IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2022-006491
First-tier Tribunal No:
HU/56507/2021
PA/00459/2022

THE IMMIGRATION ACTS

Decision & Reasons Issued:
On the 25 July 2024

Before

UPPER TRIBUNAL JUDGE MANDALIA
DEPUTY UPPER TRIBUNAL JUDGE JUSS

Between

Secretary of State for the Home Department

Appellant

and

Harjinder Singh
(NO ANONYMITY DIRECTION MADE)

Respondent

REPRESENTATION

For the Appellant: Mr C Bates, Senior Home Office Presenting Officer
For the Respondent: Mr S Vokes, instructed by M & K Solicitors

Heard at Birmingham Civil Justice Centre on 16 February 2024

DECISION AND REASONS

INTRODUCTION

1. Although the appellant in the appeal before the Upper Tribunal is the Secretary of State for the Home Department, for ease of reference we continue to refer to the parties as they were before the First-tier Tribunal ("FtT"). Hereafter we refer to [HS] as the appellant and the Secretary of State as the respondent.

2. The appellant is a national of India. He claims to have arrived in the UK in or about 2007. He made a number of unsuccessful attempts to regularise his immigration status that we do not set out in this decision. For present purposes it is sufficient to note that on 10 December 2016 the appellant was granted leave to remain in the UK on family and private life grounds until 9 June 2019.

3. On 28 June 2017 the appellant was convicted at the Black Country Magistrates Court of two counts of assault occasioning actual bodily harm. He was sentenced on 13 July 2017 at the same court, *inter alia,* to 16 weeks imprisonment, wholly suspended for 12 months. On 22 January 2020, the appellant was then convicted at Wolverhampton Crown Court of two counts of robbery. He was sentenced on 13 October 2020 to 62 months imprisonment concurrent for each count.

4. On 9 November 2020 the respondent made a decision to deport the appellant pursuant to the Immigration Act 1971 and UK Borders Act 2007. The appellant was informed that the respondent proposes to give directions for his removal to India. He was invited to set out any reasons why he should not be deported there. Having considered representations made by the appellant in response, together with an application for leave to remain that had been made by the appellant on 6 October 2016, on 5 October 2021 the respondent made a decision to refuse the protection and human rights claims made by the appellant. The appellant was also made the subject of a Deportation Order.

5. The appellant's appeal against the respondent's decision to refuse the appellant's protection and human rights claims was allowed by First-tier Tribunal Judge Groom following a hearing on 7 February 2023. The respondent applied for and was granted permission to appeal to the Upper Tribunal by FtT Judge Hatton on 13 March 2020.

6. Following a hearing before Upper Tribunal Judge Kopieczek and Deputy Upper Tribunal Judge Hanbury ("the panel of UT judge's") on 8 September 2023, the decision of FtT Judge Groom was set aside. The panel of UT Judge's set out their reasons for doing so in a decision dated 26 October 2023 ("the error of law decision"). They directed that the decision will be remade in the Upper Tribunal. It is against that background that the appeal comes before us to remake the decision. This decision should therefore be read alongside the error of law decision.

PRESERVED FINDINGS

7. The panel of UT judges directed that the parties must be in a position to make submissions as to the findings of fact made by Judge Groom that can be preserved. At the outset of the hearing before it was agreed that the following findings are to be preserved:

> "39. The Respondent accepts that the Appellant has given a detailed and consistent account for the reasons why he follows Islam, and it is accepted

that he follows the Islam faith. Religious conversion is therefore accepted by the Respondent.

40. The Appellant is married to [RJ], a British citizen. There is one child from the marriage, [HA], who was born on 2 October 2019. A copy of the birth certificate and passport for [HA] have been provided. As a result of these documents being provided, I accept that [HA] is a British citizen.

41. The Appellant does not dispute his previous criminal convictions. In considering section 72(2) of the 2002 Act, the Appellant has been convicted in the UK of an offence and sentenced to a period of imprisonment of at least 2 years. I therefore find that section 72 is engaged by the Appellant's offending history.

42. The Appellant faces two rebuttable presumptions. The first presumption is that the Appellant is presumed to have been convicted by a final judgement of a particularly serious crime. The Appellant was convicted of two counts of Robbery of vulnerable, female victims, the offences being committed one week apart, whilst under the influence of Class A drugs. The sentencing Judge described the offences as "a serious matter" Given that the starting point for a single offence of Robbery is four years with a category range of between three to six years and the Appellant was sentenced to 62 months, I conclude that the two offences of Robbery are particularly serious crimes. I therefore find that the Appellant has not rebutted the presumption that he has been convicted of a particularly serious offence.

