



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

Appeal Number: UI-2022-003784  
[HU/58082/2021]

**THE IMMIGRATION ACTS**

**Heard at Field House**

**On 24 July 2023**

**Decision & Reasons  
Promulgated  
On 6 August 2023**

**Before**

**UPPER TRIBUNAL JUDGE PITT**

**Between**

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

Appellant

**and**

**MYA FORE  
(ANONYMITY DIRECTION NOT MADE)**

Respondent

**Representation:**

For the Appellant: Ms Ahmed, Senior Home Office Presenting Officer  
For the Respondent: Ms Smith, Counsel instructed by Wilsons LLP

**DECISION AND REASONS**

1. This decision is a remaking of the appellant's appeal against the respondent's decision of 7 December 2021 which refused to revoke a deportation order served on 31 August 2012.

2. For the purposes of this appeal I refer to the Secretary of State for the Home Department as the respondent and to Ms Fore as the appellant, reflecting their positions before the First-tier Tribunal.

### Background

3. There was little, if any, dispute about the appellant's history and what is set out below is taken in the main from the appellant's skeleton argument submitted for the remaking hearing.
4. A is a Zimbabwean national born on 25 July 1989. She is 34 years old.
5. The appellant's mother came to the UK in 1994. The appellant remained in Zimbabwe with her paternal grandmother. The appellant's mother had another child, James Kirk, on 8 February 1996. The appellant came to the UK to join her mother and her brother in 1996 when she was 7 years old.
6. The appellant's mother had significant difficulties raising the children and the appellant's brother was taken into care in 2003. The appellant remained with her mother but she was placed on the child protection register under the categories of neglect and abuse.
7. The appellant had a daughter, Aliyah, on 4 October 2008. Due to the difficulties in living with her mother the appellant moved in with friends in January 2009. She struggled to parent adequately, however, and in December 2009 her daughter was taken into care by Social Services and subsequently adopted. The appellant only has yearly letter-box contact with her. The appellant returned to her mother's home notwithstanding the difficult circumstances there and her mother's continuing abuse of alcohol.

### Forensic History

8. The appellant has 28 convictions for 42 offences. She first had contact with police 2001 at the age of 12. Her first conviction in 2003 was for common assault for which she received a referral order for 3 months with her mother required to attend the first session. The numerous other offences include assaults, including assaults on police officers, battery, public order offences, damaging property, breaching various court orders, drink driving and being drunk and disorderly. Her offending was persistent and from 2005 onwards she began to receive detention and training orders, supervision orders. In 2008 she was sentences of 2 and 3 months in a Youth Offenders Institute (YOI) as well as being given suspended sentences of imprisonment. In 2011 she was sentenced to 10 weeks in prison for an assault on a constable.
9. The index offence which led the respondent to commence deportation proceedings occurred on 25 March 2011 when the appellant was arrested for possession with intent to supply (Class B - cannabis). The offence concerned taking cannabis into a prison. On 29 June 2011 the appellant

was sentenced to 12 months in prison. The court also recommended that she be deported from the UK.

10. On 30 June 2015 the appellant was convicted of assaulting a constable and using threatening or abusive words/disorderly behaviour. She was given a community order, ordered to pay compensation and given a victim surcharge. She failed to comply with the community order twice and was resentenced for the original offences, being given an extended unpaid work requirement.
11. On 28 February 2017 the appellant was convicted of being drunk and disorderly and was given a fine of £100 and a victim surcharge of £30.

