



IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM
CHAMBER

Case No: UI-2022-000821

First-tier Tribunal No:
PA/53085/2020; IA/02796/2020

THE IMMIGRATION ACTS

Decision & Reasons Issued:
On 2 August 2024

Before

UPPER TRIBUNAL JUDGE SMITH

Between

AMUDU YUSUF SHEIDU

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr A Gilbert, Counsel instructed by Wilsons LLP

For the Respondent: Mr T Melvin, Senior Home Office Presenting Officer

Heard at Field House on Tuesday 25 June 2024

DECISION

PROCEDURAL BACKGROUND

1. By a decision promulgated on 23 February 2024, Upper Tribunal Judge Kebede found an error of law in the decision of First-tier Tribunal Judge J W H Law promulgated on 10 January 2022 dismissing the Appellant's appeal against the Respondent's decision dated 22 December 2020 refusing to revoke a deportation order made against him in 2012. The deportation order was made following a criminal conviction for five offences relating to the proceeds of crime for which he was sentenced to twenty-seven months' imprisonment. The Appellant appealed the

making of the deportation order at that time, but his appeal was dismissed on 28 September 2012.

- 2.** The Appellant in this appeal sought revocation of the deportation order based on his fear of return to Sudan which he claimed to be his country of nationality, his family life with his wife and children and his private life including health issues.
- 3.** In a lengthy decision, Judge Law reached the following conclusions:
 - (1) The Appellant fell to be excluded from the Refugee Convention applying section 72 of the Nationality, Immigration and Asylum Act 2002 (“the 2002 Act”).
 - (2) In any event, taking the findings in the 2012 appeal as a starting point, the Appellant did not have a well-founded fear of persecution on return to Sudan because he is not from Sudan; he is Nigerian. His appeal on protection grounds therefore failed.
 - (3) The Appellant’s mental health problems did not reach the high threshold for an Article 3 ECHR claim.
 - (4) The Appellant could not meet the first exception under section 117C (4) of the 2002 Act (“Section 117C”) based on his private life. He had not lived in the UK lawfully for most of his life, he was not socially and culturally integrated in the UK and there would be no very significant obstacles to his integration in Nigeria.
 - (5) In relation to the second exception under Section 117C (5), the Appellant’s wife and two children (one now an adult) would remain in the UK were the Appellant to be deported. That would not be unduly harsh for them.
 - (6) There were no very compelling circumstances over and above those two exceptions. The Respondent’s decision was not disproportionate having regard to the public interest which applied.
 - (7) The Appellant’s appeal on human rights grounds was also therefore dismissed.
- 4.** Permission to appeal Judge Law’s decision was refused by the First-tier Tribunal but granted on seven grounds by the Upper Tribunal.
- 5.** Upper Tribunal Judge Kebede found no merit in the grounds challenging Judge Law’s decision regarding the impact of the Appellant’s deportation on his daughter [M]. Judge Kebede also rejected the grounds relating to the protection and medical claims.
- 6.** Judge Kebede did however accept that there was merit in the grounds challenging Judge Law’s assessment of the impact of the Appellant’s deportation on his minor son, [R]. Judge Kebede’s reasons and assessment of next steps are set out at [17] to [19] of her decision as follows:

“17. That then leaves grounds one, two and seven, all of which challenge the judge’s approach to the appellant’s relationship with [R] and his lack of findings on the impact of the appellant’s deportation on [R]. It seems to me that the focus on the question of [R]’s paternity led to a

failure by the judge to consider [R] within the family life assessment. The judge appeared to have accepted that [R] formed part of the family unit and that he was living with Ms Sheidu and [M], and he therefore erred by missing him out of the unduly harsh consideration. I have considered whether such a failure by the judge was nevertheless immaterial and whether he would have reached the same conclusions in any event, having already found that the impact upon [M] would not be unduly harsh and considering that he took account of [R]’s medical condition and behaviour when considering the impact of the appellant’s absence on Ms Sheidu and [M] at [123] to [127]. Ms Lecointe, in her submissions, accepted that the judge had failed to undertake a clear examination of the entire family, although she was not prepared to go so far as to say that it was material error. However it seems to me that, whilst the outcome may have been the same, it is not necessarily so and there needs to have been proper assessment by the judge of whether the impact of deportation on [R] would be unduly harsh.

18. Accordingly, I find that Judge Law materially erred in law in his decision on that basis and I find that the decision in the appellant’s appeal has to be re-made to that limited extent, with the remaining parts of his findings and conclusions being preserved. I accept that it is difficult to separate the question of the impact of deportation on [R] from the impact on the family unit as a whole and therefore, whilst I have found that the judge did not err in his findings about the appellant’s partner and daughter, I accept that the impact of deportation on the family as a whole has to be looked at again in light of the evidence which will be available at a resumed hearing.

19. Since much of Judge Law’s findings and conclusions are preserved, and the issues are limited as stated above, it seems to me that the re-making of the decision can be undertaken in the Upper Tribunal. The matter will therefore be retained in the Upper Tribunal for the decision to be re-made on that basis and will be listed for a resumed hearing on a date to be notified to the parties.”

