



IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2023-000504
First-tier Tribunal No:
HU/00024/2022

THE IMMIGRATION ACTS

Decision & Reasons Issued:
On the 20 August 2024

Before

UPPER TRIBUNAL JUDGE STEPHEN SMITH
UPPER TRIBUNAL JUDGE O'BRIEN

Between

LL (Uganda)
(ANONYMITY DIRECTION IN FORCE)

Appellant

and

Secretary of State for the Home Department

Respondent

Representation:

For the Appellant: Mr A. Gilbert, Counsel instructed by Wilson Solicitors LLP
For the Respondent: Mr E. Terrell, Senior Home Office Presenting Officer

Heard at Field House on 25 July 2024

DECISION AND REASONS

1. By a decision dated 16 December 2021, the Secretary of State refused a human rights claim dated 22 July 2021 made by the appellant, a citizen of Uganda born in 1989. The appellant made the human rights claim in an attempt to resist deportation following his pleas of guilty to two counts of the possession of a Class A drug with intent to supply, namely heroin and crack cocaine. On 7 October 2020, the appellant was sentenced by the Crown Court sitting at Woolwich to 30 months' imprisonment on each count, to run concurrently. We refer to these convictions as the "October 2020 offences", or the "October 2020 convictions".
2. The appeal was brought under section 82(1) of the Nationality, Immigration and Asylum Act 2002 ("the 2002 Act").

Procedural context

3. This appeal was originally heard and allowed by First-tier Tribunal Judge Bart-Stewart ("Judge Bart-Stewart") on 13 January 2023. By a decision promulgated on 7 July 2023, Upper Tribunal Judge Stephen Smith set aside the decision of Judge

Bart-Stewart, with certain findings of fact preserved, and gave directions for the appeal to be reheard in this tribunal, acting under section 12(2)(b)(ii) of the Tribunals, Courts and Enforcement Act 2007. It is against that background that the matter resumed before us, sitting as a panel, on 25 July 2024. There were a number of delays to the listing of the resumed hearing occasioned by adjournments to enable the appellant to secure legal representation.

4. A copy of the Upper Tribunal's decision of 7 July 2023 may be found in the **Annex** to this decision. We refer to that decision as the "error of law" decision.

Anonymity

5. Upper Tribunal Judge Stephen Smith made an order for the appellant's anonymity because he has alleged that he is a victim of modern slavery. By a decision dated 30 May 2022, the Single Competent Authority concluded that there were reasonable grounds to suspect that the appellant was such a victim.
6. Mr Terrell informed us that the Single Competent Authority has now issued a conclusive grounds decision concluding that the appellant is not a victim of modern slavery. However, we consider that the statutory anonymity enjoyed by the appellant pursuant to the Sexual Offences (Amendment) Act 1992 continues to apply, since the Act is engaged where an "allegation" has been made (see para. 4 of the error of law decision). Accordingly, we maintain the order for anonymity already made. We stress that that order only applies to prohibit publication of the appellant's status as a person who has alleged that he is a victim of modern slavery.

Factual background

7. The appellant arrived in the UK lawfully in 1998 to join his mother. She had arrived some years earlier as an asylum seeker. Her claim was refused but she was granted exceptional, and later indefinite, leave to remain. The appellant was granted indefinite leave to remain in 2001.
8. In response to the appellant's offending prior to February 2014 (see below), the Secretary of State sought to pursue his deportation. On 20 February 2014 a deportation order was signed against him. That had the effect of invalidating his indefinite leave to remain. The appellant appealed to the First-tier Tribunal. The appeal was initially allowed, but the Secretary of State successfully appealed to the Upper Tribunal. The Upper Tribunal remitted the Secretary of State's decision to be re-taken, as was then possible under the appeal framework in force at the time.
9. On 31 October 2018, the appellant was served with a decision to refuse a human rights claim. He appealed to the First-tier Tribunal. The appeal was heard by Judge I. M. Scott ("Judge Scott") who, by a decision dated 19 February 2020, allowed the appeal. Permission to appeal against that decision was refused to the Secretary of State by both the First-tier Tribunal and the Upper Tribunal.
10. By a letter dated 22 July 2021, the appellant made representations in response to the Secretary of State notifying him that she was minded to deport him in respect of the October 2020 convictions. The representations were treated as a human rights claim and refused by a decision dated 16 December 2021; it is that decision the appellant appeals against in these proceedings.

Offending history

11. The appellant was convicted of offences of affray and burglary in 2004 and 2005, and subjected to non-custodial disposals.

12. On 21 December 2005, the appellant was included in his mother's application for British citizenship. The appellant's application was rejected on good character grounds.
13. On 23 February 2007, the appellant was convicted of the possession of cannabis, for which he received a fine.
14. On 25 July 2008, the appellant was convicted of driving while disqualified and sentenced to 4 months' detention. He was also convicted of handling stolen goods, for which he was also sentenced to 4 months' detention, using a vehicle while uninsured (£200 fine) and failing to surrender to custody, to which he was sentenced to 14 days' detention. The appellant was also disqualified from driving.
15. On 23 December 2009, the appellant was convicted before the Crown Court at Cardiff for the possession of a Class A controlled drug, namely crack cocaine, with intent to supply. For this offence the appellant was sentenced to two years' detention in a young offenders' institute.
16. On 29 October 2011, the appellant was convicted of driving while disqualified, for which he was sentenced to a community order and disqualified for a further six months.
17. On 10 April 2012, the appellant was convicted of failing to comply with a community order. The conditions of the order were amended to include a 14 day curfew requirement with electronic tagging.
18. On 1 October 2012, the appellant was convicted of failing to comply with a community order. The terms of the order were amended to include a 21 day curfew requirement with electronic tagging.
19. On 12 August 2013, the appellant was convicted of driving offences for which he was sentenced to four months' imprisonment and disqualified from driving for two years.
20. On 30 July 2018, the appellant was convicted before the magistrates' court of driving a motor vehicle whilst under the influence of a controlled drug, driving while uninsured, driving a vehicle taken without the owner's consent, driving without a licence and the possession of a class B drug, namely cannabis. For these offences, the appellant was sentenced to a community order and disqualified from driving for 12 months.
21. On 9 September 2020, the appellant pleaded guilty to two counts of the supply of a Class A drug, namely heroin and crack cocaine. He was sentenced by HHJ Shorrocks to 30 months' imprisonment. Those offences had been committed on 19 February 2020. As set out above, these are the October 2020 convictions, for which the Secretary of State pursues the appellant's deportation.

