



IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2023-002167

First-tier Tribunal No: HU/51019/2022

THE IMMIGRATION ACTS

Decision & Reasons Issued:

10th January 2024

Before

UPPER TRIBUNAL JUDGE HANSON

Between

DTT
(ANONYMITY ORDER MADE)

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr Martin and Mr Talacci, instructed by David Wyld and Co Solicitors.

For the Respondent: Mr McVeety, a Senior Home Office Presenting Officer.

Heard at Manchester Civil Justice Centre on 20 December 2023

Order Regarding Anonymity

Pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008, the appellant is granted anonymity.

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. Failure to comply with this order could amount to a contempt of court.

DECISION AND REASONS

1. On 28 September 2023 a panel of the Upper Tribunal heard the above appellant's appeal against the decision of the First-tier Tribunal, promulgated on 10 May 2023, which dismissed his appeal against the refusal of his application to resist his deportation on the grounds that his removal from the United Kingdom would be a disproportionate interference with his Article 8 rights.

2. The grounds raised two issues, whether the First-tier Tribunal Judge had erred in his approach to (a) whether it will be unduly harsh for the appellant's children if he were to be deported; and (b) whether there were in this case exceptionally compelling circumstances such that deportation would be disproportionate.
3. Mr McVeety, who appeared on behalf of the Secretary of State on that occasion, accepted that taken cumulatively the error pleaded in relation to the unduly harsh test was sufficient to undermine the decision. It was therefore found that the question of whether the appellant's deportation will be unduly harsh on his family had to be remade.
4. In relation to the ground challenging the findings of the First-tier Tribunal concerning the existence of exceptional compelling circumstances, at [12] of the error of law finding the Upper Tribunal wrote:

12. Section 117C(6) Nationality, Immigration and Asylum Act 2002 requires the decision maker to consider all relevant factors in considering whether a proposed deportation would place the United Kingdom in breach of its obligations under Article 8. As Mr. Martin readily accepted, these factors include not just the public interest in removing criminals, but the public interest in maintaining immigration control. Written submissions for the First-tier Tribunal pleaded that this Appellant was a man of good character since his conviction 13 years ago. We do not agree. By his own admission he re-entered the United Kingdom within a year of his voluntary departure following the signing of the deportation order. Although he claims to have been on that occasion a victim of trafficking, we note that he has declined to have his case considered within the National Referral Mechanism, he has never been declared to be a victim of trafficking and even if his claim to have been brought back to the United Kingdom under duress were true, he then spent a number of years living in this country apparently freely without hindrance before he approached the Home Office. His flagrant disregard for the deportation order signed in 2009 is a factor of some significance in this case, and any Tribunal considering whether there were exceptional compelling circumstances would have to weigh that in the balance alongside the Appellant's conviction for cultivation of cannabis. We are satisfied that the combined weight of those factors is such that even taking the Appellant's evidence about his family life at its very highest, they are factors which cannot be outweighed in a s117C(6) balancing exercise. That being the case, we do not propose to address any of the criticisms made in the grounds of appeal under this heading; we are satisfied that any error in the approach would be immaterial because this is an argument that the Appellant simply cannot win on the facts as they presently stand.

5. A judicial transfer order has been made and the matter comes before me today to consider the two outstanding issues being whether it will be unduly harsh for the children and the appellant's partner to have to go to Vietnam with him if he is deported, the 'leave scenario', or whether it be unduly harsh for the children and partner to remain in the UK if the appellant is deported, the 'stay scenario'.