- 7.** Taking account of her reasons for finding an error, Judge Kebede gave directions for the filing by the Appellant of an indexed, paginated, consolidated bundle containing all documents relied upon including [R]’s birth certificate. She also directed the filing and service of skeleton arguments from both parties.
- 8.** Contrary to Judge Kebede’s directions, I did not have before me a consolidated bundle of documents filed by the Appellant. Instead, evidence was filed piecemeal as follows (with reference to the annotations to that evidence used hereafter):
 - (1)Hearing bundle containing the documents before the First-tier Tribunal running to 585 pages pdf including Appellant’s bundle (pp1-97 plus 2 additional documents) ([AB/xx]) and Respondent’s bundle (pp1-458) (filed 8 December 2022);
 - (2)Psychological report of Ms Chireal Swallow dated 2 December 2022 (updated 15 December 2022) in relation to [R] (“the Psychological Report”) (filed 25 August 2023);

- (3)Hearing bundle comprising three parts running to 203 pages ([HB/xx]) which includes the Psychological Report at [HB/83-114] (filed over the period April 2024 to June 2024)
- (4)Further medical notes in relation to the Appellant’s wife unpaginated served and filed on 25 June 2024

- 9. Mr Gilbert helpfully confirmed at the outset that I needed to refer only to the three-part hearing bundle and further medical notes for the Appellant and the Respondent’s bundle although I have taken into account in what follows such of the previous evidence as I consider to be relevant by reference to Judge Law’s decision.
- 10. In addition to the evidence, I received a skeleton argument from Mr Gilbert filed on 24 June 2024 and one from Mr Melvin which I received at the hearing (subsequently filed 27 June 2024).

THE ISSUES AND LEGAL FRAMEWORK

- 11. Although some of the evidence submitted for the hearing before me appeared to raise issues which went beyond those set out by Judge Kebede as requiring determination, Mr Gilbert confirmed that the Appellant was not seeking to raise a further protection issue as his latest witness statement suggested. He confirmed that the issues were confined to Article 8 ECHR both under the exceptions in Section 117C and over and above those exceptions. He confirmed that Article 3 ECHR was not relied upon in relation to the Appellant’s medical condition.
- 12. The legal framework is therefore that set out in Section 117C as follows:

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

- (1) The deportation of foreign criminals is in the public interest.
- (2) The more serious the offence committed by a foreign criminal, the greater is the public interest in deportation of the criminal.
- (3) In the case of a foreign criminal (“C”) who has not been sentenced to a period of imprisonment of four years or more, the public interest requires C’s deportation unless Exception 1 or Exception 2 applies.
- (4) Exception 1 applies where—
 - (a) C has been lawfully resident in the United Kingdom for most of C’s life,
 - (b) C is socially and culturally integrated in the United Kingdom, and
 - (c) there would be very significant obstacles to C’s integration into the country to which C is proposed to be deported.

(5) Exception 2 applies where C has a genuine and subsisting relationship with a qualifying partner, or a genuine and subsisting parental relationship with a qualifying child, and the effect of C's deportation on the partner or child would be unduly harsh.

(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.

..."

- 13.** In relation to the test of very significant obstacles to integration on return (Section 117C(4)), guidance is to be found in the Court of Appeal's judgment in Secretary of State for the Home Department v Kamara [2016] EWCA Civ 813 ("Kamara") as follows:

"14. In my view, the concept of a foreign criminal's 'integration' into the country to which it is proposed that he be deported, as set out in section 117C(4)(c) and paragraph 399A, is a broad one. It is not confined to the mere ability to find a job or to sustain life while living in the other country. It is not appropriate to treat the statutory language as subject to some gloss and it will usually be sufficient for a court or tribunal simply to direct itself in the terms that Parliament has chosen to use. The idea of 'integration' calls for a broad evaluative judgment to be made as to whether the individual will be enough of an insider in terms of understanding how life in the society in that other country is carried on and a capacity to participate in it, so as to have a reasonable opportunity to be accepted there, to be able to operate on a day-to-day basis in that society and to build up within a reasonable time a variety of human relationships to give substance to the individual's private or family life."

- 14.** The most recent and authoritative guidance regarding the undue harshness test under Section 117C (5) is to be found in the Supreme Court's judgment in HA (Iraq) and others v Secretary of State for the Home Department [2022] UKSC 22 ("HA (Iraq)") as follows:

"KO (Nigeria)

19. The specific issue which arose for decision in *KO (Nigeria)* was whether, in determining if it would be unduly harsh on a qualifying child if a parent were deported as a foreign criminal, it was appropriate to consider the relative seriousness of the parent's offending, having regard to section 117C (2) of the 2002 Act. This was an issue upon which different views had been expressed in decisions of the Upper Tribunal and the Court of Appeal. The Supreme Court held that this was not appropriate and that the seriousness of the parent's offending was not a factor to be balanced against the interests of the child in applying the unduly harsh test.

20. The core of the reasoning of Lord Carnwath is set out in paras 22 and 23 of his judgment:

'22. Given that Exception 1 is self-contained, it would be surprising to find Exception 2 structured in a different way. On its face it raises a factual issue seen from the point of view of the partner or child: would the effect of C's deportation be 'unduly harsh'? Although the language is perhaps less precise than that of Exception 1, there is nothing to suggest that the word 'unduly' is intended as a reference back to the issue of relative seriousness introduced by subsection (2). Like Exception 1, and like the test of 'reasonableness' under section 117B, Exception 2 appears self-contained.