#### Deportation Proceedings

12. As a result of the 12 month prison sentence handed down in June 2011, on 31 August 2012 the respondent served a deportation order on the appellant. She appealed to the First-tier Tribunal but the appeal was dismissed in a decision dated 2 September 2013. The appellant had had recent periods in detention at the time of the decision and in addition to her convictions, her detention records showed a number of adjudications for violent and disruptive behaviour, matters which were of additional concern to the First-tier Tribunal panel. The appellant became appeal rights exhausted on 4 October 2013 but it was not possible to remove to Zimbabwe at that time and she remained on temporary admission, signing on regularly.
13. In 2017 the appellant began a relationship with Mr Florin Cojocaru, a Romanian national born on 8 April 1998. Mr Cojocaru was granted settled status under Appendix EU of the Immigration Rules on 10 October 2022. The couple have two children, Armando, born on 13 September 2019 and Anastasiya, born on 5 June 2021. As a result of the appellant's history, Armando was made subject to a pre-birth child protection plan and both children were made subject to such a plan when Anastasiya was born. At present there is no involvement with Social Services. The children were granted settled status under Appendix EU of the Immigration Rules on 10 October 2022. On 20 March 2023 Armando was registered as a British citizen under s.1(3) of the British Nationality Act 1981.
14. On 11 October 2021 the appellant applied for the deportation order to be revoked. The application was refused on 7 December 2021. The respondent accepted that the appellant had a genuine and subsisting relationship with her partner and children and that she was the main carer as Mr Cojocaru worked in the construction industry to support the family. The respondent did not accept that it would be unduly harsh for the family to go to Zimbabwe or Romania together or for the appellant to return to Zimbabwe on her own, the partner and family remaining in the UK.
15. The appellant appealed to the First-tier Tribunal. The appeal was allowed in a decision dated 18 July 2022. The respondent appealed against that

decision. In a decision issued on 26 January 2023 the Upper Tribunal found that the First-tier Tribunal decision contained an error of law as an incorrect legal test had been applied. The decision was set aside and the appeal thus came before me on 24 July 2023.

### The Law

16. Section 117C of the Nationality, Immigration and Asylum Act 2002 (NIA) is entitled "Article 8: additional considerations in cases involving foreign criminals". It is the central provision in this appeal and provides:

- “(1) The deportation of foreign criminals is in the public interest.
- (2) The more serious the offence committed by a foreign criminal, the greater is the public interest in deportation of the criminal.
- (3) In the case of a foreign criminal ("C") who has not been sentenced to a period of imprisonment of four years or more, the public interest requires C's deportation unless Exception 1 or Exception 2 applies.
- (4) Exception 1 applies where -
  - (a) C has been lawfully resident in the United Kingdom for most of C's life,
  - (b) C is socially and culturally integrated in the United Kingdom, and
  - (c) there would be very significant obstacles to C's integration into the country to which C is proposed to be deported.
- (5) Exception 2 applies where C has a genuine and subsisting relationship with a qualifying partner, or a genuine and subsisting parental relationship with a qualifying child, and the effect of C's deportation on the partner or child would be unduly harsh.
- (6) In the case of a foreign criminal who has been sentenced to a period of imprisonment of at least four years, the public interest requires deportation unless there are very compelling circumstances, over and above those described in Exceptions 1 and 2”.

17. The appellant did not rely on the exception in s.117C(4). The parties were in agreement that the Tribunal had to assess whether the appellant could

show that the exception set out in s.117C(5) was met regarding the appellant's partner and her British child, Armando. If not, an assessment of whether there were very compelling circumstances capable of outweighing the public interest had to be conducted, following s.117C(6) of the NIA.

18. In HA(Iraq) v Secretary of State for the Home Department [2022] UKSC 22 the Supreme Court confirmed that there was no "baseline" notional comparator against which undue harshness should be evaluated. There were too many variables in the suggested baseline characteristics for any comparison to be workable. Such an approach would also be potentially inconsistent with the statutory duty to have regard to the "best interests" of a child. The Supreme Court confirmed that the correct approach is to follow the guidance in KO (Nigeria) v Secretary of State for the Home Department [2018] UKSC 53, namely the direction in the Upper Tribunal case of MK (section 55 – Tribunal options) Sierra Leone [2015] UKUT 00223 (IAC). That direction said:

"... unduly harsh does not equate with uncomfortable, inconvenient, undesirable or merely difficult. Rather, it poses a considerably more elevated threshold. 'Harsh' in this context, denotes something severe, or bleak. It is the antithesis of pleasant or comfortable. Furthermore, the addition of the adverb 'unduly' raises an already elevated standard still higher".

This test recognises both that the level of harshness which is "acceptable" or "justifiable" is elevated in the context of the public interest in the deportation of foreign criminals and that "unduly" raises that standard still higher. The task for the Tribunal is to make an evaluative judgment as to whether that elevated standard has been met on the facts and circumstances of the case.