Principal controversial issue

22. The principal controversial issue in these proceedings is whether there are "very compelling circumstances" over and above the statutory exceptions to the public interest in the appellant's deportation contained in section 117C of the 2002 Act.
23. The error of law decision preserved most of Judge Bart-Stewart's findings of fact, including her findings that the appellant had not met Exceptions 1 and 2 at the date of the hearing before her on 23 December 2022. Those findings, and the other preserved findings, form the starting point for our analysis.

The parties' cases

24. In broad terms, there are two strands to the appellant's case. He relies on all elements of them collectively to point to the presence of "very compelling circumstances".
25. First, the appellant contends that the circumstances of the October 2020 convictions reduce the public interest in his deportation. He was pressurised into dealing drugs to repay a debt. He was unable to work, and owed money to a law firm in respect of his immigration matters, and needed an income. He pleaded guilty on that basis, and Judge Shorrocks accepted the basis of plea in October 2020. That means those offences are less serious, he submits.
26. Secondly, the appellant relies on his private and family life. He is in a long term relationship with L, a British citizen, and is engaged to be married to her. They have two sons; T, born in 2013, and M, born in 2017. Both children are British citizens. While Judge Bart-Stewart found that the impact of the appellant's deportation on L, T and M would not be "unduly harsh", almost two years have elapsed since those findings were reached. Since then, the family life the appellant enjoys with his partner and his sons has only strengthened. As for the appellant's own circumstances, he arrived in the United Kingdom as a young child in 1998, and has lived here ever since. He has very few remaining links with Uganda. His family are all here. He would struggle to work. Life would be harsh. His children, pursuant to the preserved findings of fact, could not be expected to accompany him to Uganda. Accordingly, his deportation would rupture the family. Moreover, the appellant is now fully rehabilitated. His history of offending is behind him. He has not committed any further offences since his release from prison.
27. The Secretary of State's position is that there are no very compelling circumstances over and above the statutory exceptions to deportation. The appeal should be dismissed.

The hearing

28. The resumed hearing took place at Field House on 25 July 2024. We heard evidence from the appellant. He was cross-examined by Mr Terrell. L and the appellant's sister, Y, each attended and adopted their statements dated 16 July 2024. Mr Terrell had no questions for them.
29. We reserved our decision.

The law

30. The sole ground of appeal is that the appellant's removal from the United Kingdom would be unlawful under section 6 of the Human Rights Act 1998: see section 84(1)(c) of the 2002 Act. The appellant's case is that it would be disproportionate for the purposes of Article 8(2) of the European Convention on Human Rights ("the ECHR") for him to be removed from the United Kingdom. Article 8 provides:

"1. Everyone has the right to respect for his private and family life, his home and his correspondence.

2. There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the

prevention of disorder or crime, for the protection of health or morals,
or for the protection of the rights and freedoms of others.”

31. Part 5A of the 2002 Act contains a number of mandatory public interest considerations to which a court or tribunal must have regard when considering whether an interference with a person’s right to respect for private and family life is justified under Article 8(2) of the ECHR. The considerations in section 117C apply in all cases concerning the deportation of foreign criminals: see section 117A(2)(b).
32. Section 117C provides:
- “(1) The deportation of foreign criminals is in the public interest.
 - (2) The more serious the offence committed by a foreign criminal, the greater is the public interest in deportation of the criminal.
 - (3) In the case of a foreign criminal (‘C’) who has not been sentenced to a period of imprisonment of four years or more, the public interest requires C’s deportation unless Exception 1 or Exception 2 applies.
 - (4) Exception 1 applies where—
 - (a) C has been lawfully resident in the United Kingdom for most of C’s life,
 - (b) C is socially and culturally integrated in the United Kingdom, and
 - (c) there would be very significant obstacles to C’s integration into the country to which C is proposed to be deported.
 - (5) Exception 2 applies where C has a genuine and subsisting relationship with a qualifying partner, or a genuine and subsisting parental relationship with a qualifying child, and the effect of C’s deportation on the partner or child would be unduly harsh.
 - (6) In the case of a foreign criminal who has been sentenced to a period of imprisonment of at least four years, the public interest requires deportation unless there are very compelling circumstances, over and above those described in Exceptions 1 and 2.
 - (7) The considerations in subsections (1) to (6) are to be taken into account where a court or tribunal is considering a decision to deport a foreign criminal only to the extent that the reason for the decision was the offence or offences for which the criminal has been convicted.”
33. Section 117D defines certain key terms. Section 117D(1) defines “qualifying child” to include British citizen children. “Qualifying partner” means a partner who is a British citizen, or settled in the United Kingdom. Section 117D(2) defines “foreign criminal” to include those, such as this appellant, who have been sentenced to a period of imprisonment for at least 12 months.
34. Pursuant to *NA (Pakistan) v Secretary of State for the Home Department* [2016] EWCA Civ 662, while section 117C(6) is not expressly engaged in relation to a foreign criminal sentenced to less than four years’ imprisonment, that is an obvious drafting error. Parliament cannot have intended so-called medium offenders to be denied the benefit of an overall ECHR-compliant proportionality assessment in circumstances when serious foreign criminals (that is, those

sentenced to at least four years' imprisonment) enjoy the benefit of such an assessment.

35. It is for the appellant to establish that Article 8(1) would be engaged by his prospective removal. If he can, then it is for the Secretary of State to establish that his removal would be proportionate for the purposes of Article 8(2). The Secretary of State does so by relying on the public interest considerations contained in Part 5A and the Immigration Rules. In a case where deportation is involved, the appellant must establish, to the balance of probabilities standard, that he meets the relevant exception to deportation, or that there are very compelling circumstances and over and above the exceptions, rendering his removal disproportionate.