...

[68]. The Respondent accepts that the Appellant has converted from following the Sikh faith to the Islam faith and furthermore goes on to accept that the Appellant has given a detailed and consistent account for the reasons why he follows Islam. The Appellant maintains that he is a practising Muslim, this claim was not undermined."

THE ISSUES

8. Mr Vokes and Mr Bates agree that there is a preserved finding that the aappellant has been convicted of a particularly serious offence. There is however a rebuttable presumption that the appellant constitutes a danger to the community and that remains in issue between the parties. Mr Vokes and Mr Bates agree that we are required to consider:

a. Whether the appellant has rebutted the second limb of the presumption in s72 of the Nationality, Immigration and Asylum Act 2002 ("the 2002 Act") that, having been convicted of a serious offence, the appellant is a danger to the community in the UK. The appellant's claim for international protection falls for consideration in line with the appellant's challenge to the respondent's section 72 certification.

b. Whether the appellant faces a real risk of treatment contrary to Article 3 ECHR on return to India.

c. The appellant's Article 8 claim based upon his relationship with [RJ], the best interests of [HA] and the length of time the appellant has lived in the UK.

THE SENTENCING REMARKS

9. The appellant was sentenced by His Honour Judge Berlin at Wolverhampton Crown Court on 13 October 2020. We have been provided with a copy of the sentencing remarks:

> "You have previous convictions which involve assault occasioning actual bodily harm in 2017. On the day of trial …, you changed your plea to guilty to two counts of robbery: count 1, 16 July 2019, you robbed Mrs [L] of a gold necklace and then a week later you robbed an elderly lady, [JK], of a gold necklace as well.
>
> The facts are straightforward. Tuesday, 16 July 2019 in broad daylight you mugged a woman in the street on Birmingham Road, Wolverhampton. Mrs [L] was walking with a pram with her twins at around 12 o'clock of thereabouts in the afternoon on her way back from worship when you approached her at a bus stop and snatched her Indian gold necklace which was worth £600. It caused her to fall to the ground as you snatched it and caused her to suffer cuts and grazes. You then made off in a BMW car driven by another and were traced by CCTV.
>
> This left her very scared according to the information I have received, not wanting to go out because of the problems that she had had. Quote, "He has taken this from me". Her neck hurt; she suffered injuries which were painful as a result of your attack on her.
>
> A week later on 23 July around the same time you did the same thing; this time to an elderly lady, a grandmother, 78 years of age, [JG], who was waiting at a bus stop. You pulled the gold chain from her neck and that was valued at £2,000. It is plain, although it has not been stated specifically that you chose vulnerable, soft targets. This is appalling. ….. The starting point is four years for a single offence with a category range of three to six years. There are, of course, aggravating features here. You have, as I have already outlined previous convictions for violence. The victims targeted were vulnerable women in the street in broad daylight. There are two offences and I bear in mind totality. So, I am going to impose concurrent sentences on each of them. You were also under the influence of class A drugs which is not a mitigating factor; it is an aggravating factor.
>
> As to mitigation you have through your learned counsel explained some remorse. That remorse is belated. I accept that you have tried, it seems anyway, to put your life back on course since then and I bear it in mind. I also bear in mind the lengthy period since the offence took place ….Nonetheless this is a serious matter and I have increased the starting point bearing in mind the aggravating factors balanced with mitigating factors to five years and ten months; that is seventy months which would be concurrent on each. I am reducing that by 10 per cent, in fact slightly more than 10 per cent, which gives sixty-two months, concurrent for each offence. There will be no separate penalty on the other matters…. You will serve half the sentence in custody. That will not bring the sentence to an

end and if you fail to comply with the terms of licence when you are released or commit any other offence which carries imprisonment you will go back to prison to serve out the rest of the term…"

THE EVIDENCE

10. We heard oral evidence from the appellant. We have also heard oral evidence from the appellant's partner [RJ] and his sister-in-law (RJ's sister), who we shall refer to as [IJ]. The evidence before the Tribunal is a matter of record. We do not propose to rehearse the written and oral evidence relied upon by the appellant and witnesses at any length and will instead refer to it as far as it is necessary to do so to explain the conclusions we have reached.