Discussion and analysis

6. The appellant's immigration history set out in the reasons for refusal letter is in the following terms:

- On 18 June 2009, you were arrested on suspicion of being illegally present in the United Kingdom (UK) and cannabis cultivation.
 - On 17 July 2009, you were convicted at Isleworth Crown Court of Production of a class B controlled drug - cannabis. You were sentenced to 2 years imprisonment.
 - On 29 July 2009, you signed a disclaimer and expressed willingness to return to Vietnam.
 - On 05 November 2009, you were served liability to automatic deportation letter.
 - On 30 November 2009, a Deportation Order (DO) was signed against you and this was served on you on 03 December 2009.
 - On 23 March 2010, you were removed from the UK to Vietnam.
 - On 17 March 2014, you submitted an application for Leave to Remain (LTR) on basis of your family and private life which was refused on 16 April 2014 with no appeal rights.
 - On 03 August 2018, you submitted an application for LTR on basis of his family and private life which was rejected on 18 November 2018 due to fail to submit required fee and documents.
 - On 04 October 2018, you submitted a marriage referral which was determined sham on 04 December 2018.
 - On 28 November 2018, your legal representatives, David Wyld & Co. Solicitors submitted an application on behalf of you for LTR on basis of your family and private life. In their letter dated 25 July 2018 they stated that *"you have not repaid the accumulated loan with high interest which you owed to the agent who brought you to the UK. you returned from UK to Vietnam in 2009, shortly after that, you were caught by that agent and sent back to the UK to work for them. You managed to escape from them. Hence, your life will be in danger if you have to live in Vietnam."*
 - On 11 April 2021, your legal representatives, David Wyld & Co. Solicitors submitted an application on behalf of you for Leave to Remain on basis of your family and private life.
 - On 07 September 2021, an email (concerning the National Referral Mechanism) along with Preliminary Information Questionnaire (PIQ) was sent to your legal representatives, David Wyld & Co. Solicitors. However, it was later stated that you did not wish to be referred into the National Referral Mechanism as a Potential Victim of Trafficking / Modern Slavery and you did not wish to make asylum application.
7. In addition to the appeal procedure the Upper Tribunal recently received an email from the appellant's solicitors indicating that he has now made a trafficking claim.
 8. The appellant is a citizen of Vietnam born on 11 July 1981. He has provided within his bundle of documents a copy of his Vietnamese passport issued on 18 October 2013 in London. The appellant's partner, NT, was born on 12 May 1987 in Vietnam, but naturalised as a British citizen. Her Certificate of Naturalisation is dated 29 June 2011.
 9. The appellant and NT were married on 11 January 2019 at Stockport in the UK.
 10. There are two children of the family, a boy JQ-T (hereinafter referred to as 'J') born on 4 December 2008, of whom the appellant is not the natural father, and a girl CT born on 10 July 2013. Both children are British citizens.
 11. As noted above, the appellant was convicted of an offence that caused serious harm for which he was sentenced to 2 years imprisonment. Deportation order was made and signed on 30 November 2009 following which the appellant was removed from the UK to Vietnam on 23 March 2010 after an application for the

facilitated return scheme, which granted the appellant financial incentive, was accepted. The current application and submissions must therefore relate to an application to revoke the deportation order which remains in force for a minimum period of 10 years or until revoked by the Secretary of State. As there has been no revocation it remains in force. The appellant's actions in re-entering the UK unlawfully at the beginning of 2011, and remaining in breach of the deportation order, means not only has his status been unlawful, but also demonstrates a disregard of the UK laws and deportation provisions.

12. The relevant provisions of the Immigration Rules relating to revocation of a deportation order are now to be found in Part 13 which reads:

Section 4: Revocation of a deportation order

13.4.1 Revocation of a deportation order does not entitle the foreign national to re-enter the United Kingdom; it means they may apply for and may be granted entry clearance or permission to enter or stay in the UK.

13.4.2. A deportation order remains in force until either:

1. (a) it is revoked; or
2. (b) it has been quashed by a court or tribunal.

13.4.3. A foreign national who is subject to a deportation order can apply to the Home Office for revocation of the order and should normally apply from outside the UK after they have been deported.

