimant's family home. In August 2010, the house was destroyed by fire, and his family placed in emergency accommodation. There was no room for the claimant: he was of no fixed abode after that. He turned 18 in August 2011.
6. In 2011, the claimant owed money to a man called Yardie. At Yardie's instigation, the claimant committed an offence of robbery and possessing a knife in a public place, of which he was convicted on 30 September 2011 and on 20 March 2012, sentenced to 40 months' detention in a Young Offenders Institute (YOI). He was 19 years old then, but would have been a minor when the offence was committed. A deportation order was made but the claimant appealed successfully to the First-tier Tribunal.

## **The Canavan decision (25 July 2013)**

7. On 25 July 2013, First-tier Judge Canavan (as she then was) and Miss R I Emblin JP , a non-legal member, handed down a decision allowing the claimant's appeal against deportation for the 2011/2012 offence. That decision is the *Devaseelan* starting point for any further consideration of the claimant's circumstances.
8. The First-tier Tribunal found that the claimant had no ties with the country of his proposed removal, the DRC, and did not speak either Lingala or French fluently, those being the languages spoken in his country of nationality. The Tribunal found that culturally and linguistically, the claimant was British, despite not being a British citizen. His removal would effectively extinguish his family life in the UK. He had taken

advantage of the opportunity to carry out courses whilst in prison. He had only recently been released but had taken steps to enrol in education for the coming term in a specialist establishment that had expertise in assisting young people in his position.

9. The Tribunal concluded that it would be disproportionate for the claimant to be removed in pursuance of the deportation order. The decision concluded thus:

“36. The appellant was born in the UK and has lived here all his life. When he was first notified of his liability to deportation, he did not realise that he could be deported because he was not a British citizen. The [claimant] has since had the benefit of legal advice and will now be aware that, even though he was born and brought up in the UK, there is an important distinction between those who are technically British citizens and those who are not. *If he commits any further offences, especially of a serious nature, then it would still be open to the Secretary of State to review whether he should be subject to further deportation proceedings. If he does commit further offences, it is likely that it would become increasingly difficult for him to resist deportation in future.* The appellant is a young man with strong ties to the UK who has a history of juvenile offending. The evidence before us indicates that his imprisonment and the threat of deportation has given him cause to mature and take stock of his life. We trust that he will learn from this experience and work hard to achieve his stated ambition to return to education and gain some qualifications that would allow him to work and make a positive contribution to society.” *[Emphasis added]*

## **2013 onwards**

10. Within 3 weeks of his successful appeal, the claimant was arrested for On 7 August 2013, the Secretary of State notified the claimant that she intended to revoke his indefinite leave to remain and replace it with limited leave to remain, which would affect his immigration status in the UK.
11. On 27 September 2013, the claimant was again convicted of possessing a knife in a public place, and sentenced to 26 weeks’ detention in a YOI. He had done so under pressure from Yardie, of whom he was increasingly scared. He feared for himself and his family members. He pleaded guilty. The sentencing judge accepted that the claimant had been threatened and had ‘good grounds to fear [Yardie] and to do what he was demanding you did’.
12. The revocation of his indefinite leave to remain took place on 19 May 2014. The claimant did not apply for discretionary leave to remain, nor did he challenge the revocation. He has been in the UK without leave since 19 May 2014. On 2 December 2014, the Cardinal Hume Centre submitted representations that the revocation would breach the claimant’s Article 3 ECHR rights, citing a risk of torture and serious harm if he were returned to the DRC, his country of nationality.

13. The claimant continued to commit offences. On 3 December 2015, at Woolwich Crown Court, he was convicted of a number of offences and on 22 January 2016, he sentenced to a total of 6 years' imprisonment. The index offences included possession of a firearm of less than 30 cm/60 cm in length, possession of a knife in a public place, and possession of a Class A drug (heroin) with intent to supply.
14. The claimant had a partner, who was pregnant when he went to prison. In February 2016, while the claimant was serving his sentence, his elder child was born.
15. On 8 June 2016, the Secretary of State again served a notice of decision to deport. The claimant's legal representatives made representations on a number of occasions thereafter, pursuant to Article 8 ECHR.
16. On 18 August 2018, the Secretary of State made a deportation order against the claimant.
17. On 21 January 2019, the claimant was released on licence. His younger child was born in May 2020.
18. On 8 November 2019, there was a shooting incident at the claimant's accommodation.
19. On 5 August 2019, the Secretary of State issued a supplementary letter, maintaining her deportation decision.
20. The claimant appealed to the First-tier Tribunal.