11. In summary, the appellant adopted his witness statement dated 30 January 2023. He confirmed that following his release from prison he remains on licence and will do so until 25 March 2025. He is still 'tagged' and is aware that he can be recalled to prison in the event that he commits further offences. He said that he last had contact with his father in or about 2017 and that his father is not aware of the appellant's conversion to Islam. He confirmed that the only contact his partner has with her family is the contact she has with her sister. Her family live about 2 miles away. The appellant was referred to paragraph [7.12.1] of the report of Professor Syed Afghan dated 25 January 2023 which records that according to [RJ], she experienced a significant backlash from her own family, however, the problems appear to have become less significant over time as her own family have accepted her marriage to the appellant. The appellant maintained there has been no reconciliation with his partner's family and that the only relationship [RJ] has with her family is her relationship with her sister. The appellant said that if he is allowed to remain in the UK, he would hope that he will be able to work and his partner could look after their daughter. The appellant confirmed [RJ] also has Pakistani nationality, but they have not made any enquiries as to whether it might be possible for her to join the appellant in India.

12. The appellant's partner, [RJ] adopted her witness statement dated 30 January 2023. She confirmed she is expecting another child that is due at the end of September 2024. She maintains that there has been no reconciliation with her family. She explained that she comes from a very strict Muslim family and had been expected to marry a relative. She left home on 26 December 2017 with the assistance of the police, who put a marker on her passport. About a month later, she was persuaded to return home after being reassured by her family that they would arrange for her to marry who she wanted. She returned to live with her family for about two months. In about March 2018 she was taken on a pilgrimage. When she returned, she was again put under pressure to marry her sister-in-law's brother, and, in September 2018 she could take no more. The police were called, and she left the family home with a police escort. The appellant's partner told us that she maintained some contact with her

father, but when her brother found out, in or about November 2018, that contact ended.

13. Mr Bates referred [RJ] to her GP records and an entry dated 7 June 2020 of a telephone consultation. The entry records "*.. Working from brother - struggling with this as family have rejected her extra difficult has parents telling her not to hand in notice looking for other jobs...".* [RJ] explained that at the time she was working for a company that was owned by the sister or her brother's friend. She was given the job because of her brother. At the time the appellant was in prison and she was struggling. This friend had sought the approval of [RJ]'s parents before employing her and her parents had told this friend that they wanted [RJ] to be able to continue working because she was struggling at the time. [RJ] maintained that even to this day, her brother will not accept that she has married someone that was formerly a Sikh. [RJ] said that when she and the appellant lived in Tipton, she and her daughter were threatened by the appellant's uncle. They therefore moved to Stoke, to be in an area that she is familiar with, and where she could receive some support from her sister. In questions from us by way of clarification, [RJ] said the only familial support she has is from her sister. She said that she would be unable to join the appellant in India because she was born in the UK and has lived here all her life. She said that she has a maternal uncle who is a politician in Pakistan and he has connections to India. She believes that is likely to put her and her daughter at risk and she fears she will be targeted in India.

14. Finally, we heard evidence from [IJ], the appellant's sister-in-law. She said that she too is in a marriage that her family disapprove of, and although she experienced problems initially, things have now calmed down. She was asked whether her family have any political connections in Pakistan. She said that her uncle (her mum's brother) is a local politician in Azad Kashmir. She described him as the "main man" in the family who makes all the decisions.

THE LEGAL FRAMEWORK

15. Section 32 of the UK Borders Act 2007 defines a foreign criminal as a person not a British citizen, who is convicted in the UK of an offence and, inter alia, sentenced to a period of imprisonment of at least 12 months. Section 32(4) of the 2007 Act sets outs out the clear proposition that deportation of a foreign criminal is conducive to the public good. That is a statement of public policy enacted by the legislature, which the courts and tribunals are obliged to respect. Section 32(5) require that the Secretary of State must make a deportation order in respect of a foreign criminal (subject to section 33). Section 32(6) provides that the Secretary of State may not revoke a deportation order made in accordance with subsection (5) unless–

> (a) he thinks that an exception under section 33 applies,

(b) the application for revocation is made while the foreign criminal is outside the United Kingdom, or

(c) section 34(4) applies.

16. As far as relevant to this appeal, section 33 of the 2007 Act sets out the exceptions to deportation as follows:

> "33 Exceptions
>
> (1) Sections 32(4) and (5)-
>
> (a) do not apply where an exception in this section applies (subject to subsection (7) below), and
>
> (b) are subject to sections 7 and 8 of the Immigration Act 1971 (Commonwealth citizens, Irish citizens, crew and other exemptions).
>
> (2) Exception 1 is where removal of the foreign criminal in pursuance of the deportation order would breach–
>
> (a) a person's Convention rights, or
>
> (b) the United Kingdom's obligations under the Refugee Convention.
>
> …
>
> (7) The application of an exception–
>
> (a) does not prevent the making of a deportation order;
>
> (b) results in it being assumed neither that deportation of the person concerned is conducive to the public good nor that it is not conducive to the public good;
>
> But section 32(4) applies despite the application of Exception 1 or 4."