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

21. Lord Carnwath then considered the facts relating to the appeal in KO (Nigeria). In this context he stated at para 27 as follows:

'27. Authoritative guidance as to the meaning of 'unduly harsh' in this context was given by the Upper Tribunal (McCloskey J President and Upper Tribunal Judge Perkins) in *MK (Sierra Leone) v Secretary of State for the Home Department* [2015] INLR 563, para 46, a decision given on 15 April 2015. They referred to the 'evaluative assessment' required of the tribunal:

'By way of self-direction, we are mindful that 'unduly harsh' does not equate with uncomfortable, inconvenient, undesirable or merely difficult. Rather, it poses a considerably more elevated threshold. 'Harsh' in this context, denotes something 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."

- 15.** The Supreme Court went on to consider the sentence it had emphasised in that passage and rejected the Respondent's submission that this was intended to invite a comparison of the impact of deportation on a specific child with a notional comparator ([31] to [40]). Having done so, it then repeated the self-direction cited at [21] of the judgment (see above) as representing the appropriate test.
- 16.** Finally, although on the face of the legislation, Section 117C(6) applies only to those sentenced to four years in prison which does not apply to this appellant, the Court of Appeal recognised in NA (Pakistan) v Secretary of State for the Home Department [2016] EWCA Civ 662, that this gave rise to an anomalous situation whereby a "medium" offender would be unable to rely on matters falling outside the exceptions. Accordingly, the Court concluded at [24] to [27] of the judgment that it must have been intended that the "fall back protection" in Section 117C (6) would apply equally to those sentenced to under four years but over twelve months in prison. Section 117C (6) therefore has to be considered if I find that neither of the two exceptions in Section 117C can be met.

EVIDENCE

The Appellant and Ms Sheidu

- 17.** I heard oral evidence from the Appellant and his wife, Shefia Sheidu. They gave evidence in English. Neither the Appellant nor his wife were asked to adopt their earlier statements as they were adopted in the First-tier Tribunal. They adopted their latest statements in evidence. I set out below a summary of their evidence. I have taken into account their evidence both written and oral but refer only to that which is relevant to the issues which I have to determine.

The Appellant

- 18.** The Appellant has provided two witness statements as follows:-

(1) First statement (undated) - ([AB/4-7])

(2) Second statement dated 19 June 2024 ([HB/163-165])

- 19.** The Appellant confirms that he and his wife both look after [R]. He describes the family as a close-knit one. [M] is now an adult and is due to go to university in September. He says that thereafter [M] will be living away from home and will therefore be unable to help with [R]'s care. [M] is due to attend Aston university in Birmingham. The Appellant said that she would be living in Birmingham during term time.

- 20.** The Appellant describes [R] as “cheeky”. He says he gets on very well with him. [R] is “a strong boy and growing”. He says that there is “no way that [his wife] would be able to look after him on her own”.
- 21.** The Appellant was asked questions about [R]’s education. He said that [R] has been home schooled since 2019 although then said that [R] had stopped going to school at the time of the Covid pandemic which would have been early 2020. The Appellant however then agreed when asked that [R] had attended school last in 2022 when he was expelled from school. That is confirmed by a letter from the school at [HB/188].
- 22.** The Appellant said that [R] has a teacher who comes in three to four times per week. However, he then said that she had to stop coming when she had obtained a full-time job. Otherwise, he and his wife provided teaching in accordance with an online course provided by the local authority. The Appellant said that [R]’s schooling was monitored by the local authority. However, other than referring to a meeting arranged for 5 July, the Appellant was vague about how often and how [R]’s education was monitored. He indicated that there was some contact once per year, but that communication was only via email.
- 23.** The Appellant did however admit that [R] is due to return to school in September. He is being assessed to see if he is fit to return.
- 24.** The Appellant was asked about the visit by Ms Swallow prior to the preparation of the Psychological Report. The Appellant admitted that Ms Swallow had only met [R] at the solicitor’s office. She had not visited the family home.
- 25.** The Appellant admitted that he and his wife had lots of friends in the area local to where they have lived, he thought since 2013. Although they have no family nearby, he said that they had very close friends. He confirmed that he and his wife had never asked for help from social services.
- 26.** In relation to his wife, the Appellant said that she continues to suffer from physical and mental health problems.

Ms Shefia Sheidu

- 27.** Ms Sheidu has provided three witness statements as follows:
 - (1) First witness statement (undated) ([AB/8-11])
 - (2) Second witness statement dated 16 December 2021 ([HB/41-42])
 - (3) Third witness statement dated 19 June 2024 ([HB/170-171])
- 28.** Ms Sheidu confirmed that [M] is going to university in the autumn. However, she said that [M] currently had no plans to live away from home. She thought that [M] would continue to live at home at least for

the first term and maybe longer. The family home is in Peterborough and therefore travel to Birmingham is not inconvenient. Ms Sheidu said that no arrangements have been made for [M] to move to Birmingham.