### Discussion

19. It is expedient to begin with an assessment of whether it would be unduly harsh for the appellant's British national child, Armando, to go to Zimbabwe with her or for him to remain in the UK with his father and sister and the appellant deported on her own to Zimbabwe. It is only if deportation would lead to unduly harsh circumstances for Armando, rather than Anastasiya, that the second limb of s.117C(5) can be met and I bear that in mind when making my decision. It is somewhat artificial to conduct that assessment as if the appellant and Armando were a separate unit from the appellant's partner and other child, however, so there is inevitably reference to them and the family as a whole in the consideration below.
20. The appellant's abusive childhood and the behavioural difficulties that this led to were not disputed by the respondent and were evidenced in numerous sources in addition to the statements of the appellant; see for example, the statement of Ms Skinner dated 7 October 2021, statement of Ms Hogan dated 8 October 2021, letter from a cousin, Ms Dhilwayo, dated

11 October 2021, letter from another cousin, Ms Rusike, dated 7 October 2021 and letters from the Women's Support Centre Surrey dated 16 April 2019, 13 December 2019 and 16 December 2019.

21. The appellant also relied on an independent social work report (ISW) dated 27 May 2022 in support of her claim that deportation would lead to unduly harsh circumstances for the children and the appellant's partner. Mr Horrocks' set out his extensive expertise and experience in social work and assessments of this kind, including experience of conducting such assessments remotely as a result of the pandemic. He has been accepted as a reliable witness in a very large number of Tribunal appeals and nothing here suggested that he was not a reliable expert witness whose evidence should attract weight. The respondent's representative suggested that Mr Horrocks had limited knowledge of the family as he had conducted only one set of interviews but given the level of his experience and expertise including conducting assessments remotely and his clearly stated understanding of his duties to the court, it appeared to me that he could be expected to indicate if his findings were tentative or preliminary because of the amount of contact he had with the family. He did not do so. Mr Horrocks also set out the extensive materials he was provided with on which he also drew to prepare his report, in addition to the interviews with the appellant and her partner. All of these factors indicted to me that weight should be placed on the ISW.
22. Mr Horrocks set out a clear opinion on the very adverse impact if Armando remained in the UK without his mother or had to go to Zimbabwe with her. The most relevant parts of his opinion are set out here (with my emphasis):

"4.7 For Armando and Anastasiya the presence of their mother in their lives is that of a central figure who is together with them on a day to day basis, whereas their father is only able to spend time with them when he is absent from work on a Sunday. Without question this is a very vulnerable family unit, not least linked to their mother's background history, the absence of any meaningful experience of positive parenting in her own life, her offending behavior and subsequent imprisonment and time in detention. She grew up with a mother, whose life was dominated by alcohol abuse and she was effectively a carer for her own mother from a young age. Their mother's background has had a profound impact on her mental health, which at times will make her emotionally unavailable for her children. The two children have an elder half-sister, who has been placed for adoption and who they have never seen, this in turn led to Armando being made subject to a pre-birth child protection plan by social services, who are no longer involved with the family... ."

"4.10 In the event of the removal of Mya from the UK, the situation facing these children is one of permanent separation from their mother, with no meaningful likelihood of any face to face contact in the future. As identified previously, these are very vulnerable children, given the family history and background. Their mother is the primary carer for the children and meets all aspects of their emotional and practical care needs, as well as being the most significant attachment figure in their lives. Their father, because of his

working hours and role as the provider, plays a somewhat peripheral role in the lives of the children, he is tired on his return from work and is only able to spend any meaningful time with them on a Sunday. Given his age, Florin is only 24 and the nature of the role he plays in the lives of his children, questions have to be raised about his abilities to parent these children in the absence of their mother. He appears to have given little thought to the consequences of Mya's deportation for his children and whilst he clearly acknowledges how much he loves them, Florin presents as somewhat immature and has no plan in terms of how he would manage in the absence of Mya, other than returning to Romania and asking his neighbours for food.

4.11 The option of the children and their father relocating to Zimbabwe to be with Mya has to be excluded for multiple reasons, not least because their mother states that she would not take her children to that country, where she would struggle to survive as a single person. In addition Florin is not prepared to move to Zimbabwe.”