Whether there are “very compelling circumstances over and above” the exceptions to deportation

36. It is common ground that Article 8(1) of the ECHR would be engaged by the appellant's deportation. It is also common ground that the appellant is a “foreign criminal” as defined by section 117D(1) of the 2002 Act. It is accepted by the appellant, through Mr Gilbert, that in light of the preserved findings of fact reached by Judge Bart-Stewart, the appellant did not meet either of the statutory exceptions to deportation at the date of the hearing before her, namely 23 December 2022. Despite the passage of time since those findings were reached, it is not the appellant's case that we should revisit those findings in light of contemporary evidence. Rather the appellant's case is that the extent to which he almost meets the statutory exceptions, when combined with the remaining relevant factors in his favour, in particular the length of his residence and his age upon arrival, mean that cumulatively there are “very compelling circumstances over and above” the statutory exceptions to deportation.
37. To assess this issue, we must first determine the factual matrix upon which our analysis must be based. Naturally, we have considered all evidence in the case, in the round.
38. Two previous judicial decisions are relevant to these findings; the decisions of Judges Scott and Bart-Stewart. The latter decision is the most relevant, since it took as *its* starting point the findings of Judge Scott. The relevant findings that are relevant to our analysis include:
- a. The appellant was in a stable relationship with L, and performed a full and active role in the lives of his children. Those findings were reached partly in reliance on a report from an independent social worker, Peter Horrocks, dated 25 May 2022 (“the Horrocks report”). (Para. 48).
 - b. Save for the time that the appellant had been in custody, L, T and M had always lived in a family unit with the appellant. The children were attending school. There was nothing to suggest that they were not doing well. (Para. 50).
 - c. There were large numbers of extended family members in the United Kingdom. Neither the children nor their mother had ever visited Uganda. (Para. 50).
 - d. T and M had no understanding of the issues then faced by their family, and appeared to have no awareness of the prospect of their father being removed. Neither child had any additional needs over and above those which would ordinarily be expected in children of their ages, which were 9 and 5 at the time. (Para. 51).

- e. It would be unduly harsh for L, T and M to relocate to Uganda. That was particularly so for T, given his age and the links he would have formed in the United Kingdom by then. The difficulties would be augmented by the fact that the appellant would not have retained any knowledge of life in Uganda, not least because his parents had relocated to the United Kingdom before he and his siblings left the country. It was reasonable to assume that the appellant had no personal contact with anyone there, and it was unlikely that there would be support available to him from anyone in Uganda, still less support to assist the relocation of his UK-based family. (Para. 59).
- f. It would not be unduly harsh for L, T and M to remain in the United Kingdom in the appellant's absence. There would be difficulties, but they would not meet the unduly harsh threshold. It was speculative to conclude that T would be susceptible to gang membership, as the appellant had claimed on that occasion. Nor would he lose the claimed positive role model in the form of the appellant; his criminal history meant that he was not the role model that he purported to be. (Para. 60). They had been able to cope while the appellant was in prison. They would enjoy the benefit of a supportive extended family who, in particular, had already said that they would assist with the children while the appellant was in prison. (Para. 62).
- g. The appellant's October 2020 offences were financially motivated. (Para. 61). His offending history before that point had not been financially motivated, as the Secretary of State had claimed.
- h. As for the appellant's own private life was concerned, he arrived age 9 in order to join his parents. His arrival was lawful and he had been lawfully resident for most of his life. He had worked in the past. He played a significant part in the lives of his British family. The appellant has socially and culturally integrated in United Kingdom. (Para. 64).
- i. The appellant would not face "very significant obstacles" to his own integration in Uganda. But his formative years and the entirety of his adult life had been spent in United Kingdom. He would not be likely to have close family members or support upon which he could rely when returning to Uganda. He would be returning as a stranger. However, English is the official language in Uganda, and the appellant is able to speak Luganda. The appellant would be able to work in Uganda; there was no reason he would not be able to work in agriculture, the majority occupation, despite his lack of skills and experience in the field. The appellant was educated and would return with the benefit of the skills and experience he had acquired in United Kingdom. Even if there were no direct family support in Uganda, financial support could be remitted to him by his UK-based family in order to help him secure accommodation, at least until he secured employment. While his reintegration would undoubtedly be difficult, on balance it did not amount to "very significant obstacles". These findings were reached partly in reliance upon a country expert report by Karen O'Reilly dated 9 May 2022. (Para. 65). We have considered that report.
- j. The appellant had been assessed as presenting a low risk of harm by the probation service. (Para. 66).

39. Against that background we reach the following additional findings.

Best interests of T and M

40. We will first determine the best interests of the appellant's children, before addressing the above factors as part of our balance sheet assessment.
41. The best interests of the appellant's children are for the appellant to remain in the United Kingdom.
42. The unchallenged findings reached by Judge Bart-Stewart are that it would be unduly harsh for L, T and M to relocate to Uganda. We also take into account the unchallenged evidence of L and Y about the prospective impact of the appellant's deportation on the children. We have considered L's unchallenged written evidence about the struggles she experienced while the appellant was serving his most recent period of imprisonment, and her own health challenges, including anxiety and depression triggered by the prospect of the appellant's deportation.
43. Moreover, while not unduly harsh, life in the UK without the appellant would be tough. The evidence before Judge Bart-Stewart suggested that the appellant's relationship with M and T was positive, and that they were making good progress at school. The passage of time since those findings were reached is such that the children who were then aged 9 and 5 are now aged 11 and 6. T will be approaching secondary education. M remains in his formative years where the support and assistance of the appellant will be vital. If the appellant were permitted to remain in the United Kingdom, he would reacquire the right to work, and would be able lawfully to provide for his family. That can only be in the best interests of the children. Moreover, the support that L will need (and currently enjoys) from the appellant would continue if he were permitted to remain in the UK, with the right to work. As children get older, their physical needs require less constant attention, but their emotional dependence on the parents can develop and augment. The appellant's relationships with his children will now be stronger than they were when Judge Bart-Stewart reached her findings. We recall that Mr Gilbert did not invite us to revisit this aspect of the preserved findings of fact in light of the passage of time, and nor is there an update to Mr Horrocks' report. There is no evidence before which necessitates a different approach of our own motion.
44. The best interests of M and T are for the appellant to remain in the UK, but it would not be unduly harsh for them were he to be removed. We reach that conclusion bearing in mind the "elevated threshold" for the statutory concept, as enunciated by *HA (Iraq) v Secretary of State for the Home Department* [2022] UKSC 22 at paras 41 to 44. At para. 41, the Supreme Court endorsed the self-direction given in *MK (Sierra Leone) v Secretary of State for the Home Department* [2015] UKUT 223 (IAC), which we adopt and apply:

"... '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."
45. We do not consider that the updated evidence meets this elevated threshold. The appellant's deportation will undoubtedly be harsh for L, T and M, but not unduly so.

Impact of the appellant's debt on the seriousness of his October 2020 offending

46. We must determine the extent to which the appellant was pressurised into committing the offences for which he was sentenced in October 2020. We accept

that, in principle, the circumstances of the appellant's offending are a factor relevant to the determination in the public interest in his deportation, as we must in light of *HA (Iraq)* at paragraphs 60 to 71, and section 117C(2) of the 2002 Act. This is relevant because the appellant says that it reduces his culpability for the offending, and, in turn, the public interest in his deportation.