17. The respondent certified the decision to refuse the appellant's protection claim under s.72(2) of the 2002 Act on the basis that the appellant had been convicted of a particularly serious crime and constitutes a danger to the community of the United Kingdom. On an appeal under s82 of the 2002 Act, the Tribunal must begin substantive deliberation of the appeal by considering the certificate and if in agreement that the presumption has not been rebutted, must dismiss the appeal insofar as it relies on the ground that the removal of the appellant from the United Kingdom would breach the United Kingdom's obligations under the Refugee Convention.

18. Part 5A of the Nationality, Immigration and Asylum Act 2002 ("the 2002 Act") informs the decision making in relation to the application of the exceptions referred to in section 33 of the UK Borders Act 2007. Section 117A in Part 5A provides that, when a court or tribunal is required to determine whether a decision made under the Immigration Acts breaches

a person's right to respect for private and family life under Article 8, and, as a result, would be unlawful under section 6 of the HRA 1998, the court, in considering the public interest question, must (in particular) have regard to the considerations listed in section 117B and, additionally, in cases concerning the deportation of foreign criminals, to the considerations listed in section 117C. Section 117C specifically deals with the weight to be attached to the public interest in deporting foreign criminals and provides a structure for conducting the necessary balancing exercise, dependent in part, on the length of sentence imposed.

19. In *HA (Iraq) v Secretary of State for the Home Department* [2022] UKSC 22, Lord Hamblen referred to the 'very compelling circumstances' test set out in s117C(6) of the 2002 Act. He cited the judgement of Sales LJ in *Rhuppiah v Secretary of State for the Home Department* [2016] 1 W.L.R 4203, at [50], that the 'very compelling circumstances' test "provides a safety valve, with an appropriately high threshold of application, for those exceptional cases involving foreign criminals in which the private and family life considerations are so strong that it would be disproportionate and in violation of article 8 to remove them". Lord Hamblen said:

> "51. When considering whether there are very compelling circumstances over and above Exceptions 1 and 2, all the relevant circumstances of the case will be considered and weighed against the very strong public interest in deportation. As explained by Lord Reed in *Hesham Ali* at paras 24 to 35, relevant factors will include those identified by the European Court of Human Rights ("ECtHR") as being relevant to the article 8 proportionality assessment. In *Unuane v United Kingdom (2021) 72 EHRR 24* the ECtHR, having referred to its earlier decisions in *Boultif v Switzerland (2001) 33 EHRR 50* and *Üner v The Netherlands (2006) 45 EHRR 14* , summarised the relevant factors at paras 72-73 as comprising the following:
>
> > "• the nature and seriousness of the offence committed by the applicant;
> >
> > • the length of the applicant's stay in the country from which he or she is to be expelled;
> >
> > • the time elapsed since the offence was committed and the applicant's conduct during that period;
> >
> > • the nationalities of the various persons concerned;
> >
> > • the applicant's family situation, such as the length of the marriage, and other factors expressing the effectiveness of a couple's family life;
> >
> > • whether the spouse knew about the offence at the time when he or she entered into a family relationship;
> >
> > • whether there are children of the marriage, and if so, their age; and
> >
> > • the seriousness of the difficulties which the spouse is likely to encounter in the country to which the applicant is to be expelled …

> • the best interests and well-being of the children, in particular the seriousness of the difficulties which any children of the applicant are likely to encounter in the country to which the applicant is to be expelled; and
>
> • the solidity of social, cultural and family ties with the host country and with the country of destination."

52. The weight to be given to the relevant factors falls within the margin of appreciation of the national authorities. As Lord Reed explained in *Hesham Ali* at para 35:

> "35. While the European court has provided guidance as to factors which should be taken into account, it has acknowledged that the weight to be attached to the competing considerations, in striking a fair balance, falls within the margin of appreciation of the national authorities, subject to supervision at the European level. The Convention on Human Rights can thus accommodate, within limits, the judgments made by national legislatures and governments in this area."

...