- 29.** Ms Sheidu also confirmed that [R] has been home schooled with assistance from a teacher who she said attended twice per week. That individual is a teaching assistant and has been helping with [R]’s schooling since August 2023. The teacher to whom the Appellant referred had stopped teaching [R] in June or July 2023. Ms Sheidu also confirmed that they used an online service provided by the local authority and that the local authority monitored [R]’s education.
- 30.** Ms Sheidu was able to provide more information about [R]’s return to school in September. She was confident that a school would be found for [R] which was suitable for his condition. She said that she had a guarantee that he would be able to go back to school. She did not know however whether that would be full-time. She thought it likely that he would start full-time but the previous school had reduced his attendance to half day.
- 31.** Ms Sheidu also confirmed that she and the Appellant have a lot of friends in the local area where they have lived, she thought since 2011, although no family. She confirmed that they had never sought assistance from social services but even if they were able to assist, she did not think that they would do so overnight.
- 32.** In terms of her own health, Ms Sheidu said that she was on medication for blood pressure and painkillers for her fibromyalgia. The Appellant has produced a report from Professor Piyal Sen, Consultant Forensic Psychiatrist dated 22 January 2024 ([HB/139-154]) which diagnoses Ms Sheidu as suffering from a depressive episode of moderate severity. However, Ms Sheidu confirmed that she was not being prescribed any medication for depression even though she had told the GP of her mental health problems. She was only receiving physiotherapy for her fibromyalgia and no therapy or counselling for her mental health problems.

[M]

- 33.** [M] has provided a witness statement dated 19 June 2024 ([HB/166-168]). It had been intended that she would attend to give oral evidence, but it was explained to me that she was unable to do so as she had to remain at home to take care of [R]. As her evidence was not tested, I can give it less weight, but I take it into account.
- 34.** [M] confirms that she is due to start university in autumn. She says that she would be moving there but that is contrary to Ms Sheidu’s evidence that no plans had been made for her to move and that she would be remaining at home at least for the first term. I prefer Ms Sheidu’s evidence particularly since [M]’s statement is vague as to what she means by “moving there” when speaking of her plans.

- 35.** [M] also confirms that [R] is home schooled but says that this has only been since February 2022. She says that the Appellant and Ms Sheidu share responsibility for [R]’s education and for his care which includes “washing, dressing, his feeding and when he goes out of the house”. She says that [R] is now aged nine and “big for his age”. Although friendly “he requires constant attention”. She expands on this by saying that “[h]e cannot be left to play or study on his own”. Although [M] says that she provides care she says that this is only “sometimes on a short term basis”.
- 36.** I do not accept [M]’s evidence that the family does not have friends in the local area although I accept that those friends may be unwilling to look after [R] given his needs. I do not accept that the local authority would not provide care if asked. The evidence of the Appellant and Ms Sheidu was that they had not sought that help.
- 37.** In [M]’s opinion, her mother would be unable to care for [R] alone particularly as he becomes “bigger and stronger”. She says that it would be “impossible” for one person to look after [R] alone. [M] says that she is “dreadfully worried what will become of [her] family were [her] father to leave”. She would also be “personally devastated”.

Documentary Evidence

[R]

- 38.** The main focus of the Appellant’s case as it now emerges following the error of law decision is the impact of deportation on [R] who is now aged nine (born in April 2015). R was diagnosed with autism spectrum disorder (“ASD”) and developmental delay in 2018.
- 39.** As appears from Judge Kebede’s decision, First-tier Tribunal Judge Law was not satisfied that [R] is the Appellant’s biological son. I now have [R]’s birth certificate at [HB/1] which names the Appellant as [R]’s father. Although not determinative of paternity, I accept that the Appellant is [R]’s father.

Education, Health and Care Plan – “the EHC Plan”

- 40.** The most up to date EHC Plan in the bundle was produced by the local authority dated 22 October 2021 ([HB/15-37]). According to the EHC Plan, [R] was diagnosed with ASD and Developmental Delay in October 2018. The EHC Plan notes that [R] started walking and talking as would be expected, but his speech has regressed since the age of two and a half years, he has become fussy about food and has limited reaction with his peers. He suffers sleep disturbance resulting in him becoming tired at school.
- 41.** The EHC Plan suggests that although [R] started school part-time in what appears to be September 2019, he was making positive improvements up to March 2020. Obviously, his education would have

been impacted at that time by the Covid-19 pandemic, but the report indicates that he resumed attendance in September 2020.

- 42.** The EHC Plan indicates that by May 2020, [R]’s speech, understanding and listening and attention were those of a child between sixteen and twenty-six months (he was by then aged five years). His relationships were on a par with a child of eight to twenty months. The report notes no improvement by March 2021. However, the report does suggest that by May 2020, [R] was able to dress himself and deal with his own personal care except at night.
- 43.** The EHC Plan indicates a need for routine. There is reference in the report to [R] lashing out at his peers and teachers when he becomes frustrated. The report does not suggest that [R] has any social care needs.
- 44.** I give weight to the EHC Plan, prepared as it was with input from persons other than [R]’s parents who were monitoring him at regular intervals and have expertise in their area (see list at [HB/36]). Unfortunately, perhaps as a result of [R] being home schooled there does not appear to have been any update to this report which, although dated October 2021, deals with developments only up to March 2021.

The Psychological Report – Ms Chireal Swallow

- 45.** The Psychological Report is dated 2 December 2022 but noted as updated on 15 December 2022. It appears at [HB/83-114]. Ms Swallow BSc, GBC, MSc, MBPsS is a consultant psychologist. Her CV appears at [HB/112-114]. I am satisfied that she has the appropriate expertise to offer an opinion. However, I am concerned about the methodology which she has adopted for the following reasons.
- 46.** First, the documents to which she has been referred do not include the EHC Plan which is the most recent plan – she was given only that dated 21 May 2019 (which appears at [AB/55-66]). It is not clear whether she had access to any other recent documents from those with regular interaction with [R] other than his parents.
- 47.** Second, she refers to having conducted a “full observation and psychological assessment with [R]” but it is clear from the report that this was only a meeting of one hour albeit she says with “discussions and observations with the family for an additional hour”. Although she refers to observation of the family having been conducted at the offices of the solicitor, she has offered no opinion as to what impact that artificial environment might have had on [R] which may have affected her observations. It appears that she may also have met [R] with his mother. However, the Appellant in his evidence confirmed that the family had only ever met Ms Swallow at the solicitor’s office. It must therefore be assumed that this meeting also took place away from the home environment.