47. When passing sentence, Judge Shorrocks said:

“As I have already observed, it seems to me that from about the middle of January of this year until early March of this year, you were assisting in the running of what is known as the leftie drugs line. I say assisting in the running, to make myself clear, I accept that you were, as you say in your basis of plea, working for somebody higher up the chain as a runner. You were doing so in the hope that you would make money, some £200 per week, your basis of plea suggests, and also because you got yourself into debt and that was a way of paying off that.

I accept Ms Knight's point that there are significant roles and significant roles, and yours was one of the lesser roles in that category, but you were nonetheless assisting a street dealer in plying his trade, therefore your case belongs in the category for which the starting point is four and a half years; the sentencing range for which is three and a half years to seven years but in your case, the appropriate starting point is one of four years and I will reduce that by 18 months to reflect your early guilty pleas and current circumstances making a total of two and a half years' imprisonment.”

48. The length of sentence is the primary indicator of seriousness. Judge Shorrocks accepted that the appellant's personal mitigation necessitated a downward adjustment in the starting point after a trial of four and a half years down to four years' imprisonment. Accordingly, the appellant has already benefitted from being able to rely on some personal mitigation concerning this issue.
49. We do not find that the appellant was exploited in a way which significantly reduced his culpability such that the public interest in his deportation is diminished to any significant extent.
50. The thrust of the appellant's oral and written evidence on this issue was that he was in financial difficulties in the run up to committing the offences resulting in the October 2020 convictions, primarily on account of having been unable to work as a result of being subject to a deportation order. He was in a desperate situation, he said. The appellant's statement dated 16 July 2024 said that he turned to a friend of a friend for money when L became pregnant with M.
51. However, M was born in 2017. In his oral evidence, the appellant said that he turned to this (unnamed) person in 2019. When asked to explain the discrepancy, both by Mr Terrell and by Mr Gilbert under re-examination, the appellant accepted that there had been a degree of confusion in the dates he had given, but explained that he owed approximately £950 to a law firm arising from his immigration matters, and that that debt was extant at the time M was born. In response to questions from Mr Gilbert, he added that his financial difficulties continued until 2019, and into when he committed the offences, in February 2020.

52. The appellant has not named this “friend”, nor the “friend of a friend”, to whom, or through whom, he told us he owed the debt. There is no evidence pertaining to those details before us. The inconsistencies in the appellant’s oral and written evidence were not satisfactorily explained by the appellant’s reference to having owed some money to an immigration law firm, and later needing more money. The hearing before Judge Scott took place on 21 November 2019, which was at the very time that the appellant now maintains that he was in such financial difficulties that he was forced to turn to a criminal associate for a loan. Yet there appears to have been no mention of the appellant’s claimed financial difficulties in his evidence before the First-tier Tribunal at that time, despite the appellant’s evidence to us that he had already incurred debts he could not pay by then. In fact, the appellant’s evidence to Judge Scott painted the opposite picture. Judge Scott’s decision said, at para. 29:

“[The appellant] and his partner are able to provide for their children financially. He had savings and has been doing jobs for cash in hand, while his partner is in receipt of benefits. When he was working he did a nightshift, so he was able to take the children to school in the morning and his partner picked them up in the afternoon.”

53. We find that the evidence the appellant gave before Judge Scott about the events of late 2019 was wholly inconsistent with the account he now seeks to rely on. Putting to one side the fact that there is no documentary evidence concerning the debt from the law firm, aspects of the appellant’s case lacked credibility, even when taken on its own terms. The appellant explained that at the time he owed the debt to the law firm he also had approximately £1,100 in savings. If that were so, it throws into sharp relief the difficulties he claimed to have faced on account of owing that *lesser* sum to a firm of solicitors.

54. Under re-examination, the appellant claimed that he needed to borrow money from – as Mr Terrell had put it to him under cross-examination – a loan shark, despite having savings, because he wanted to provide for his children. That underlines the fact that the appellant enjoyed the very choice which he claims not to have had. We find that the appellant wanted, rather than needed, money. He returned to crime in order to provide himself with *additional* funds that he would otherwise have struggled to generate using what minimal options were open to him as described at para. 29 of Judge Scott’s decision. He was accustomed to engaging in criminal activity to meet his needs.

55. Paragraph 7.5 of the OASys report dated 22 December 2021 described the appellant’s reliance on his “anti-social peers” to sell drugs as being for “a financial gain”. We consider that to be an apt description. We find that any debt the appellant was exposed to had been incurred as part of normal working relationships within the criminal underworld. The appellant was not forced into committing those crimes from a position of vulnerability such that his culpability for the offence is diminished to any significant extent. The appellant wanted more money than he had in savings. He did not *need* it, in light of what he had recently told Judge Scott.

56. We therefore accept that the appellant turned to his criminal associates for a loan, but his doing so did not diminish his culpability for the October 2020 convictions to any significant extent. The sentence that was imposed, after a full one third reduction for his plea of guilty, was 30 months’ imprisonment, from a starting point of 48 months. That itself was a reduction from the starting point in the sentencing guidelines of four and a half years; any reduction on account of

the debt, and the fact the appellant was working for someone higher up the chain in a lesser (albeit 'significant', for the purposes of the sentencing guidelines) role, has already been reflected in that sentence. There is no basis for this tribunal to ascribe any greater level of significance to those offences than already reflected in the sentence imposed by Judge Shorrocks.

57. Finally, in contrast to the position that obtained before Judge Bart-Stewart, the appellant has now received a conclusive grounds decision from the Single Competent Authority, which concludes that he was not a victim of modern slavery. We have not seen the decision or its reasoning, but its overall conclusion is significant. Judge Bart-Stewart did not have the benefit of that development when she reached her decision. Moreover, we note that the appellant did not seek to rely on the defence contained in section 45 of the Modern Slavery Act 2015 when he pleaded guilty to the offences for which he was sentenced by Judge Shorrocks.
58. Drawing this analysis together, we conclude that the circumstances leading up to the most recent offences committed by the appellant do not merit any significant reduction in the public interest in his deportation. To the extent that that context was relevant, it has already been taken into account in the sentence he received. In the words of *HA (Iraq)* at para. 70, "care must be taken to avoid double counting."

Other matters

59. The factors in *Unuane v United Kingdom* (2021) 72 EHRR 24 and *Boultif v Switzerland* (2001) 33 EHRR 50 and *Üner v The Netherlands* (2006) 45 EHRR 14 are also relevant. They were summarised at paras 72 to 73 of *Unuane v United Kingdom* in the following terms:
- 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.