“4.15 Relevant for both children of this family is the highly vulnerable nature of their family background, the previous involvement of social services with the family and their mother's own history, whereby she missed out on fundamental aspects in terms of her own experiences of being parented as a child, which has had profound and enduring implications for her own life. There is a history of two generations, when children have been removed from this family, the uncle of the children was removed from the care of their maternal grandmother. Their half-sister was removed from their own mother's care. Both children have been subject to child protection plans. The mother of these children continues to be followed and haunted by the events related to her own childhood, whereby she lacks legal status to remain in the UK, which in turn impacts on the living circumstances of the family. The family are forced to live in a single room, because the local authority are not willing to offer more suitable accommodation. Their mother has ongoing mental health difficulties and the children face the potential consequences of family breakdown if their mother is removed from the UK. One possible outcome of such a situation would be that they too will be taken into the care of social services, because their father lacks any meaningful plan as to how he will care for them in the absence of their mother.”

“4.17 I have previously highlighted the background circumstances of this family, the fact that Armando was made subject to a pre-birth child protection plan and at a later stage both children were again made subject to a child protection plan. In addition these children have an elder half-sister, who has been adopted and who they have never met. This has to be considered as one of the worst starts possible to life, although there is no ongoing involvement by social services with this family. I have previously referred to adverse childhood experiences and would consider that based on the highlighted criteria, this family must be considered to be amongst the most vulnerable and that the presence of a strong support network has to be considered a priority in order to maximise the full potential of these children and to minimise their exposure to risk and harm. Irrespective of the above, the children will have been exposed to their mother's mental health difficulties. Weir (2003) identifies the impact of parental mental health on children in a family; *“Children whose parents have mental health problems are generally at greater risk of experiencing a range of problems when*

*compared with the general population. Emotional difficulties, cognitive delays, psychiatric disorders, academic underachievement and poor peer and family relationships are some of the problems which have been identified in surveys of these children". Furthermore the domestic incident following the birth of Anastasiya refers to some form of domestic violence. Research indicates that *Children who are exposed to violence in the home may have difficulty learning and limited social skills, exhibit 47 16 violent, risky or delinquent behaviour, or suffer from depression or severe anxiety. Children in the earliest years of life are particularly vulnerable: studies show that domestic violence is more prevalent in homes with younger children than those with older children"* (UNICEF 2006). Without question the children of this family will already have been exposed to harm to their emotional development and have to be considered as amongst the most vulnerable children in the UK on the basis of their family history and background."*

"4.18 For the children of this family, the present situation indicates, that in spite of the family history, the current circumstances have to be considered as relatively stable and a very positive indicator that in spite of the background, significant progress has been achieved. At the same time, the high degree of vulnerability remains and the ongoing threats posed by the lack of legal status of Mya continues to hang over the family functioning. In the event of Mya's removal from the UK and her return to Zimbabwe, Armando and Anastasiya would suffer great distress and trauma at the separation from the person, who has been and continues to be their primary carer and who has to be considered as the key attachment figure in their lives. They would suffer harm to their emotional development, which would compound the harm they have already suffered. A report on parental separation, (De Graff 2020) identifies that *recent studies on the impact of (parental) deportation on a child's well-being clearly demonstrate negative short- and long-term effects of detention and deportation on children and families. These include many of the negative effects seen with family separation as a result of parental incarceration, such as severe emotional cost, stress and pressure on the left-behind family, increased financial difficulty and the risk of children developing long-term mental health problems.*

4.19 Of relevance for these children is the nature of the role played by their father in their lives, he loves his children greatly, however he sees himself as a provider as opposed to being a primary carer. He has no plans for the future in the event that Mya was returned to Zimbabwe, other than to return with the children to Romania and to ask his neighbours for food. He is without question a hard-working man, but at the same time he presents as immature. In some ways his family and his current situation has come about as a result of circumstances, without any planning. Serious questions have to be raised about his capacity to both provide for these children and at the same time to meet their basic care needs to a good enough degree, that is not something that he has had to do up to now. In my professional opinion Florin has not demonstrated the capacity to compensate to any degree for the absence of the children's mother in their lives. I would consider that in the event of Mya's removal from the UK, the children of this family face the risk of suffering harm to all aspects of their overall development and that the harm is likely to be considered significant to the extent that social services will have no option but to become involved with this family and that



there is a significant likelihood of family breakdown and the children being taken into the care of the local authority.”