13.4.4. Where an application for revocation is made, a deportation order will be revoked where:

- (a) in the case of a foreign national who has been convicted of an offence and sentenced to a period of imprisonment of less than 4 years, the Article 8 private or family life exception set out in paragraph 13.2.3 or 13.2.4, or both, is met or where there are very compelling circumstances which would make a decision not to revoke the deportation order a breach of Article 8 of the Human Rights Convention; or
- (b) in the case of a foreign national who has been convicted of an offence and sentenced to a period of imprisonment of 4 years or more, there are very compelling circumstances which would make a decision not to revoke the deportation order a breach of Article 8 of the Human Rights Convention; or
- (c) a decision not to revoke the deportation order would be contrary to the Human Rights Convention or the Refugee Convention.

13.4.5. Where an application for revocation is made, a deportation order made in relation to a foreign national who has not been convicted of an offence for which they received a custodial sentence may be revoked where there has been a material change in circumstances in relation to the factors that resulted in the foreign national's deportation on the ground it was conducive to the public good.

13. As the appellant was sentenced to a period of two years imprisonment the Article 8 private or family life exception set out in paragraphs 13.2.3 or 13.2.4 are relevant which the appellant will have to show were met, or that there are very compelling circumstances which would make a decision not to revoke the deportation order a breach of Article 8 of the ECHR.

14. Paragraph 13.2.3 states:

13.2.3. The Article 8 private life exception is met where:

- (a) the foreign national has been lawfully resident in the UK for most of their life; and
- (b) they are socially and culturally integrated in the UK; and

(c) there would be very significant obstacles to their integration into the country to which they are to be deported.

15. It was not suggested before me that the appellant could satisfy the above as he has not been lawfully resident in the UK for most of his life. Although the appellant may argue he is socially and culturally integrated into the UK he also failed to establish there are very significant obstacles to his integration into Vietnam.

16. Paragraph 13.2.4 reads:

13.2.4. The Article 8 family life exception is met where the foreign national has:

(a) a parental relationship with a child that meets all the requirements of paragraph 13.2.5; or

(b) a partner relationship that meets all the requirements of paragraph 13.2.6.

17. Paragraph 13.2.5, relating to the children, reads:

13.2.5. The foreign national has a parental relationship with a child and all of the following apply:

(a) the relationship is genuine and subsisting; and

(b) the child is either a British citizen or has lived in the UK continuously for at least the 7 years immediately before the date of the decision to make the deportation order; and

(c) the child is at the date of the decision to make the deportation order resident in the UK; and

(d) it would be unduly harsh for the child to live in the country to which the foreign national is to be deported; and

(e) it would be unduly harsh for the child to stay in the UK without the foreign national who is to be deported.

18. Paragraph 13.2.6, relevant to NT, reads:

13.2.6. The foreign national has a partner relationship and all of the following apply:

(a) the foreign national's relationship with the partner is genuine and subsisting; and

(b) the partner is either a British citizen or is settled in the UK; and

(c) the partner is resident in the UK; and

(d) the relationship did not begin when the foreign national to be deported was in the UK unlawfully or when their immigration status was precarious; and

(e) it would be unduly harsh for that partner to live in the country to which the foreign national is to be deported; and

(f) it would be unduly harsh for that partner to stay in the UK without the foreign national who is to be deported.

19. These requirements reflect the provisions of Part five of the Nationality, Immigration Asylum Act 2002 ('the 2002 Act').

20. So far as paragraph 13.2.5 is concerned, it is not disputed the appellant has a genuine and subsisting relationship with J and CT. It is not disputed that both children are British citizens. It is not disputed that both children are at the date of the further submissions, the refusal to revoke the deportation order, and at the date of the hearing and this decision, resident in the UK. That leaves the issues to be considered subparagraphs (d) and (e).