Balance sheet assessment

60. We will adopt a balance sheet assessment in order to address the above factors alongside all remaining considerations.
61. Factors militating in favour of the appellant's deportation include the following:
- a. The deportation of foreign criminals, such as this appellant, is in the public interest (section 117C(1), 2002 Act);
 - b. The more serious the offence, the greater the public interest in the deportation of a foreign criminal (section 117C(2));
 - c. This appellant committed a serious offence for which he received a sentence of 30 months' imprisonment. That is a serious sentence, albeit firmly within the range for a "medium" offender such as this appellant. It reflects a discount for the circumstances of the appellant's offending, the fact that he was at the bottom end of the "significant role" category in the sentencing guidelines, and the fact that he was seeking to repay a debt;
 - d. Prior to the commission of this offence, the appellant was a persistent offender and committed offences of increasing seriousness throughout the later years of his childhood and, until the present offences, most of his adult life;
 - e. While the appellant has not reoffended since his October 2020 convictions, he continues to seek to minimise his culpability for the commission of those offences, meaning less weight attaches to his recent offending-free conduct;
 - f. The appellant does not satisfy either of the statutory exceptions to deportation;
 - g. The appellant would be deported to Uganda, the country of his nationality;
 - h. The appellant would enjoy the right to work in Uganda;
 - i. The appellant would not face very significant obstacles to his integration in Uganda. He would benefit from remitted financial assistance from his UK-based family in the first instance, while he established himself;
 - j. The appellant may be eligible for the Secretary of State's *Facilitated Return Scheme* of up to £1,500 (see the final page of the 16 December 2021 decision); the appellant has not relied on any evidence to contradict the prospective availability of such assistance to him.
62. Factors militating against the appellant's deportation include:
- a. The best interests of the appellant's minor children are for the appellant to remain in the UK, for the reasons we set out above;
 - b. The offences were committed over four years ago;
 - c. The appellant has not reoffended since the commission of these offences. While there is no positive evidence of rehabilitation over and above the non-commission of further offences, the passage of time since the appellant's release from prison means that more than minimal weight attaches to his rehabilitation;
 - d. L, M and T are all British and enjoy the right of abode here. The appellant's relationship with L has endured his criminal offending and

subsequent sentences of imprisonment. It would be unduly harsh for them to leave the United Kingdom for Uganda;

- e. The appellant is, as the Secretary of State accepts at para. 56 of the refusal letter, socially and culturally integrated;
- f. The appellant has lived in the United Kingdom since he was a young child and has been found to have no remaining links with or in Uganda;
- g. The appellant has been lawfully resident in the United Kingdom for more than half of his life.

63. This is a finely balanced decision.

64. The appellant is a persistent offender whose criminal history led to Judge Shorrocks making a criminal behaviour order. While his offences followed what is often a sadly predictable crescendo of escalating seriousness, his most recent offending was committed in early 2020, suggesting that there has been a degree of rehabilitation, given his offending-free conduct since then. We note that L described the appellant's 2020 convictions as a "turning point", stating that his role as a father is a protective factor (see para. 15 of her statement). That attracts some weight, although there is little evidence of broader positive conduct of the sort which can take the weight attracted by this issue to a higher level, and the appellant has continued to seek to minimise his responsibility for his most recent convictions (see the discussion above about the impact of the appellant's debt on his culpability and, therefore, the seriousness of the October 2020 offences), which ultimately limits the weight attracted by his claimed rehabilitation.

65. The appellant has resided here for over 25 years, and for most of his life was lawfully resident. He has very few connections to Uganda (although we find that he will be likely to be able to cultivate such connections, given the large extended family of the appellant's Ugandan relatives living in the United Kingdom). This is a very significant factor in his favour.

66. We conclude that the public interest in the deportation of foreign criminals is such that the factors we have considered on the appellant's side of the scales do not outweigh the factors on the Secretary of State's side. The appellant is a foreign criminal. He does not meet the exceptions to deportation. While we are mindful of the impact of the appellant's deportation on his children and L, we consider that the cumulative force of the factors militating in favour of the appellant's deportation are capable of outweighing the best interests of the children. While the appellant has been lawfully resident for a lengthy period which started when he was a young child, he has continued to offend. His claimed rehabilitation is undermined by his continued attempts to minimise his culpability for the October 2020 convictions. His most recent offences were committed, in the submission of Mr Terrell, "before the ink was dry" on Judge Scott's decision allowing his appeal at that time. The cumulative force of the factors the appellant relies upon do not amount to very compelling circumstances over and above the exceptions to deportation. His deportation would be proportionate for the purposes of Article 8(2) ECHR.

67. We dismiss this appeal.

Notice of Decision

The decision of Judge Bart-Stewart involved the making of an error of law and is set aside.

Case No: UI-2023-000504

First-tier Tribunal No: HU/00024/2022

We remake the decision, acting under section 12(2)(b)(ii) of the Tribunals, Courts and Enforcement Act 2007, dismissing the appeal.

Stephen H Smith

Judge of the Upper Tribunal
Immigration and Asylum Chamber

8 August 2024

Annex - Error of Law decision



IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2023-000504

First-tier Tribunal No: HU/00024/2022

THE IMMIGRATION ACTS

Decision & Reasons Issued:

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Before

UPPER TRIBUNAL JUDGE STEPHEN SMITH

Between

The Secretary of State for the Home Department

Appellant

and

LL (UGANDA)
(ANONYMITY DIRECTION MADE)

Respondent

Representation:

For the Appellant: Mr E. Tufan, Senior Home Office Presenting Officer
For the Respondent: Mr M. Moriarty, Counsel instructed by Turpin & Miller LLP

Heard at Field House on 5 May 2023

Order Regarding Anonymity

Pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008, the appellant is granted anonymity insofar as he is alleged to be a victim of human trafficking.

No-one shall publish or reveal any information, including the name or address of the appellant, likely to lead members of the public to identify the appellant as a person alleged to be victim of human trafficking. Failure to comply with this order could amount to a contempt of court.