- 48.** Third, Ms Swallow admits that she was not able to have a conversation with [R] “due to the severity of his disability”. That is contrary to the EHC Plan which does record some communication between the authors of the EHC Plan and [R] albeit that [R] has limited vocabulary and speech. Ms Swallow appears to accept that her diagnosis is tentative ([4.1.2] of the Psychological Report - “[i]f my observations of [R] are to be considered as correct”). She says that [R] is unable to dress himself or use the toilet independently but that is contrary to the EHC Plan. Ms Swallow’s knowledge of the position viz-a-viz [R]’s education appears to be out of date. She says he attends a mainstream school but according to the Appellant and Ms Sheidu that was not the position in December 2022 or October 2022 when Ms Swallow assessed [R]. Again, Ms Swallow appears to be relying on the out-of-date EHC plan.
- 49.** For those reasons, I can give little weight to Ms Swallow’s evidence about such things as [R]’s support needs, his safety and the risk he poses. Her information is out of date and must in any event come from the Appellant and Ms Sheidu rather than from any other source because [R] would not speak to her.
- 50.** I can place little weight on her assessment that [R] is at the “more complex and challenging end of the spectrum” due to [R]’s unwillingness to speak with her and therefore her inability to assess his condition. As I have already pointed out, it appears that the meeting took place at the solicitor’s office which may have impacted on [R]’s willingness to participate.
- 51.** The EHC Plan indicates communication problems and speech delays but not that [R] is “non-verbal”. Ms Swallow’s opinion of [R]’s condition thereafter appears to stem from this observation. What follows is a generalised opinion about how those with ASD may behave.
- 52.** Ms Swallow’s opinion about the care which [R] needs now or in the future also depends on what she has been told by his parents. Although she refers for example at [4.1.38] of the Psychological Report to what “[d]ocuments show”, there is no cross-reference to any documents. For the most part, the documents she was provided with aside the out-of-date EHC plan are ones which were produced for this litigation (witness statements of [R]’s parents and social worker’s report).
- 53.** I do however accept some of Ms Swallow’s opinions, in particular those which tally with the other evidence, for example the EHC Plan and the documents underlying that plan. I accept therefore, as Ms Swallow says at [4.1.43 - 4.1.45], that [R] “will above all require consistency and certainty, which will take the form of having a routine for his daily life” and that “he will require stability of home life”, “consistency of caregiving” and “having care provided to him by people he is familiar with and has a bond and close relationship with”. I also

accept that [R] is likely to find it particularly difficult to deal with change.

- 54.** I found particularly instructive a SEN Autism Advisory Teacher Service Report of Claire Nunn dated 25 June 2021 which appears at [AB/53] and [HB/8-9]. That report refers to two incidents of violent behaviour by [R] towards his teachers at around that time. It is noted in the report that this was at a time when Covid “bubbles” were operating which Ms Nunn thought might be impacting on [R]. She also thought that lack of sleep might be contributing to his behaviour. It appears from this document that, at that time (June 2021), [R] was in school full-time as Ms Nunn suggests that he “reduce his time in school until just after lunch”. It does not appear from Ms Nunn’s report that violent behaviour from [R] was a common occurrence even at what was undoubtedly a challenging time. However, that report does support Ms Swallow’s opinion that [R] has difficulty in adapting to change and that he is likely to react poorly and possibly violently when confronted with such change.

The Social Worker’s Report – Mr Peter Horrocks

- 55.** At around the same time as Ms Nunn’s report, there was a report from a social worker, Mr Peter Horrocks, dated 9 July 2021 (“the Social Worker’s Report”). However, the Social Worker’s Report is of little if any assistance to me as Mr Horrocks did not meet [R] and his knowledge about [R]’s condition appears to depend on the same EHC plan as was relied upon by Ms Swallow and information from Ms Sheidu. I take into account Mr Horrocks’ opinion that change is particularly difficult for [R] in light of his ASD and that he would be badly affected by the loss of one parent from the household.

Autism Advisory Teacher Service Report - Lisa Eddings

- 56.** At [HB/10-11] is a report from Lisa Eddings who reports (on 9 September 2021) that [R] was having “more emotional meltdowns in school which [were] resulting in him lashing out and throwing school property”. It is reported that one member of staff had been injured and that “staff [were] finding it harder to manage his unpredictable behaviour”. The report records that [R] had already been subject to one fixed term exclusion and was at that time attending school only in the mornings. [R]’s poor behaviour was attributed to “being overloaded by sensory stimulation” and inability to express himself.

Ms Sheidu

- 57.** Coupled with the impact of the Appellant’s deportation on [R] is the impact of his deportation on Ms Sheidu, particularly in relation to her ability or otherwise to deal with [R]’s care.
- 58.** I do not need to deal with evidence about Ms Sheidu’s physical ill health. That is dealt with at [128] of Judge Laws’ decision and the medical evidence has not been updated save as to Ms Sheidu’s mental

health and the production of further GP notes. As is there noted, Ms Sheidu has been diagnosed with fibromyalgia with a recommendation for physiotherapy which she said she has been undertaking. She has been prescribed medication for heartburn and high blood pressure.