21. In relation to NT, it was not disputed before me that the appellant and his wife are in a genuine and subsisting relationship. It was not disputed that NT is a British citizen or that she is resident in the UK. In relation to subparagraph (d) DTT met NT in the middle of 2009. He met her again in 2011 after re-entering the UK illegally following his deportation and states it was then they commenced living together. I make a finding of fact based on the chronology and other evidence considered as a whole that the relationship did begin when the appellant was in the UK unlawfully and when his status was precarious as it always has been. I therefore do not find the appellant can meet the requirement of paragraph 13.2.6 (d) of the Immigration Rules.
22. This aspect is also relevant pursuant to Article 8 ECHR as Strasbourg jurisprudence recognising that the weight to be given to a relationship is reduced where it was entered into at the time a party had no lawful right to remain in the UK.
23. Even if the appellant could not succeed under the Immigration Rules in respect of NT it is still necessary, when considering Article 8 ECHR outside the Rules to have regard to whether his removal would be unduly harsh upon his children and his partner.
24. In HA (Iraq) v Secretary of State the Home Department [2022] UKSC 22 and KO (Nigeria) the Supreme Court endorsed the MK (section 55 – Tribunal options) [2015] UKUT 223 (IAC) formulation at [46] that unduly harsh “does not equate with uncomfortable, inconvenient, undesirable or merely difficult. Rather, it poses a considerably more elevated threshold. ‘Harsh’ in this context, denotes something severe, or bleak. It is the antithesis of pleasant or comfortable. Furthermore, the addition of the adverb “unduly” raises an already elevated standard still higher.” The Supreme Court upheld the judgement of the Court of Appeal in HA (Iraq) v Secretary of State for the Home Department (Rev 1) [2020] EWCA Civ 1176 that:
 - Undue harshness should not be evaluated with reference to the distress that ‘any child’ might face when their parent is deported. To apply such a notional comparator would be contrary to s55
 - It is no longer correct to say (as in SSHD v PG (Jamaica) [2019] EWCA Civ 1213) that the ‘commonplace’ distress caused by separation from a parent or partner is insufficient to meet the test: it could be. The focus should be on the emotional impact on *this* child: [Underhill LJ 44-56, Peter Jackson LJ 157-159]
 - Undue harshness must not be conflated with the far higher test of “very compelling circumstances”. The underlying concept is of an “enhanced degree of harshness sufficient to outweigh the public interest in the medium offender category” [44-56]
 - decision makers should take into account the *Zoumbas* principles [55, 84, 114, 153], the best interests of the child [55], emotional as well as physical harm [159], relationships with other family members in the UK [120] and where applicable “the very significant and weighty” benefits of British citizenship [112-116 cf. Patel (British citizen child - deportation) [2020] UKUT 45 (IAC)] but note that it will not necessary be an error of law to fail to recite every factor mentioned in HA - only those relevant to the case need to be considered MI (Pakistan) v Secretary of State for the Home Department [2021] EWCA Civ 1711 (18 November 2021) [25]
 - non-physical harm is an important part of the evaluation and should not be regarded as intrinsically less significant than physical harm [159].

On this point see further MI (Pakistan) where the court rejects the notion that evidence of psychological injury would be required [49]

25. The appellant claims that he is involved in all aspects of the children's lives to support their growth and development to the full. He states he takes them to parks where they can play, to clinics for health checks, claims to be the person responsible for their education, taking with them daily to school and picking them up at the end of the school day, and to be the point of contact for teachers and the school.
26. The appellant claims to have been recognised as a good father, a good stepfather, and a good husband to his family, which he claims it will be disproportionate to break up.
27. The appellant claims that the time difference and distance would make it impossible for him and his family to maintain their relationship if he were in Vietnam and they are in the UK as he claims they could not visit him regularly, due to time and financial constraints, and their daily commitments in the UK, and the childcare supporting his wife as he does now would not work remotely.
28. The appellant claims that if he was returned to Vietnam the lives of his wife and children will be devastated as it would be extremely hard for his wife to work full time and look after the two children alone properly. He states his daughter and stepson will lose the father who daily looks after them that they would not be able to be looked after properly if he was not with them. The appellant claims childcare in the UK is very expensive, not flexible, and there is a lack of love that cannot meet the needs of his wife and children. The appellant states if his wife needs to be a full-time mother the financial needs of the family will not be met. He also claims that if his wife worked full time to meet the financial needs the required care will not be available and that the relationship that he has with his wife and family may be broken if he was to live in Vietnam.
29. The appellant raises the issue that if he was returned to Vietnam his wife would be constantly living under serious fear, stress, and depression which could lead to her suicide. He claims he will be discriminated against if he was returned to Vietnam, but such a claim is not substantiated on the evidence.
30. In relation to the consequences of the family returning as a whole to Vietnam, the appellant claims that his wife and children will be discriminated against by the Vietnamese community because his wife had a child out of wedlock and because she followed a further relationship with the appellant. The appellant also claims that J will be discriminated against as he has been abandoned by his biological father and stepfather, and claims discrimination due to the children having different fathers and the irregular family background together with his own criminal conviction in the UK. The appellant claims they will not be able to live as normal people do in Vietnam and it would not be fair on the children to live in fear and face intimidation which will affect their development.
31. In his answers in reply to cross-examination the appellant confirmed he has a mother, two other sisters, and family in Vietnam, and that he is in contact with his mother.
32. The appellant's wife, NT provided a witness statement and also gave oral evidence.
33. In her statement she confirmed her status and the details of their children. NT confirms that due to her business she does not have much free time, she often gets home late, and the appellant therefore looks after the children. She also confirmed she suffered with stress and anxiety while she was a single mother of J due to the hardship of being a working single parent.
34. NT claimed in her witness statement have communication problems with the children as she did not know English and the children did not know Vietnamese,