DECISION AND REASONS

1. By a decision promulgated on 13 January 2023, First-tier Tribunal Judge Bart Stewart (“the judge”) allowed an appeal brought under section 82(1) of the Nationality, Immigration and Asylum Act 2002 (“the 2002 Act”) against a decision of the Secretary of State dated 16 November 2021 to refuse a human rights claim.
68. The Secretary of State now appeals against the decision of the judge with the permission of First-tier Tribunal Judge Mills.
69. For ease of reference, this decision will refer to the appellant before the First-tier Tribunal as “the appellant”.
70. Since there has been an allegation that the appellant is a victim of modern slavery, he is entitled to anonymity in respect of that allegation. I have made an order anonymising the appellant insofar as he may be identified as a victim of human trafficking. This anonymity order is intended to go no further than the anonymity enjoyed by the appellant under the Sexual Offences (Amendment) Act 1992, section 2(1)(db).

Factual background

71. The appellant is a citizen of Uganda born in 1989. He arrived in the UK lawfully when he was nine years old, to join his mother. She had arrived some years earlier as an asylum seeker. Although her claim was refused, she was granted exceptional, and later indefinite, leave to remain. The appellant was granted indefinite leave to remain in 2001.
72. The appellant is a persistent offender. He is no stranger either to the criminal courts or to this tribunal, the appeal below being the third successful appeal against a decision of the Secretary of State to deport him since 2014. It is not necessary to set out the appellant’s full criminal or immigration history. His most recent conviction, for which the Secretary of State now pursues his deportation, resulted from his plea of guilty in the Crown Court at Woolwich to possession of a Class A drug (heroin) with intent to supply, on 9 September 2020. The appellant was sentenced to 30 months’ imprisonment. He received full credit for his plea of guilty from a starting point of 45 months. He was made subject to a criminal behaviour order until 2028, to which he remains subject. HHJ Shorrocks made that order on the basis that the appellant was a “serious and persistent offender” and was likely to reoffend. The sentencing judge found that the appellant’s behaviour would be likely to cause harassment, alarm and distress if it were unchecked, due to the impact on the general public arising from drug dealing taking place in the streets. The effect of the order was to prohibit the appellant from associating with certain named individuals in a public place, and to limit, amongst other matters, the extent to which he would be entitled to possess a mobile telephone or a SIM card in a public place, and to prohibit him from having a knife of any description in a public place. In other words, the appellant was not to be in public with the tools, or associates, of his drugs trade.
73. Following the above conviction, the appellant made a human rights claim in an attempt to resist deportation. The Secretary of State refused the claim by her decision dated 16 November 2021, and it was that refusal decision that was under consideration before the judge below.
74. The appellant’s human rights claim was based on the length of his residence in the UK, his minimal ties to Uganda, and his relationship with his British partner and children, who were aged 5 and 9 at the time of the hearing before the judge.

75. The issues on appeal before the judge were, first, whether the family life exceptions to deportation contained in paragraph 399 of the Immigration Rules were met; secondly, whether the private life exceptions to deportation in paragraph 399A were met; and, thirdly, if not or in any event, were there “very compelling circumstances” over and above the exceptions to deportation in respect of the appellant, under paragraph 398(c) of the rules.
76. Much of the judge’s decision sets out the background and the parties’ evidence and submissions, which I will not re-summarise here. Having considered written evidence from an independent social worker and a Uganda country expert, the judge found that it would be “unduly harsh” to expect the appellant’s British partner and children to relocate to Uganda (see paragraph 59), but that it would not be unduly harsh for them to remain in the UK, in his absence (paragraph 60). There is a large extended family in the UK. The appellant’s partner and children had been able to cope when he was in prison. He could find work in Uganda, and he would enjoy a degree of social media connectivity with which to communicate with them upon his removal (paragraph 60). Their separation would be “difficult, unpleasant and possibly harsh”, but not unduly harsh (paragraph 62). Paragraph 399 of the Immigration Rules was not met.
77. As for paragraph 399A, the appellant arrived in the UK legally when he was aged 9. He had been lawfully resident for most of his life and (as the Secretary of State had conceded) and was socially and culturally integrated. The judge rejected the country expert’s opinion that the appellant would be unable to work in Uganda and found that he would benefit from family remittances in any event. While reintegration would be difficult, he would not face very significant obstacles to his integration (paragraph 65). The appellant could not meet paragraph 399A of the rules.
78. The judge correctly recognised that for the appeal to succeed by reference to the immigration rules, the appellant would have to demonstrate the presence of “very compelling circumstances” over and above those described in paragraphs 399 and 399A of the rules. At paragraph 66, the judge highlighted the impact of the lengthy immigration proceedings on the appellant’s ability to work. The probation service had sought the Secretary of State’s permission for the appellant to work and had not received a response. At paragraph 67, she said:
- “The delays and lack of response by the respondent cannot in any way condone or excuse offending. The offence is an escalation in severity and potential impact on the public and further crime. The sentencing judge described the appellant as a persistent offender. The appellant pleaded guilty. The sentence was considerably discounted. It seems accepted that he fell into debt, borrowed money and was pressured into supplying drugs as a way to clear his debt. There was a clear financial motive.”
79. At paragraph 68, the judge said that the appellant’s criminal sentence had led to a long period of separation from his growing family. He had expressed remorse and engaged in rehabilitative courses while in prison. The impact of his offending on the children had been considerable, and the children were a protective factor. He had demonstrated reflective thought and had realised the negative impact on himself and his family. He had been described as “always polite”. There had been no reports of further offending while he was on licence. The risk of community harm remained low.
80. The appellant had been referred to the Competent Authority in order to consider whether he had been a victim of modern slavery. It was the appellant’s case that

he was coerced into dealing drugs in circumstances of great financial vulnerability which were exploited by those around him for whom he was working. The basis of plea before the Crown Court, which had been accepted by the sentencing judge, had been that his dealing had been a means to pay off a debt. As to those issues the judge said:

“A further factor to consider is his claim to be a victim of modern slavery. This relates to the offence. The Secretary of State has made a reasonable conclusive grounds decision under the national referral mechanism, that the appellant may have been a victim of modern slavery. There is likely to be considerable delay in making a conclusive grounds decision. In addition the appellant will remain on supervision for several more years.”

81. The judge’s decision concluded in the following terms:

“The appellant has spent the majority of his life in the UK. Very serious reasons are required to justify removal. I consider that in this case there are very compelling circumstances why the appellant should not be deported.”

82. The judge allowed the appeal.

Issues on appeal to the Upper Tribunal

83. The grounds of appeal are formulated under the single heading “making a material misdirection of law/lack of adequate reasoning.” They contend that the judge’s reasoning failed to demonstrate the required compelling circumstances necessary to justify allowing the appeal. The judge’s focus on the appellant’s rehabilitation was at odds with the Court of Appeal’s judgment in *Secretary of State for the Home Department v HA (Iraq)* [2020] EWCA Civ 1176 at para. 141, which held that only limited weight could be placed on evidence of rehabilitation, when set against the deterrent factor and public interest in the deportation of foreign criminals. Whilst the appellant has the benefit of a “reasonable grounds” modern slavery decision, there is no conclusive grounds decision and, in any event, reasonable grounds decisions feature only a low standard of proof.