Report of Professor Piyal Sen (“the First Psychiatric Report”)

- 59.** In relation to Ms Sheidu’s mental health, I now have the First Psychiatric Report dated 5 September 2022 in relation to Ms Sheidu which appears at [HB/60-81]. Professor Sen, MBBS, DPM, FRCPsych, DFP, PGCAP is a consultant forensic psychiatrist. I accept from his CV (at HB/78-81) that he has the appropriate qualifications and experience to provide an opinion on Ms Sheidu’s mental health.
- 60.** Professor Sen provides a diagnosis of a “moderate depressive episode”. He says that Ms Sheidu has been provided anti-depressants but has not yet started taking them. That may well be what Ms Sheidu told Professor Sen but is contrary to her oral evidence to the Tribunal where she admitted that although she had asked for medication for her mental health, the GP had not prescribed any. That is confirmed by the medical records. Although Professor Sen notes one entry showing that Ms Sheidu had been prescribed anti-depressants ([4.1]) that dates from 2013.
- 61.** Professor Sen opines that Ms Sheidu’s depressive symptoms and prognosis are linked to stressors, the most important of which is the prospect of the Appellant’s deportation. He did not consider her to be at risk of suicide at that time but said that the risk would be heightened by any severe stressors such as the Appellant’s deportation.
- 62.** Overall, I can give only little weight to the First Psychiatric Report which is based largely on Ms Sheidu’s own reporting. Not only is that reflected in Professor Sen’s acceptance that Ms Sheidu had been prescribed medication when she has not but also in such matters as the impact of [R]’s condition on her mental health (which she appears to downplay – see [3.8.6]) and her friendships which she also downplays (at [3.14.2] she says that she has less friends than before whereas her oral evidence and that of the Appellant was that they have a lot of friends).
- 63.** Professor Sen does recognise that Ms Sheidu has other stressors such as her physical ill-health and [R]’s condition but opines that the Appellant’s deportation is the most major because she relies on him for her emotional and practical support in particular with childcare. I place some weight on that opinion.

The Addendum Psychiatric Report dated 22 January 2024

- 64.** Professor Sen has provided an addendum report (“the Addendum Psychiatric Report”) which is at [HB/139-154]. The Addendum Psychiatric Report followed an assessment conducted remotely over

one hour. Professor Sen provides the same opinion as before. I found the Addendum Psychiatric Report of limited if any value. It is largely a summary (if indeed it can be called such) of other documents which I could read for myself. It accepts what is said in the Psychological Report at face value. I have already indicated that I have been able to give less weight to that report due to what I consider to be defects in the methodology adopted. Although Professor Sen advocates the prescription of anti-depressant medication, none has been offered to Ms Sheidu by her GP.

The Appellant

- 65.** In relation to the Appellant himself, I am not determining any further issues relating to the Appellant's protection claim. Those are settled by the decision of First-tier Tribunal Judge Law.
- 66.** The only issues which potentially remain relevant are connected to his private and family life. Aside his own evidence, the only documentary evidence which has been updated is in relation to his mental health.
- 67.** Judge Law dealt with the evidence before him at [106] to [114] of his decision. Judge Law accepted that there was evidence that the Appellant self-harmed in 2013 whilst in detention. Based on his findings in relation to the protection claim, Judge Law found that the Appellant was fabricating his symptoms to the consultants, Dr Maloney and Dr Galappathie whose reports were before him ([107]). Judge Law also did not accept that the Appellant had intended to kill himself by the incident in 2013 ([108]). The Appellant had by the time of the hearing before Judge Law stopped taking medication for his mental health and was not receiving any treatment or counselling.
- 68.** Judge Law appears to accept however the diagnosis made by Dr Galappathie at that time of "recurrent depressive disorder" which Dr Galappathie himself accepted was partly due to the Appellant's unresolved immigration status. Judge Law did not accept that the Appellant was at risk of suicide on return to Nigeria. He found that there would be treatment available for any mental health problems.
- 69.** The report from Dr Galappathie dated 20 December 2021 at [HB/43-59] was already before Judge Law and therefore taken into account in his findings (see [80] to [82] of the decision).

The Second Psychiatric Report – Professor Priyal Sen

- 70.** Professor Sen has also provided a psychiatric report dated 27 January 2024 in relation to the Appellant ("the Second Psychiatric Report"). That appears at [HB/115-138]. Again, I can give little if any weight to this report.

- 71.** Professor Sen starts by setting out a history of the Appellant which has now been disbelieved by two Tribunals (in relation to his experiences in Sudan). In any event, Professor Sen accepts that the Appellant has no current diagnosable mental health condition (contrary to the position at the time of the hearing before Judge Law). He does however says that the Appellant has some “pre-existing personality vulnerabilities” which however are also said to be linked to his previous experiences in Sudan which have been found not to be credible.
- 72.** Professor Sen opines that the Appellant would be at high risk of developing mental health problems if removed from the UK but the “significant psychosocial stressors” on which Professor Sen places weight are part of the Appellant’s history which has been disbelieved now on two occasions. It is not apparent that Professor Sen was even told when instructed that the Appellant has been found to be Nigerian and does not therefore risk deportation to Sudan. Certainly, he was not provided with the previous Tribunal decisions. I cannot therefore blame Professor Sen for basing his opinions on what he was told but it is apparent that I cannot therefore place weight on those opinions.