- and to also have a short-term memory, learning difficulties, and not to know much about technology or to use the Internet.
35. NT claimed her health was not very good or stable and she would get ill easily when she goes out of the house feeling dizzy and sick, and that if it was not for the business she would not go out.
 36. NT speaks of the strong bond between the appellant and J with there being no bias in the way in which the appellant cares for either child. NT claims the children's welfare will be negatively affected if the relationship with the appellant ends as a result of separation and she becomes a single mother again.
 37. NT states that when her former partner left her and J she experienced a lot of physical hardship and mental breakdowns, was always in a bad mood, tired, stressed, depressed, and failed to care for J properly. She claims at times she wanted to end her life but that all ended when she moved in with the appellant. Notwithstanding their current situation NT states she is sometimes scared that the single motherhood situation will happen again which she describes as being extremely painful, shocking, and that it will be heartbreaking for her and the children to be separated from the appellant who she claims to be dependent upon.
 38. NT repeats the claims of facing discrimination if they have to live in Vietnam and claims they cannot leave the UK as everything including her business and other ties in her children's education are based in the UK. NT claims the children are British and have been taught everything in English and would face great difficulties in their studies and daily lives in Vietnam which would affect their development and well-being. It is claimed as British citizens they would not get proper support and benefits in education and health care in Vietnam similar to those they receive in the UK.
 39. NT claims if they have to go to Vietnam they will have to look for new jobs in order to financially support the family, but that both she and the appellant do not have proper qualifications in Vietnam, which would make it extremely difficult to find suitable jobs to support the family, especially the children.
 40. In relation to the 'stay scenario' NT claims it will not be possible for her and the children to stay in the UK if the appellant is returned to Vietnam as they are reliant upon him for their day to day activities and that the children will be in shock and heartbroken if they were to be separated. NT claims it would be difficult for them to visit him due to the nature of her business, the children's school, and other constraints, and that she would need to spend more time to look after the children meaning she would not be able to support the family with their essential needs. NT claims that if she chose to continue to work full time the children will not get proper care which can affect their development and that childcare is not an ideal option for her because it is very expensive, inflexible, and has a lack of love. NT also claims that the appellant would only be able to support the children remotely which would never be enough, and that without proper care from both parents the children will feel left out and suffered emotional breakdowns. NT claims that she will be overwhelmed and under pressure if she has to cover her work, her children, and the housework, let alone meeting her own health needs, and will be concerned about the children's welfare and development if the appellant was to leave the UK.
 41. The statement by NT that it is in the children's best interests to be allowed to remain with both parents in the UK in stable family environment that currently exist is not disputed, but that is not the fundamental issue at hand.
 42. In reply to cross-examination NT confirmed she has family in Vietnam and that she last travelled to Vietnam in 2017, that she had taken J to Vietnam on two

occasions when she visited her foster mother but could not recall whether that was in 2017 or 2019.