84. Mr Tufan submitted that the judge failed to address or apply the guidance given by the Supreme Court in *HA (Iraq) v Secretary of State for the Home Department* [2022] UKSC 22 at para. 46ff, which in turn (para. 49) adopted the judgment of Lord Reed in *Hesham Ali v Secretary of State for the Home Department* [2016] UKSC 60 at para. 38. That guidance, submitted Mr Tufan, emphasises the need for weighty and compelling countervailing considerations to offset the otherwise considerable public interest in the deportation of foreign offenders. The judge had conducted her analysis without performing a balancing assessment of that nature.

85. On behalf of the appellant, Mr Moriarty submitted that read as a whole, the judge’s decision addressed all relevant factors, pursuant to a careful assessment of the findings. Her decision should not be compartmentalised in the manner suggested by the Secretary of State, but rather her findings should be analysed in the round. When one reads the decision in that way, submitted Mr Moriarty, it is clear that the judge reached a decision she was entitled to reach, on the basis of the evidence before her. Properly understood, the Secretary of State sought to advance a rationality challenge to the judge’s decision. This was a sensible decision that reached the conclusion the judge was entitled to reach, for the reasons she gave.

86. Mr Moriarty relied on his helpful skeleton argument, which I have considered alongside his oral submissions.

Legal framework

87. Although the judge analysed the appeal by reference to the Immigration Rules, as held in *CI (Nigeria) v Secretary of State for the Home Department* [2019] EWCA Civ 2027 at para. 21, it is generally unnecessary to refer to the rules, since section 117C of the 2002 Act makes statutory provision intended to achieve the same effect.

88. Section 117C(1) of the 2002 Act provides that the deportation of “foreign criminals” is in the public interest for the purposes of determining the proportionality of deportation under Article 8(2) of the European Convention on Human Rights (“the ECHR”). The appellant satisfies the definition of foreign criminal for the purposes of this section because he is not a British citizen and has been convicted of an offence which led to a period of imprisonment of at least 12 months: see section 117D(2) of the 2002 Act. The remainder of the section provides:

“(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.”

89. Exception 1 (section 117C(4)) corresponds to paragraph 399A of the Immigration Rules; Exception 2 (section 117C(5)) corresponds to paragraph 399. Section 117C(6) corresponds to the “very compelling circumstances” test in paragraph 398(c).

90. As for what amounts to an error of law, para. 9 of *R (Iran) v Secretary of State for the Home Department* [2005] EWCA Civ 982 summarises common errors of

law in this jurisdiction. They include making a material misdirection of law and a failure to give sufficient reasons.

91. It is also necessary for any appellate tribunal or court to guard against categorising disagreements of fact and weight as errors of law.

Judge’s analysis of “very compelling circumstances” in error

92. The difficulty with the judge’s lengthy and otherwise careful decision is that the operative analysis by which she concluded that there were “very compelling circumstances...” at paragraphs 66 to 69 omitted to address key considerations which should feature in any assessment of the concept, and ascribed determinative significance to factors that have been held by the Court of Appeal and Supreme Court to be unable to attract such weight. I set out my reasons for reaching this conclusion below.

93. First, a finding that there are “very compelling circumstances” must be made by express reference to the significant public interest in the deportation of foreign criminals. In *NA (Pakistan) v Secretary of State for the Home Department* [2016] EWCA Civ 662, the Court of Appeal held that when determining whether there are “very compelling circumstances”:

“The decision-maker, be it the Secretary of State or a tribunal, must look at all the matters relied upon collectively, in order to determine whether they are sufficiently compelling to outweigh the high public interest in deportation.”

94. The judge was plainly aware of the high public interest in the deportation of foreign criminals, having summarised the Secretary of State’s position on the issue throughout her decision, but her operative analysis of her “very compelling circumstances” findings did not assess the concept against that high watermark. In isolation, this factor would not be determinative; the judge was sitting as an expert judge in a specialist tribunal and can be expected to have been doing her job properly. Decisions would be unnecessary lengthy and unwieldy if all judges were always required to repeat every concept back to the parties. What matters is the substance of a decision. However, where, as here, a judge’s overall analysis is deficient, then a failure expressly to refer to a material concept may throw the judge’s remaining findings into sharp relief.

95. Secondly, “very compelling circumstances” must be *over and above* the exceptions to deportation. Exceptions 1 and 2 perform a role in calibrating what amounts to “very compelling circumstances”. Any assessment of the concept must consider the extent to which the claimed very compelling circumstances go beyond the exceptions.

96. In findings that have not been challenged by the appellant, the judge found that the appellant did not meet either exception. His inability to do so should have informed the judge’s application of the “very compelling circumstances” threshold, yet she did not expressly address the extent to which, if at all, the factors she went on to conclude were “very compelling” were *over and above* the exceptions. That is not to say that the judge was confined to the factors relevant to the exceptions in her consideration of whether there were “very compelling circumstances”, but she should have recognised that (i) the “very compelling circumstances” threshold must exceed the statutory exceptions, and (ii) the appellant’s failure to meet the statutory exceptions was a factor of relevance in the judge’s conclusion that the appellant’s circumstances exceeded them.