Second Addendum Psychiatric Report – Professor Priyal Sen

- 73.** The Second Addendum Psychiatric Report of Professor Sen is dated 28 May 2024 and is at [HB/175-185]. It again confirms that the Appellant does not currently suffer from any mental health disorder ([4.1]). The remainder of the report is concerned with a further protection claim which it was accepted the Appellant could not advance as a “new matter”. I therefore need say no more about this report.

DISCUSSION AND FINDINGS

Exception 1

- 74.** The Appellant does not place any significant reliance on his private life. That is understandable since he cannot meet the first exception under Section 117C as he has not lived in the UK lawfully for most of his life.
- 75.** Judge Law made the following findings in relation to the private life exception at [117] of his decision:

“Section 117C(4) contains three requirements and all three have to be met for a person to benefit from the exception to deportation. Therefore, the appellant cannot benefit from this, but in any event I am not satisfied that there would be very significant obstacles to his integration in Nigeria, the country of his nationality as has been found previously. There would be no language barrier and he would not have become unfamiliar with the way of life there as he was about 29 when he left. On the question of whether the appellant is now socially and culturally integrated in the UK, I agree with the respondent’s conclusions as set out above, there being no submissions to the contrary.”

- 76.** I take into account the Appellant's mental health. However, the evidence I now have is that he is not currently suffering from any current diagnosable mental health condition. I have explained why I am unable to give weight to the Second Psychiatric Report and the Second Addendum Psychiatric Report about the likely consequences of deportation, particularly since Professor Sen bases his opinions on a deportation to Sudan which is not the proposed destination, the Appellant having been found to be Nigerian.
- 77.** Having regard to the high threshold which applies in relation to the "very significant obstacles" test (see guidance in Kamara), I conclude that there are no very significant obstacles to the Appellant's integration in Nigeria.
- 78.** I have no new evidence about the Appellant's social and cultural integration. I do not accept that he is socially and culturally integrated. Although he and Ms Sheidu referred to having friends in their local area, I have no statements from any of them.
- 79.** Accordingly, I find that the Appellant is unable to meet the first exception.

Exception 2

- 80.** The focus of the Appellant's case is his family life with Ms Sheidu, [M] and [R]. The issue for me is whether it would be unduly harsh for them to accompany him to Nigeria or to remain in the UK without him.
- 81.** Although Mr Melvin did not make an express concession that Ms Sheidu and the children could not go with the Appellant to Nigeria, he was content for me to proceed on the basis that they would not do so. The only issue therefore is whether it would be unduly harsh for them to remain in the UK whilst the Appellant is deported to Nigeria.
- 82.** There was no dispute before Judge Law as to the genuineness of the relationship between the Appellant and Ms Sheidu ([118] of his decision). Judge Law also accepted that the Appellant had genuine and subsisting parental relationship with [M] ([119]). He did not accept that the Appellant had a genuine and subsisting parental relationship with [R] due to a lack of evidence as to parentage. I now have that evidence in the form of the birth certificate. I accept on the evidence that the Appellant has a genuine and subsisting parental relationship with [R].
- 83.** Since Judge Law's decision, [M] has reached her majority and is no longer a child. Whilst that does not mean that she cannot be considered as part of the family unit when looking at family life under Section 117C (6), the second exception can no longer apply as she is no longer a child. In any event, she is about to go to university and forge an independent life (whether she intends to live at home whilst at university or not). I have no new evidence about [M] other than her university plans and that she continues to say that she would be

“devastated” if the Appellant were deported. At [133] of his decision, Judge Law concluded that the Appellant’s deportation would not have an unduly harsh effect on [M]. Having regard to the high threshold which that test implies (see HA (Iraq)), I agree with that conclusion.

- 84.** In order to consider the impact on Ms Sheidu, it is first necessary to deal with the position of [R].
- 85.** I accept that [R] has been diagnosed with ASD and Developmental Delay and that his speech and development are delayed. He continues to have behavioural problems which I accept on occasion involve violence towards individuals including his mother. He has problems forming relationships with his peers. He is also upset by any change and frustration can itself lead to violent outbursts.
- 86.** Although I have placed limited weight on the Psychological Report for the reasons I have explained and I do not therefore accept Ms Swallow’s assessment of [R] as being severely disabled, there is no doubt that [R]’s behaviour is more challenging than that of a child of his age without his disability. I have accepted her opinion about the likely impact of change on [R] which is borne out by other documents.
- 87.** The oral evidence I heard is that [R] is highly likely to be moving back into mainstream education (or rather away from home schooling) in September 2024. There was some inconsistency in the evidence about the length of time for which [R] has been home schooled. I prefer the documentary evidence that [R] has not been at school since February 2022, albeit for a period before then there may have been periods of exclusion and periods when [R] was not at school full-time. Be that as it may, it is to be hoped that [R]’s return to school will relieve some of the pressure on Ms Sheidu and the Appellant.
- 88.** However, the position has also altered since Judge Law’s decision in that [M] is going to university. Again, the evidence I heard was inconsistent but, if as Ms Sheidu said, no plans have been made for her to live away from home for the first term at least, I find it likely that [M] will continue to live at home, probably for the first year of university. However, she will be studying and will therefore be away from home when she attends lectures and the like. It is to be expected therefore that she will be able to give less assistance with the care of [R].
- 89.** Turning then to Ms Sheidu, Judge Law made the following findings at [132] of his decision:

“Having considered the wife’s situation and the daughter’s situation separately, I have decided that I am not satisfied that the effect of the appellant being deported would be unduly harsh on either of them. I have taken into account the two substantial periods when the appellant has been in prison. During the first of those, which followed his conviction in 2011, the appellant’s wife was looking after only one child, but did so with no apparent problems. Although she had two children by the time of the

second imprisonment, she was able to look after both of them and there is no evidence that she had to turn to Social Services for support. I am not persuaded that her health is worsening since her medical records show that she has complained of back pain, depression and high blood pressure since 2014; although she received a new diagnosis of fibromyalgia in April 2018, there is no evidence that she is receiving the physiotherapy which was prescribed; no new medication was prescribed for that condition and, according to the medical records, her medication has not changed since 2015. She moved in and out of the hearing room with no apparent difficulty or indication that she was in pain. As a British citizen, it is her prerogative to decide whether to go with the appellant if he is deported and I accept that she would not do so. As she said at the hearing, that would be very difficult for her, but I am not satisfied that it would be unduly harsh. She would still have the support of her friends whose help she has relied on previously and there is a care plan in place for her son. She would have the support of Social Services if required, for example if her son becomes more difficult to manage as he grows older and larger. She would have no financial support from the appellant, but that is the current position as he is not allowed to work. She already receives welfare benefits for herself and the children, comprising Universal Credit, Child Benefit and Disability Living Allowance, and there is no reason why that would not continue while their need continues. I have accepted that she and the appellant are in a genuine relationship and clearly therefore separation would involve a degree of hardship, but she would be able to keep in touch with him by ordinary calls and/or video calls and she would be able to visit him. The uncertainty which has been hanging over the family for years is one likely cause of her depression and that would end.”

- 90.** There is no new medical evidence which undermines the findings of Judge Law in relation to Ms Sheidu’s health conditions. Although she has been diagnosed now with a moderate depressive episode, she has not been offered medication or treatment for that condition which undermines the weight I can place on the First Psychiatric Report. Even if she does suffer from mental ill-health, it is not necessarily the Appellant’s deportation which is causative of the problem as the problem appears to be long-standing (dating back it appears to at least 2013). In addition to the uncertainty to which Judge Law refers, Ms Sheidu is likely to suffer from the strain of caring for [R].
- 91.** Judge Law took into account in his findings the need for Ms Sheidu to care for [R] and the difficulties she would be likely to face. His findings were based on an earlier EHC plan which if anything suggested that [R]’s condition was worse than it is now. However, although the EHC Plan does suggest some improvements, for example with personal care, I take into account that Ms Sheidu’s situation now would be as a single parent with limited support from [M] looking after a growing boy with behavioural problems which can and do give rise to incidents of violence.
- 92.** Although, as Judge Law pointed out, Ms Sheidu was able to cope with two children when the Appellant was in prison for a second time, that was at a time when [R] was very young and before his diagnosis.

Although I agree with Judge Law that there is limited evidence that Ms Sheidu is physically incapacitated, I accept that she will find it extremely challenging to deal alone with a child of [R]'s age, particularly on the occasions that he has violent outbursts.

- 93.** It remains the case that the Appellant and Ms Sheidu have friends locally who may be willing to help from time to time, but they have no family (other than [M]) who can assist. I accept that Social Services may be able to assist but the EHC Plan does not suggest any social care needs presently so they may not be willing (or able) to offer a great deal of assistance. Moreover, I have accepted Ms Swallow's opinion that [R] requires a consistency of caregiving.
- 94.** Notwithstanding my concerns about the Psychological Report, I place particular weight on what Ms Swallow says about [R]'s likely reaction to change. Whilst her opinions are general in nature, I take into account how she says that this reaction may exhibit itself. [R]'s reaction to change is borne out by other evidence such as the report of Ms Nunn.
- 95.** I bear in mind that I am assessing not only whether deportation of the Appellant would be harsh but whether it would be unduly harsh which is a higher threshold. I have in mind what is said in HA (Iraq) by reference to the cases there cited about the test which applies.
- 96.** However, taking into account the likely impact of the Appellant's deportation on [R] coupled with the difficulties which Ms Sheidu would have as a lone parent dealing with his condition and behaviour, I am satisfied that the Appellant's deportation would have an unduly harsh effect on [R] and also an unduly harsh effect on Ms Sheidu because of the difficulties of managing his condition on her own.
- 97.** I therefore find that the second exception under Section 117C (5) is met. The Appellant's deportation would have an unduly harsh impact on [R] and Ms Sheidu.
- 98.** As the Appellant is a medium offender, I do not need to go on to consider his case under Section 117C (6). Had I not reached the conclusion I have in relation to the second exception, I would not have found there to be any factors over and above the exceptions which would outweigh the public interest. However, since I am satisfied that the second exception is met, the Appellant is entitled to succeed on that basis alone, and I therefore allow the appeal.

CONCLUSION

- 99.** The Appellant's deportation would have an unduly harsh impact on [R] and Ms Sheidu. The second exception (Section 117C (5)) is therefore met. The Appellant's appeal therefore succeeds.

NOTICE OF DECISION

The Appellant's appeal is allowed.

L K Smith
Upper Tribunal Judge Smith
Judge of the Upper Tribunal
Immigration and Asylum Chamber

24 July 2024