“5.1 Given the family history of Mya and her two children, the prognosis for their future would have to be considered as questionable. Mya is a very vulnerable individual, who has already had one child removed from her care, linked to her own childhood experiences of abuse and neglect and the person primarily responsible for this was her own mother. Mya’s own brother was taken into care and is a product of the care system, whereby he presents as an abusive and challenging individual. Whilst Mya’s relationship with Florin, a man, some nine years younger, may be unusual, their role in the family complements each other. Mya is the primary carer for the children and spends her time with them, whereas Florin is clearly the provider. He is a hard worker, who loves his partner and his children and the couple have now been in a relationship for nearly five years. Social services have been involved with this family on previous occasions and will have undertaken in depth assessments of Mya’s parenting capacity and the abilities of this couple to meet the needs of these children to a good enough degree.

5.2 Armando and Anastasiya are currently making positive progress and meeting their developmental milestones. They present as happy and outgoing children. Mya is able to reflect thoughtfully on her own history and background and to learn from her own experiences. She is clear that she let down her first daughter, Aliyah and that she does not wish anything similar to happen to her other children. Mya will remain a vulnerable individual, who has ongoing mental health difficulties, which are exacerbated by her lack of legal status and the threat that she could be removed from the UK. She knows that in Zimbabwe, she would struggle to survive in a country, where she lacks any understanding of how society functions, as a result she is not prepared to expose her children to such challenges and difficulties. She sees that she has no option but to leave the children behind, however hard that will be for her emotionally. Florin loves his partner and children and is committed to supporting them. He is a hard-working individual whose role in the family is that of a provider. He works long hours and is tired on his return home and his input with the children is limited as a result. Florin has given no thought as to the implications for the children if Mya was removed from the UK, other than to take them to Romania and to ask his neighbours for food.

5.3 In the event that Mya was removed from the UK and returned to Zimbabwe, that would mean a permanent separation from Armando and Anastasiya, who would suffer great distress and trauma and would suffer harm to their emotional development. They would be left behind with their father, whose current parenting role is very limited and who has made no meaningful plans or given any in depth thought for their future, if they were in his care. He would be confronted with a situation, which would in all likelihood be beyond his capacity to manage, not least the emotionally distraught condition of his two children, given his previous very limited input into their care. The most likely outcome would be for social services once again to become involved with this family and there is a very significant risk of family breakdown as a result. These children will in all likelihood suffer harm to all aspects of their development and there is a significant risk that the harm will be long term and permanent.”

23. Mr Horrocks indicates at the end of his conclusion that he “very strongly” recommended that it was in the best interests of the children, the appellant and her partner that she be allowed to remain in the UK.
24. The ISW therefore sets out a clear view that is consistent with the evidence of the appellant and her supporting witnesses, that it is strongly in the best interests of the children and Mr Cojocararu that the appellant should remain in the UK as the primary carer. The family is managing but is very vulnerable and the appellant’s deportation or the family going to Zimbabwe would be very likely to have a severely detrimental effect on the children for all of the reasons identified by Mr Horrocks.
25. The respondent maintained that if the appellant were to be deported, Mr Cojocararu would be able to manage given that he has six siblings in the UK and the appellant has some relatives and friends in the UK who have provided some support. The appellant and Mr Cojocararu were consistent in their evidence as to limited contact with their relatives and friends in the UK, however, meeting up for birthdays and other occasions rather than regularly. Nothing indicated that a meaningful level of support would be available to Mr Cojocararu in the absence of the appellant. As above, the evidence indicated strongly that the children would be in significant difficulty in the absence of the appellant and that Mr Cojocararu was ill-equipped to deal with that situation.
26. It was also my judgment that that the ISW, evidence from the appellant and her witnesses and country evidence showed that going to Zimbabwe would be strongly against the best interests of the children and that the family would face unduly harsh circumstances there. The appellant has not lived in Zimbabwe since 1996 and has been in the UK for the last 27 years. She last visited Zimbabwe in approximately 1999, over 20 years ago, for a period of weeks to stay with her maternal grandparents. She no longer has any relatives in Zimbabwe. Nothing indicated that the appellant now has any contacts in Zimbabwe who could assist her on return or that she has any useful knowledge of life in that country that could assist her in establishing a life for herself or for her family. It was not disputed that she might understand some Shona words but she does not speak the language. Her Social Worker indicated in a letter dated 24 September 2021 that the appellant had told her that she was “scared to return” to Zimbabwe as she no longer knew the country and was in fear of her children being returned there with nowhere to live and no support.
27. In addition to the appellant’s inability to re-establish herself and her family in Zimbabwe, her partner indicated that he did not know anything about the country and would not know where to start in establishing a life there. He did not want the children to go there notwithstanding the difficulties arising from separation from the appellant.
28. The appellant’s lack of knowledge of Zimbabwe and the vulnerability of this particular family unit also has to be weighed in the context of the country situation in Zimbabwe. The human rights situation there remains