43. It was not disputed before me that the children are qualifying children as they are British citizens under 18 years of age nor was the appellant's claim to have a genuine subsisting parental relationship with both children challenged before me.
44. A number of documents have been provided by way of support from friends, from the children's schools, relating to financial position, medical evidence and the country expert report, all of which have been considered in detail even though not specifically referred to in the determination.
45. No disproportionate breach of any protected private life enjoyed with those in the UK outside the family, if deportation occurs, has been made out.
46. Of specific relevance to the issues under consideration is a report from Harris Associates, Immigration Social Workshop Services Ltd prepared by Selina Shallard on behalf of the appellant's solicitors, dated 2 April 2020.
47. In relation to the impact of the appellant's removal from the family unit, Selina Shallard writes:

9.7 The children are at a very important stage in their socio-psychological development, the evidence highlights that their primary carer and significant attachment figure is DTT. The sudden removal of DTT from their family unit would undoubtedly result in significant destabilisation. The risks of DTT being removed from their lives is likely to have detrimental consequences impacting the children as they continue to envelope throughout the various stages of their child development, this is also likely to undermine their ability to effectively cope with life's stressors given that DTT is identified as a protective factor in their lives.

9.8 The assessment highlighted DTT's removal from the UK would fundamentally conflict with CT and J's wishes and feelings. The children have expressed their strong affection towards their father and identify home and spending time with their family and their dad as an important and protective factor in their lives. The children have been shielded by their parents from the knowledge that DTT is at risk of deportation, therefore his sudden removal and severance of the close bond and attachment to the children enjoyed with a significant attachment figure is likely to be very traumatic. This would disrupt their routine, stability and sense of security and would have far reaching consequences on the children's emotional, education and psychological development. Bowlby stated that "*the emotional bond that infants form with their caregivers serves as a blueprint for the way people view themselves and others. They affect the way people act in their adult relationships*" (Bowlby, J 1979), the making and breaking of Affectional Bonds. Routledge Publishers.) As evidenced within this assessment, DTT will have undoubtedly contributed positively to the children's sense of security, positive overall child development. Therefore, his removal at this stage would cause significant disruption to CT, J and NT and undermine their overall emotional and psychological welfare.

9.9 DTT's sudden removal from the UK will destabilise the children and place them at risk of chronic stress. It should be noted that chronic stressors can be caused by significant events in a child's life, Compas et al 1995 identify this as potentially "*a greater source of harm to children than actual events*". "*Where stressors are excessive - or, in the case of very young children, where attachment to the primary carer is damaged - the stress experience is less likely to be followed by recovery, learning and growth*". McClure, M (2000). Munford and Sanders (2014) highlighted that "*unless a young person can establish safe and secure connections with family and community, identity development becomes problematic*". J and CT are currently thriving, however there is a risk that they would experience a deterioration in their emotional, psychological welfare and overall child development as a result of their father's removal.

48. At [9.12] is a direct reference to Article 8 ECHR but that is a matter for this Tribunal. The report states however "*To uproot DTT from this family unit and*

remove him from the UK would have a devastating effect on the family's overall welfare. This would undermine the children from developing confidence, stability and prevent them from reaching their full potential"