58. Given that the weight to be given to any relevant factor in the proportionality assessment will be a matter for the fact finding tribunal, no definitive statement can be made as to what amount of weight should or should not be given to any particular factor. It will necessarily depend on the facts and circumstances of the case. I do not, however, consider that there is any great difference between what was stated in *Binbuga* and by the Court of Appeal in this case. In a case where the only evidence of rehabilitation is the fact that no further offences have been committed then, in general, that is likely to be of little or no material weight in the proportionality balance. If, on the other hand, there is evidence of positive rehabilitation which reduces the risk of further offending then that may have some weight as it bears on one element of the public interest in deportation, namely the protection of the public from further offending. Subject to that clarification, I would agree with Underhill LJ's summary of the position at para 141 of his judgment:

> "What those authorities seem to me to establish is that the fact that a potential deportee has shown positive evidence of rehabilitation, and thus of a reduced risk of re-offending, cannot be excluded from the overall proportionality exercise. The authorities say so, and it must be right in principle in view of the holistic nature of that exercise. Where a tribunal is able to make an assessment that the foreign criminal is unlikely to re-offend, that is a factor which can carry some weight in the balance when considering very compelling circumstances. The weight which it will bear will vary from case to case, but it will rarely be of great weight bearing in mind that, as Moore-Bick LJ says in *Danso* , the public interest in the deportation of criminals is not based only on the need to protect the public from further offending by the foreign criminal in question but also on wider policy considerations of deterrence and public concern. I would add that tribunals will properly be cautious about their ability to make findings on the risk of re-offending, and will usually be unable to do so with any confidence

based on no more than the undertaking of prison courses or mere assertions of reform by the offender or the absence of subsequent offending for what will typically be a relatively short period." "

20. Recently, in *Yalcin v Secretary of State for the Home Department* [2024] 1 WLR 1626, Lord Justice Underhill explained:

"53. The starting-point is to identify the basic structure of the law in this area. At para. 47 of his judgment in *HA (Iraq)* Lord Hamblen approved the summary which I gave at para. 29 of my judgment in this Court:

"(A) In the cases covered by the two Exceptions in subsections (4)-(5), which apply only to medium offenders, the public interest question is answered in favour of the foreign criminal, without the need for a full proportionality assessment. Parliament has pre-determined that in the circumstances there specified the public interest in the deportation of medium offenders does *not* outweigh the article 8 interests of the foreign criminal or his family: they are, given, so to speak, a short cut. The consideration of whether those Exceptions apply is a self-contained exercise governed by their particular terms.

(B) In cases where the two Exceptions do not apply – that is, in the case of a serious offender or in the case of a medium offender who cannot satisfy their requirements – a full proportionality assessment is required, weighing the interference with the article 8 rights of the potential deportee and his family against the public interest in his deportation. In conducting that assessment the decision-maker is required by section 117C(6) (and paragraph 398 of the Rules) to proceed on the basis that 'the public interest requires deportation unless there are very compelling circumstances over and above those described in Exceptions 1 and 2'."

…

57. *NA (Pakistan)* thus establishes that the effect of the over-and-above requirement is that, in a case where the "very compelling circumstances" on which a claimant relies under section 117C(6) include an Exception-specified circumstance ("an Exception-overlap case")[9] it is necessary that there be something substantially more than the minimum that would be necessary to qualify for the relevant Exception under subsection (4) or (5): as Jackson LJ puts it at para. 29, the article 8 case must be "especially strong". That higher threshold may be reached either because the circumstance in question is present to a degree which is "well beyond" what would be sufficient to establish a "bare case", or – as shown by the phrases which I have italicised in paras. 29 and 30 – because it is complemented by other relevant circumstances, or because of a combination of both. I will refer to those considerations, of whichever kind, as "something more". To take a concrete example, if the Exception-related circumstance is the impact of the claimant's deportation on a child (Exception 2) the something more will have to be either that the undue harshness would be of an elevated degree ("unduly unduly harsh"?) or that it was complemented by another factor or factors – perhaps very long residence in this country (even if Exception 1 is not satisfied) – to a sufficient extent to meet the higher threshold; or, as I have said, a combination of the two.

…

> 62. … I agree that it would in principle conduce to transparent decision-making if the tribunal identified with precision in every case what the something more consisted of; but that will not always be straightforward. The proportionality assessment is generally multi-factorial and requires a holistic approach. A tribunal must of course in its reasons identify the factors to which it has given significant weight in reaching its overall conclusion. It is no doubt also desirable that it should indicate the relative importance of those factors, but there are limits to the extent to which that is practically possible: the factors in play are of their nature incommensurable, and calibrating their relative weights will often be an artificial exercise. It would in my view place an unrealistic burden on tribunals for them to have to decide, and specify, in every case whether the something more consists of the Exception-specific circumstance being present to an elevated degree, or of some other circumstance or circumstances, or a combination of the two. There may be cases where for some reason peculiar to the case this degree of specificity is necessary; but I do not believe that there is any universal rule. We should not make decision-making in this area more complicated than it regrettably already is."