poor, particularly for women; see pages 337 to 357 of the agreed bundle, the respondent's CPIN "Zimbabwe: Women fearing gender-based harm or violence" dated October 2018. The economic situation is very poor indeed and against that background it is difficult to see how the profiles of the appellant and her partner would enable them to find work capable of supporting the family. The Zimbabwe Human Rights NGO Forum State Of Human Rights Report 2019 refers to the growing numbers of people in extreme poverty and to serious national health issues arising from malnutrition and lack of access to clean water. The UN Human Rights Council report from the Special Rapporteur on the right to food dated 27 March 2020 indicates that:

"man-made starvation is slowly making its way in the country, with more than 60 per cent of the population now considered to be food-insecure owing to extreme poverty, high inflation and poor agricultural productivity, among other causes."

29. The respondent suggested that the small loans that the appellant's friend and former youth justice worker, Ms Skinner, might continue and assist the family to manage if they went to Zimbabwe. Ms Skinner and the appellant gave independent, clear and consistent evidence as to Ms Skinner only having lent money and that it was always repaid and that this was a limited and sporadic event rather than regular support. Ms Skinner confirmed that it was not at all possible for her to finance the appellant or the family in Zimbabwe.
30. In my judgment the evidence shows clearly that this family will find it extremely difficult to relocate to Zimbabwe and manage to establish a life there of even minimum adequacy for the children because of their lack of knowledge of the country, lack of any support there, the pre-existing vulnerability of the appellant and the children and the adverse country conditions they will encounter. They would be returning as outsiders with no support to a country which is in a significant economic crisis. The children are very young so are in a better position to adapt to a new environment than an older child might be but the other significant factors impacting on the family on return still show that return would be highly detrimental and difficult for them. The test for a finding of undue harshness is elevated, as set out above, but in my judgment it is met here, the evidence indicating that the family would be unable to establish themselves in Zimbabwe and the children would face extreme hardship and highly adverse circumstances as a result.
31. The respondent submitted that it was also open to the appellant and her family to establish themselves in Romania. This submission was not supported by any evidence showing that a Zimbabwe national who had been deported from the UK would be admitted to Romania, and, together with the vulnerabilities already identified above, it did not appear to me that this was an option for this family.

32. I was therefore satisfied that the evidence here did show that the elevated threshold for a finding of undue harshness was met where Armando would be in “devastating” circumstances, would experience “irreparable harm” and “irreversible damage” if the appellant were to be deported. The provisions of s.117C(5) are therefore met and the appeal must be allowed.
33. It is not necessary to proceed to an analysis of undue harshness for Mr Cojocaru or whether there would be very compelling circumstances where Armando’s circumstances show that the appeal must be allowed.
34. The appellant should be aware that her history of offending which continued even after deportation proceedings were taken against her remains a very serious matter. In the event of any further offending, it is entirely possible that the respondent will consider making a new deportation order against her and that her children’s circumstances would not be sufficient to show that she should be allowed to remain in the UK.

### **Notice of Decision**

35. The appeal is allowed under Article 8 ECHR.

Signed: S Pitt  
Upper Tribunal Judge Pitt

Date: 26 July 2023