### **The Burnett decision (3 February 2022)**

21. The First-tier Judge noted that the claimant had a positive Reasonable Grounds trafficking decision in his favour and treated him as a trafficked person. The claimant had never had legitimate employment and had no apparent educational qualifications. The claimant had family life with his partner and two children, born in 2016 and 2020.
22. The Tribunal accepted that it would be unduly harsh to expect the claimant's partner and children to go and live in the DRC with him. The appeal would turn on whether it was also unduly harsh for them to remain in the UK without him.
23. The claimant's partner had a difficult childhood, having herself moved between different countries. She had insecure housing and a mental health problem (a major depressive disorder with post traumatic traits) which had emerged while he was in prison. The partner was not working, following the birth of her children. She visited him in prison.
24. A psychiatric report from Dr R Thomas found that the claimant's partner was 'severely psychiatrically unwell'. The family had received threats from the claimant's former criminal associates, which impacted his partner's

wellbeing and her vulnerability. Dr Thomas considered that a severe psychiatric episode which occurred when the claimant went to prison would be highly likely to recur, if he were removed to DRC. Her fears for his safety there would make things worse. Dr Thomas considered there to be a high risk that the claimant's partner would suffer a psychiatric breakdown which would impact the children.

25. An independent social worker report from Ms P Horrocks said that the claimant was a joint primary carer for his elder child (the younger one was not born when the report was prepared), despite the child having been born after the claimant went to prison.
26. Ms Horrocks considered the family to be particularly vulnerable as a unit, and that his removal to DRC would cause severe disruption to the emotional stability of his elder child. The First-tier Judge accepted the report and that the removal of the claimant would have 'potentially... devastating consequences for the [claimant's] children'. He found that it would be unduly harsh for the claimant's children to remain in the UK without him.
27. The Judge found that the claimant was integrated in the UK, having moved away from his past criminal life and associations since coming out of prison in 2019. He had no connections to the DRC, no linguistic fluency in either of the languages spoken there, and was not in a position to pay a bribe if one were requested, nor could his family members provide him with meaningful financial assistance. His partner was a vulnerable individual with a mental health condition, and the claimant himself was a victim of trafficking. The First-tier Judge considered that the claimant was at risk of detention for more than 1 day if returned to DRC and would be ill-treated contrary to Article 3 ECHR.
28. The Judge further accepted that in the light of expert evidence by Dr Muzong Kodi in July 2019, which was not the subject of any real challenge by the Secretary of State, there was a real risk that the claimant would be unable to find employment and support himself in DRC, an alien country for him, and there was a 'very real possibility' that he would become destitute. This part of the evidence did not reach the Article 3 threshold but formed part of the Judge's overall assessment.
29. The Judge considered that the claimant's trafficking circumstances were such as to reduce the weight to be given to the public interest in deportation. He directed himself at [116] of the great weight to be given to the public interest where the paragraph 117C exceptions were not met.
30. The decision concluded:
  - "152. In my judgment there is a considerable public interest which needs to be taken into account in this case but this is reduced by the matters which I have set out above.
  153. I have considered the totality of the factors that have been brought to my attention on the appellant's behalf. I conclude that they

overcome the considerable public interest in this case. They do amount to very compelling circumstances such that the public interest is outweighed.

154. In respect of the public interest and the weight to be attached to it I re-iterate again that I am mindful of the judgment of the Court of Appeal in *SSHD v MA Somalia* [2015] EWCA Civ 48 and to a number of other cases where the Tribunal has been reminded of the considerable weight which needs to be attached to the public interest.

155. I should also note that I have taken into consideration the judgments set out earlier. All these authorities identify and establish that in order for a claim to succeed there must be “ a very strong claim indeed” for article 8 to prevail.

156. In forming my written decision, I have separated out the various factors but in making the decision as to whether there are very compelling circumstances, I have taken a holistic view of the totality of the case. I find that the appellant meets the exceptions and the requirements under the rules and there is a compelling case such that would outweigh the public interest.”

31. The Secretary of State appealed to the Upper Tribunal.

### **Grounds of appeal**

32. There were two grounds of appeal: first, put shortly, she complained that the First-tier Tribunal’s decision was insufficiently reasoned, while acknowledging that ‘it was unfortunate that [the claimant] was not asked questions concerning his professed lack of ties, and his inability to re-establish the same, given his family links to the DRC’. She contended that the First-tier Judge should have investigated this of his own motion.

33. The second ground disputed the First-tier Judge’s findings that the claimant had shown compelling compassionate circumstances over and above the Exceptions, as required by section 117C(6) of the Nationality, Immigration and Asylum Act 2002 (as amended). The Secretary of State noted that the claimant appeared to have at least two parental siblings (uncles or aunts) in DRC who could help him resettle.

34. The Secretary of State complained that Judge Burnett had not engaged with the previous decision of the Canavan Tribunal, and that ‘it was no answer to the public interest in his deportation that, with respect to *some* of the most recent offences [he] was sentenced for in 2016, the Judge had accepted coercion to have been in play’.

35. The Secretary of State contended that:

“12. Nowhere in §136 to §150 does the FTT engage with the sheer scale and recidivism of [the claimant’s] offending conduct with 23 offences committed over a short period, beyond suggesting, repeatedly (and mistakenly) that the same was mitigated by the limited degree to which he was able to point to coercion with respect to part only of his most recent sentence (see also §109).

13. It is at least arguable that the FTT failed to place the compassionate factors [the claimant] relied upon in the context of the grave and escalating impact of his offending. The suggestion that his culpability for his most recent series of offences was mitigated by his status as a “victim of trafficking” merely posed, with respect, the question as to the weight to be accorded to his offending history in the round, including the successive, lengthy custodial sentences imposed for those. The FTT further needed to engage with the fact that [the claimant] had failed to heed previous warnings and the further opportunity granted to him by his 2013 appeal.”