DECISION

THE S72 CERTIFICATE

21. There is a preserved finding that the appellant has been convicted of a particularly serious offence. We have had regard to the 'Short Format Pre-Sentence Report' dated 6 October 2020 in which the appellant was assessed as posing a low risk of further general offending. However the report also notes the appellant was assessed as posing a medium risk of serious harm to the public. The report noted the emerging pattern of violent behaviour towards strangers and that the offences were committed against vulnerable females in broad daylight.

22. The OASyS Assessment dated 19 October 2022 followed the appellant's release from custody on 8 September 2022 subject to immigration bail. The assessment was based on an interview with the appellant prior to his release and three appointments following release. It is also based on Probation Service records. The appellant is assessed to be a "High" risk in the community. The assessment records at section 'R10', that the risk to the general public could be to males or females and is 'likely to be to strangers'. The risk is likely to increase with any return to using illicit substances and 'increased association with anti-social / negative peers, and any deterioration in mental health and frustration caused by a lack of income. Mr Vokes drew our attention to the assessment that the 'probability of proven violent-type reoffending' is recorded to be 'low' overall. He also drew our attention to the letter from the health visitor, Lynn Kavanagh dated 3 November 2020 in which she states the appellant had supported his partner and attended all her ante-natal appointments until he was remanded in custody. The health visitor also refers to the bond that the appellant has established with his daughter [HA]. Mr Vokes

submits these relationships serve as a positive influence upon the appellant and an incentive to abstain from any further offending.

23. We recognise the support the appellant receives from his partner. We have been provided with a letter from Kelly Brooks, the appellant's Probation Officer, dated 2 February 2023. She summarises the appellant's progress since his release from custody on 8 September 2022. She confirms that the appellant has complied fully with his licence supervision and attended all appointments as instructed. The supervision sessions have focused on resettlement into the community and trying to adjust to being back home with his family. She states there has been no evidence or suspicion of substance use and a random drug test completed on 25 January 2023 was negative. We accept, as Mr Bates submits, that there is no indication in the recent evidence from Kelly Brooks that the previous assessment set out in the OASyS report that the appellant is assessed to be a "High" risk in the community, has changed.

24. In reaching our decision we have had regard to the fact that the appellant has not committed any further offences, but that must be considered in light of the fact that he was not released from his custodial sentence until 8 September 2022, and he remains on licence with the risk, as he himself acknowledges, of the prospect of a recall to prison in the event that he offends again. There is in our judgement little evidence of any sustained rehabilitation and the lack of offending must also be considered in light of the fact that the appellant faces the prospect of deportation. Standing back, we have considered all the positive factors raised on behalf of the appellant, however looking at the appellant's offending history and the drivers to the appellant's offending as detailed within the OASys report, we find the appellant has not rebutted the section 72 NIAA 2002 presumption that he is a danger to the community in the UK.

25. Consequently, pursuant to section 72(10) of the 2002 Act the appellant's appeal against the respondent's decision to refuse his claims for international protection must be dismissed. We have found that the section 72 presumptions do apply to the appellant and therefore appellant's appeal on humanitarian protection grounds must also be dismissed.

ARTICLE 8

26. According to the immigration history that is recorded in the respondent's decision dated 5 October 2021, the appellant arrived in the UK in or about March 2007. He would have been 11 years old at the time. He is now 28 years old. The respondent accepts the appellant has a genuine and subsisting relationship with [RJ], who is a 'qualifying partner' as defined in s117D(1) of the 2002 Act. Although the respondent did not accept the appellant has a daughter, [HA], or that the appellant has a genuine and subsisting relationship with [HA], there is a preserved finding that there is a child of the appellant's marriage to [RJ], [HA], who was born on 2 October 2019 and is a British citizen.

27. We find the appellant has established a family life with his partner and daughter. It is uncontroversial that the decision to refuse the appellant's human rights claim has consequences of such gravity as to engage the operation of Article 8. We accept that the interference is in accordance with the law, and that the interference is necessary to protect the legitimate aim of immigration control and the economic well-being of the country. The central issue in this appeal is whether the decision to deport the appellant is proportionate to the legitimate aim.

28. It is uncontroversial that the appellant is a foreign criminal, as defined in s117D(2) of the 2002 Act. The appellant has been sentenced to a period of imprisonment of sixty-two months and is therefore a 'foreign criminal' as defined in s117D. Applying s117C(6) of the 2002 Act, the public interest requires deportation unless there are very compelling circumstances, over and above those described in Exceptions 1 and 2.