49. It is not disputed that when assessing whether a decision is unduly harsh on a child it is necessary to focus solely on the position of the children concerned.
50. It is accepted that J and CT were born in the UK and are British citizens. It is accepted that their mother, NT, is a British citizen in the UK lawfully who wishes to remain in the UK and not return to Vietnam.
51. I accept, as outlined by the Supreme Court in ZH (Tanzania) [2011] UKSC 4, that although the nationality of the children is not a trump card it is of particular importance in assessing the best interests of any children. There is merit, based upon the evidence considered as a whole, including country information, that the children will be deprived of benefits to which they are lawfully entitled in the UK as British citizens, including education and medical facilities if required, and society and lifestyle to which they have enjoyed all their lifetime as a result of being brought up as British citizens resident in the UK.
52. I accept that although there is evidence of J having visited Vietnam there is insufficient evidence to establish social and linguistic connection to that country. NT's claim of not being able to communicate with the children as she cannot speak English and they cannot speak Vietnamese has not been accepted as being credible. NT gave her evidence through a Vietnamese interpreter at the hearing, and it is likely that the children will have some knowledge of the Vietnamese language, especially J, even if not at a level of everyday conversation. One of the documents from J's school contains an entry which indicates he has some knowledge of Vietnamese. There is, however, no evidence the CT having the ability to communicate effectively in the Vietnamese language.
53. In terms of their education, J was born on the 4 December 2008 and is now 15 years of age. He is in the process of completing his GCSE education. It is not made out J has any knowledge of the education system in Vietnam, even if freely available, such that he will be able to continue to develop to the best of his educational abilities if required to restart his education in a different system taught in a different language from that that he has been used all his life.
54. CT was born on 10 July 2013 and is 10 years of age and so not at such a critical stage of her current educational journey but will be hampered by lack of understanding of Vietnamese and knowledge of the educational environment.
55. I did not find the Secretary of State has established that this is a case in which the benefits the children have of being able to continue to enjoy the rights and benefits flowing from their British citizenship have been counterbalanced or discounted by the points relied upon by the Secretary of State.
56. I accept the submission by Mr McVeety that there is no evidence provided that the children's health would suffer a negative impact if sent to Vietnam and that there was insufficient evidence to show that the family unit would not be able to get support from family members who live in Vietnam. I accept, as with all children who have to move homes and schools within the UK, that what will be required is a period of readjustment. Although there was no evidence that such adjustment could not be affected it is the consequences of that process as a whole that must be taken into account.
57. Having considered the relevant factors and the legal test outlined above, I find that the appellant has established that it will be unduly harsh upon the children, especially J, to have to go to Vietnam with the appellant if he is deported.
58. As NT is the mother of the children and if the appellant is deported she will have to remain to care for the children, I find it has not been made out that it is proportionate pursuant to Article 8 ECHR for her to be removed.

59. That leaves the issue to be considered whether it be unduly harsh upon the children and NT if they remain in the UK and the appellant is deported.
60. So far as the children are concerned it is not disputed that they are unaware that the appellant faces deportation from the UK. That is a matter for the appellant and NT as parents to decide what to tell the children and when.
61. The ISW report refers to a publication by John Bowlby who was a psychoanalyst who believe that mental health and behavioural problems could be attributed to early childhood. Bowlby claimed that a child should receive continuous care of the single most important attachment figure for approximately for the first two years of life. There is nothing to suggest that so far as J and CT are concerned that they did not have such continuing attachment.
62. A further piece of work undertaken by Bowlby together with a social worker James Robertson in 1952 observed that children experienced intense distress when separated from their mothers. In the current appeal it is not proposed that either J or CT will be separated from their mothers. It is important, however that the study found three progressive stages of distress being:
- (a) Protest: the child cries, screams, and protests angrily when the parent leaves. They will try to cling to their parents to stop them from leaving. Protest could last from a few hours to several days.
63. It is not disputed from the evidence that if the appellant is removed for deportation that is likely to be the effect or reaction from the children, especially if they have not been adequately prepared for the fact that he is to be deported. J in particular will face the prospect of losing his father figure. Although the appellant is not his biological father it is clear that is the role that he has undertaken. There is clearly a bond between both J and CT and the appellant, and their reaction is likely to be as set out above with them protesting against something that they may not understand.
64. The second stage identified in the survey is:
- (b) Despair: the child's protesting gradually stops, and they appear calmer, although still upset. The child refuses others attempts for comfort and often seems withdrawn and uninterested in anything. In the despair stage, children become increasingly withdrawn and hopeless.
65. This appears to reflect the conclusion of the author of the report of the effect upon the children of the appellant being deported. The language use indicates that the effect upon the children will result in their becoming withdrawn and suffering distress.
66. What the evidence does not suggest is that the impact upon the children is likely to be such that, although harsh, it will be unduly harsh. This is because even if the effect on the children of the appellant's deportation is to cause protest and despair it was not made out they will not be able to engage with other people again, such as their mother. It is not made out their emotions will be suppressed or that the children will not be provided with the ability to understand what had occurred and be supported by their mother and professional services if required. Although statements refer to remote communication with the appellant not being a substitute, which is accepted, it is the means by which the children will be able to keep in contact with the appellant.
67. It maybe that J as a young person will be required to do more and undertake some of the tasks the appellant currently does to help his mother, but it is not made out that he is incapable of doing so or that it will have an adverse impact upon his education or wellbeing.