### **Permission to appeal**

36. Permission to appeal was granted by First-tier Judge Sills for the following reasons:

“... 2. Given that the Judge records at para 60 that the Appellant has 7 siblings, 4 of whom were in employment, it is arguable that the Judge gave inadequate reasons for finding at para 100(v) that the Appellant is not in a position to pay a bribe if one is requested. The Judge’s sole consideration of the issue appears to be at para 94 which arguably does not demonstrate adequate consideration of the evidence.

3. It is arguable that in finding that the impact of the Appellant’s deportation would be unduly harsh upon his partner in particular, the Judge failed to consider how his partner had coped during his period of imprisonment from 2016, particularly given that she gave birth to their child in February 2016 after the Appellant had begun serving his sentence.”

### **Rule 24 Reply**

37. There was no Rule 24 Reply on behalf of the claimant.

38. That is the basis on which this appeal came before the Upper Tribunal.

### **Upper Tribunal hearing**

39. For the Secretary of State, Mr Deller said the argument was all about emphasis. The Secretary of State’s starting point was that the claimant had a terrible history, that the decision was not properly reasoned and that the First-tier Judge had not followed through the process required by primary legislation and the enormous amount of jurisprudence it had generated. The Secretary of State’s grounds of appeal were more than a mere disagreement.

40. Mr Deller accepted that it was harder for the Secretary of State to resist the decision on Article 8 grounds, as opposed to Article 3, but he continued to maintain that the decision was not properly reasoned under either of those heads, or under section 117C(6). The statement in the grounds of appeal that it was ‘at least arguable that the First-tier Tribunal

failed to place the compassionate factors [the claimant] relied upon in the context of the grave and escalating impact of his offending' was not equivalent to seeking to reargue the case before the Upper Tribunal.

41. Mr Deller asked the Tribunal to allow the Secretary of State's appeal and dismiss that of the claimant.
42. For the claimant, Ms Loughran relied on her written submissions. She said she was attending the hearing pro bono, due to the claimant's financial position. The First-tier Tribunal decision was carefully reasoned and considered over 30 pages, and the Secretary of State's grounds of appeal were a clear attempt to reargue the case. The First-tier Judge had set out the legal and jurisprudential framework with care, applying all relevant statutory considerations and giving appropriate weight to the public interest.
43. The claimant and three of his siblings had given oral evidence, with the others providing written witness statements. They had been clear that no financial support for the claimant would be possible if he were returned. It had been open to the First-tier Judge to find that the claimant would be unable to pay a bribe, should one be required.
44. The Judge had stated plainly at [98]-[100] that the evidence was being considered in the round, with reference to *BM and Others (returnees - criminal and non-criminal)* (CG) [2015] UKUT 293 (IAC) (2 June 2015), which remained the country guidance on circumstances in DRC. The First-tier Tribunal decision contained a huge amount of detail, with the law and jurisprudence applied with care, and no want of reasoning overall. Proper weight had been given to the public interest. The Judge had taken account of the claimant's status as a victim of trafficking and his partner's unchallenged witness statement and psychiatric evidence, both of which made it clear that she did not cope during his absence in prison.
45. The Tribunal should uphold the decision of the First-tier Tribunal.

## **Analysis**

46. The first of the Secretary of State's grounds of appeal is without arguable merit. The Canavan decision in 2013 made findings as to the claimant's lack of ties with DRC, his lack of its two principal languages, and his integration in the UK. It expressed what turned out to be false hope as to the claimant's intention to educate himself and to cease to commit crimes, but the primary findings were the *Devaseelan* starting point for any further consideration, and were so treated by the First-tier Tribunal in the decision under challenge.
47. The Secretary of State acknowledged in her grounds of appeal, and Mr Deller acknowledged at the hearing before us, that there was no cross-examination on these points. It would have been an error of law for the First-tier Judge to depart from the 2013 findings on that basis.



48. The second ground is essentially a disagreement with very careful and cogently reasoned findings of fact by the First-tier Judge in the present decision. The grounds of appeal say that it is 'at least arguable' that the First-tier Judge failed to engage properly with the claimant's offending history. That is not a recognisable characterisation of this long and careful decision, in which all relevant factors are taken into account. The First-tier Judge gave proper, adequate and intelligible reasons for concluding that in the case of this particular claimant, and his partner and children, compelling compassionate circumstances have been shown and deportation is not proportionate.
49. We recognise that this is not a decision to which every Judge would have come, given the claimant's history of criminality, but we cannot find that it was not open to First-tier Judge Burnett, on the facts set out in his decision.
50. The Secretary of State's appeal is dismissed.

## **DECISION**

51. For the foregoing reasons, my decision is as follows:

The making of the previous decision involved the making of no error on a point of law

We do not set aside the decision but order that it shall stand.

Signed [Judith AJC Gleeson](#)  
Upper Tribunal Judge Gleeson

Date: 12 October 2022