29. Mr Vokes candidly accepts the appellant has a high hurdle to cross. We record from the outset that we acknowledge the appellant arrived in the United Kingdom aged 11. However, he has not been lawfully resident in the United Kingdom for most of his life.

30. The appellant made a claim for international protection and fears that if returned to India, he will face mistreatment because of his religion. As we have already set out, the respondent accepts the appellant has converted from following the Sikh faith to Islam. The appellant maintains he is a practising Muslim. We do not however accept there would be very significant obstacles to the appellant's integration into India. The appellant's evidence is that he maintained contact with his father until the appellant's conviction and sentence of imprisonment. The appellant's claim for international protection is based upon his fear of Sikh and Hindu extremists. As the respondent set out in the decision dated 5 October 2021, the background material establishes that India is a secular Republic. The constitution and other federal laws protect religious freedom that is generally respected by the government. Although some states' laws and policies are restrictive and discriminatory, including the enforcement of 'anti-conversion' laws which impose penalties for converting out of Hinduism, overall, individuals are free to choose their religion. There is a sufficiency of protection available. The appellant has a general fear of extremists but we do not accept that any extremist group in particular would have the motivation, interest, means or ability to locate the appellant. In any event, the background material establishes that India is a diverse, multi-ethnic, multilingual society with a population of approximately 1.2 billion people, and the law provides for freedom of movement so that individuals can reside and settle in any part of the territory.

31. The assessment of 'integration' calls for a broad evaluative judgement as set out by Sales LJ in *SSHD -v- Kamara* [2016] EWCA Civ 813, at [14]. We accept the appellant was a child when he left India in 2007, but he was not so young that he would not have any knowledge about life there. The

appellant maintained at least some contact with his father, and the appellant has acquired at least some skills when he worked for his uncle and from his work in a warehouse that will assist him secure employment. As Mr Bates submits, the appellant speaks Punjabi, and as an otherwise fit and young male, there is no reason why the appellant cannot establish a life in India, even as a Muslim. We accept life in India will not be easy initially, but we do not accept he could not cope. Having considered the evidence as a whole, whilst we accept that he will naturally encounter some hardship in returning to India, we do not consider that hardship to approach the level of severity required by s117C(4)(c) of the 2002 Act. It follows that in our judgment, the appellant cannot benefit from Exception 1.

32. However, the appellant is in a genuine and subsisting relationship with a qualifying partner and he has a genuine and subsisting parental relationship with a qualifying child. We were particularly impressed with the evidence before us from [RJ], who we found to be an honest and credible witness. Both [RJ] and [HA] are British citizens who have no other connection to India. We accept the evidence of [RJ] that she would be unable to join the appellant in India because she was born in the UK and has lived here all her life. We also accept her evidence that she has a maternal uncle who is a politician in Pakistan, and that he has connections to India. She believes that is likely to put her and her daughter at risk, and she fears she will be targeted in India. Although we accept, as Mr Bates submits, that that evidence came out for the first time during the course of [RJ]'s oral evidence before us, it was entirely consistent with the evidence of [IJ], when she too was asked entirely independently, whether their family have any political connections in Pakistan. Whether or not [RJ]'s maternal uncle has any reach in India, it is clear that [RJ] has a subjective fear that she and her daughter will be targeted in India. That is a risk she is not prepared to take.

33. The question that arises under Exception 2 is whether the effect of the appellant's deportation on his partner and child would be unduly harsh. The term 'unduly harsh' involves an appropriately elevated standard, and we must make an informed assessment of the effect of deportation on [RJ] and [HA] and to make an evaluative judgment as to whether that elevated standard has been met on the facts and circumstances of this appeal.

34. Mr Vokes drew our attention to the report dated 9 December 2022 prepared by an independent social worker ("ISW"), Sally-Anne Deacon. The report speaks of the appellant's relationship with his daughter and the particular family dynamics regarding the breakdown of the relationship between [RJ] and her own family. We attach due weight to the opinions expressed by the ISW as to the best interests of [HA] in particular. It is said that the appellant has consistently maintained his relationship with [HA] and that the affection [HA] has for her father is reciprocated by him. It is said to be probable that [HA] will feel an acute sense of abandonment should her father's absence become long-term. The appellant is also said to present as a considerate partner to his wife who has significant and

enduring mental health problems. Although the ISW does not wish to undermine [RJ]'s parenting capacity, nor the love she has for her daughter, it is said that should [RJ]'s mental health deteriorate in the absence of the appellant, it is possible that [HA]'s needs will be at best, significantly compromised, or at worst, unmet. That may require protective action to safeguard [HA].