97. Thirdly, with respect to the judge, the reasons she gave for concluding that there were “very compelling circumstances” are not entirely clear. At paragraphs 66 and 67, the judge appeared to imply that the delay in resolving the appellant’s immigration status and his prolonged inability to work were a factor in his favour. But it is not clear whether that is the point she was seeking to make, since at paragraph 67 she stated that “the delays and lack of response by the respondent cannot in any way condone or excuse offending”, and later concluded that “[t]here was a clear financial motive” to the appellant’s offending. Although the judge appeared to ascribe significance to the fact that the appellant had been unable to work since 2014 due to the revocation of his indefinite leave to remain, at paragraph 14 the judge recorded that the appellant had worked at a major supermarket from 2014 to 2018. It is not clear whether the delay which the judge appeared to attribute to the Secretary of State began later than 2018, and if so when. The judge’s findings in this respect lack clarity. The judge did not adopt a “balance sheet” approach to her analysis of the “very compelling circumstances” issue, but if she had, it is not clear which side of the scales this part of her analysis would have featured on.
98. Fourthly, at paragraph 68, where the judge did give reasons which were clearly in favour of the appellant, it is not clear how those reasons support the conclusion that she reached. The opening sentence of paragraph 68 refers to the appellant’s criminal sentence having led to “a long period of separation from his growing family”. It is not clear how that is a factor of significance in the context of the appellant’s deportation; it arose as a consequence of the appellant’s criminal conviction and had therefore already taken place, and the judge found (para. 62) that it would not be unduly harsh for the appellant’s family to remain in the UK without him in the event of his prospective future deportation. The judge thus elevated a factor which she had found to be incapable of meeting the statutory exceptions to deportation as being a reason to conclude that there were very compelling circumstances *over and above* the exception.
99. It may be that what the judge meant was that, although the appellant’s absence from his UK-based family would not meet the “unduly harsh” threshold, the significance of his prospective permanent absence would nevertheless be a factor of some significance, and that he was essentially in a “near miss” situation insofar as Exception 2 was concerned. Such a finding would have been rationally open to the judge on the material before her (if that is what she meant), but, as held in *NA (Pakistan)* in its discussion of “near miss” situations at para. 32, the appellant “would need to have a far stronger case than that by reference to the interests protected by article 8 to bring himself within that fall back protection”. On the footing that the remaining reasons given by the judge at paragraph 68 were the appellant’s “far stronger case”, those reasons were not capable of attracting the determinative weight ascribed to them by the judge.
100. The judge found that the appellant was a reformed character; his children were a protective factor, he had shown reflective thought and realised the negative impact of his actions on him and his family. There were no reports of offending on licence. The appellant was always polite and engaged at his probation sessions. The risk of his community harm remained low.
101. The Supreme Court addressed the potential impact of rehabilitation in *HA (Iraq)* at paragraph 58. Lord Hamblen, with whom all other justices agreed, held:
- “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.'

102. It was therefore open to the judge to ascribe some limited weight to the appellant's rehabilitation. She had the benefit of hearing the appellant give evidence and considering all remaining evidence in the case. Her findings concerning the appellant's insight into his offending, its impact, and the fact he had shown "some reflective thought" are all findings of positive rehabilitation of the sort which could legitimately lead to a factor of some weight being placed on the appellant's side of the scales. It is not the role of this appellate tribunal to substitute its own view for that (or any other) assessment in the absence of an error of law. However, even taking the judge's findings of rehabilitation at their highest, they amounted to findings that were capable of having "some weight" (per Lord Hamblen), but "will rarely be of great weight" (per Underhill LJ). The judge did not expressly identify why the limited positive rehabilitation she had found the appellant to demonstrate attracted more than limited weight.
103. The final factor the judge identified in favour of the appellant related to his identification as a potential victim of trafficking through a "reasonable grounds" decision. This factor was not capable of attracting weight of any significance. A "reasonable grounds" decision is taken by the Competent Authority to a lower standard of proof than that applicable in appeals brought on Article 8 grounds against the refusal of a human rights claim. The allegation of trafficking related to the circumstances in which the appellant committed the offence for which the Secretary of State now pursues his deportation, not his prospective circumstances in Uganda. He pleaded guilty to the offence, with the benefit of legal representation. There is nothing to suggest he raised the prospect of being a victim of trafficking at that stage, and the judge found at paragraph 67 that there was a clear financial motive to the appellant's offending. The judge's

concern appears to have been motivated by the prospect of further delay, but such concerns were speculative. By definition, the judge was unable to say that any future delay would be such to diminish the public interest in the appellant's offending.

104. I must set against the above analysis the submissions of Mr Moriarty, which urged me to read the decision as a whole, as of course I have. I accept that, peppered throughout the decision, are some factors that were consistent with an overall proportionality Article 8 assessment of the sort identified at paragraph 51 of Lord Hamblen's judgment in *HA (Iraq)* in his summary of the Strasbourg jurisprudence. Those factors include the length of the appellant's stay, the seriousness of his offence, the length of his absence from Uganda, the time that had elapsed since the appellant's offending and his post-offence conduct, his family and his children.
105. The difficulty with Mr Moriarty's submission is that the judge reached those findings in the course of finding that the appellant did not meet the exceptions to deportation, and she did not address them when considering the "very compelling circumstances" issue. She undoubtedly reached findings to which she could have returned as part of the overall "very compelling circumstances" assessment, but she did not expressly draw on her earlier analysis as part of that assessment. I accept the premise of Mr Moriarty's submissions that the judge's decision should be read as a whole, but doing so does not cast her decision in the redemptive light Mr Moriarty encourages me to view it. To take Mr Moriarty's submissions to their logical conclusion would entail reverse engineering the judge's reasoning to impute to her overall proportionality assessment factors which she did not expressly address, while overlooking her failure to consider the matters I have set out above, and putting to one side the lack of clarity inherent to some of her reasoning in that part of the decision.
106. Had the judge addressed the public interest in the appellant's deportation in the manner the authorities required her to, she may have reached a different conclusion. I therefore accept the Secretary of State's submissions that the decision of the judge involved the making of an error of law and set it aside.

Preserved findings of fact

107. The judge reached findings of fact that have not been challenged by either party, which I preserve. I set aside the decision, retaining all findings of fact, other than any findings of fact which feature in paragraphs 67 to 69.
108. In light of the retained findings of fact, consistent with the *Practice Statements: Immigration and Asylum Chambers of the First-Tier Tribunal and the Upper Tribunal* at paragraph 7.2(b), the nature and extent of any judicial fact finding that remains to take place is not such as to make it appropriate to remit the appeal to the First-tier Tribunal.

Conclusion

109. The appeal is allowed. The appeal will be remade in the Upper Tribunal, acting under section 12(2)(b)(ii) of the Tribunals, Courts and Enforcement Act 2007.

Notice of Decision

The decision of Judge Bart-Stewart involved the making of an error of law and is set aside, with all findings of fact (save for those contained in paragraphs 67 to 69) set aside.

The appeal will be remade in the Upper Tribunal, with a time estimate of 3 hours.

If the appellant wishes to rely on any additional evidence, he must file and serve such evidence, along with an application to rely on it under rule 15(2A) of the Tribunal Procedure (Upper Tribunal) Rules 2008 **within 28 days of being sent this decision.**

An interpreter will **not** be booked, unless the appellant informs the Upper Tribunal that one is required **within 7 days** of being sent this decision.

Stephen H Smith

Judge of the Upper Tribunal
Immigration and Asylum Chamber

6 June 2023