35. In reaching our decision, we have had regard to the best interests of [HA]. The leading authority on section 55 remains *ZH (Tanzania) v Secretary of State for the Home Department* [2011] UKSC 4. In her judgment, Lady Hale confirmed that the best interests of a child are "a primary consideration", which, she emphasised, was not the same as "the primary consideration", still less "the paramount consideration". The child is, and has always been, wholly blameless for the criminal behaviour of the appellant and its consequences. We accept that it is generally in the best interests of children to have a good relationship with each of their parents, but that can be outweighed by other factors relevant to the public interest in the deportation of foreign criminals.

36. As we have said, we found the evidence of [RJ] to be compelling, and we accept her evidence of the particular family dynamics, including the breakdown of [RJ]'s relationship with her own family caused by her entirely understandable unwillingness to marry a relative as proposed by her parents, and instead to pursue and maintain a relationship with the appellant. We have taken into account the evidence before us regarding the health of [RJ] and her subjective fear that she will be at risk in India, so that the family could not continue to live together in India. Looking at the evidence before us holistically and having considered all the evidence before us we find that in the particular circumstances that the appellant, [RJ] and [HA] find themselves in, the particular family dynamics are such that the effect of the appellant's deportation on his partner and child would be unduly harsh. We reach that decision having noted that 'unduly harsh' does not equate with uncomfortable, inconvenient, undesirable or merely difficult. 'Harsh' in this context, denotes something severe, or bleak.

37. Here, the fact that the effect of the appellant's deportation on [RJ] and [HA] would be unduly harsh is not enough. The public interest nevertheless requires the appellant's deportation unless there are very compelling circumstances over and above those described in Exceptions 1 and 2.

38. To that end, the appellant has on any view, had a difficult childhood following the death of his mother in 2004. His father was convicted of her murder, and the appellant arrived in the UK as a child himself. He has now lived in the UK for a period in excess of sixteen years. The appellant is a national of India, whereas [RJ] and [HA] are British citizens who have no connection to India. There is an added dimension here concerning the appellant's conversion from the Sikh faith to Islam and the impact that has upon the ability of the family to live together in India in light of the

subjective fear held by [RJ] as to the risk that she and her daughter would be exposed to. We are satisfied from the evidence that we have read that the appellant and [RJ] have a close relationship. The evidence before us is that the appellant met [RJ] in 2017 and their relationship developed. We accept the evidence of {RJ] that she is from a strict conservative Muslim family and her family do not approve of her relationship with the appellant, not least because she was expected marry a family member who had been identified. [RJ] has had to make her own sacrifices to pursue and maintain her relationship with the appellant. We accept [RJ] fled her family home fearing she would be a victim of an 'honour killing'. She has remained resolute in her commitment to her relationship with the appellant. We accept the evidence of [RJ] that she will be unable to join the appellant in India. Therefore, if the appellant is deported, it is likely to lead to the breakup of the appellant's relationship with [RJ] and in consequence, the breakdown of the relationship between the appellant and [HA]. Both [RA] and [HA] have no connections to India, but the solidity of their social, and cultural ties lie in the United Kingdom.

39. In the end, standing back and looking at all the evidence before us holistically, we are satisfied that the particular family dynamics at play here, and the background, establishes a particularly strong Article 8 claim because of the combination of relevant factors that establish "something more" and that the high threshold required to outweigh the strong public interest in the deportation of the appellant is met. We find that in all the circumstances, the decision to deport the appellant is disproportionate and the appellant is allowed on Article 8 grounds.

ARTICLE 3

40. We do not accept that the removal of the appellant from the UK would be in breach of Article 3. As the Supreme Court said in *AM (Zimbabwe)* [2020] UKSC 17, it is for the appellant to adduce evidence capable of demonstrating that there are substantial grounds for believing that, if removed, he would be exposed to a real risk of being subjected to treatment contrary to Article 3. The Supreme Court confirmed that that is a demanding threshold.

41. For the reasons we have already set out at paragraphs [30] and [31] above, taken in isolation we do not accept the appellant will be at risk of treatment contrary to Article 3, upon return to India. We have rejected the appellant's claim that he will face mistreatment because of his religion having converted from following the Sikh faith to Islam.

NOTICE OF DECISION

42. The appeal is allowed on Article 8 grounds only.

V. Mandalia
Upper Tribunal Judge Mandalia

Judge of the Upper Tribunal
Immigration and Asylum Chamber

26 June 2024