68. I accept the submission by Mr McVeety that although these children would in an ideal world have their mother and father together the report of the independent social worker does not establish on the evidence that the effect of a deportation of the appellant on the children or partner would be unduly harsh.
69. The key factor in the children's future is the ability of their mother to be able to care for them. I accept NT refers in her evidence to having found it difficult when J was young to cope with single parenting. I accept there is evidence that NT has been prescribed sertraline to help with mental health needs. I accept that the model chosen by this family unit is that the appellant will provide the day-to-day practical care for the children and family until NT is able to return home at the end of the working day.
70. I do not find it made out, however, that NT is unwilling to care for the children if required or does not have the requisite skills to do so. If one looks at the evidence from the appellant and NT there is a strong focus upon economic issues and the claim that if the appellant is deported NT may need to give up her business or make a choice between her business and caring adequately for the children.
71. There are many single parent families in the UK and it is not made out that NT would not be able to adequately care and provide for the children if this is her choice. There is financial evidence in the bundle indicating that public funds have been called upon in the past and although the appellant claims NT will not be able to meet the needs of the children if she gives up work that is not supported by the evidence. I accept that if she is in receipt of state benefits the amount of money available may be far less than the family currently enjoy, but NT will still be able to work to some extent to supplement her income lawfully. It is clear that NT has been able to purchase property in which the family live and open the nail business in her local area. The children attend local schools.
72. It is clear that NT does not want the appellant to be deported and has made a number of claims to try and prevent this that I find are exaggerations, such as the alleged inability to communicate with the children and the appellant's suggestion that she is incapable in real terms of managing her business administration and day-to-day needs of the family in his absence.
73. Whilst I accept that because NT does not want to be left alone the impact of the deportation upon her will be very distressing, and to her mind harsh, it is not been made out that her GP, the NHS, or social services would not be available to help if needed. It is not made out there is sufficient evidence to enable me to conclude that the impact upon NT, or any member of this family unit, if the appellant is removed, will be unduly harsh.
74. There is discussion in the evidence about the protective factor provided by the appellant for the children. If that refers to protecting the children from the reality of day-to-day life as they grow up in their local area it has not been shown NT cannot fulfil such a role. If it refers to protecting the children from NT there is no evidence to show that the children face any real risk from her based upon her actual intent, mental health, or her inability to meet the children's basic needs and requirements. The children are also a protective factor for NT who she will have to care for if the appellant is deported. Although the appellant refers to NT committing suicide there is insufficient medical evidence to show this is an objectively well founded real risk, especially as it will mean her children being left without either parent. The current arrangement is not as a result of NT abandoning her children but a practical arrangement as she is the bread winner in the family as the appellant does not work.
75. I do not find the appellant has established an ability to succeed under the Immigration Rules or section 117C of the 2002 Act on the basis he has failed to

show there will be unduly harsh consequences for the children or his partner if they remain in the UK and he is deported.

76. In relation to considering whether circumstances over and above the exceptions to deportation are made out, such that deportation will be disproportionate, I refer to the above finding at the error of law states that on the evidence available this test had not been met. Considering the matter appertaining at the date of the hearing before me I do not find the appellant has established that there is anything in addition in this appeal that would warrant a grant of leave to remain on that basis. The offence is serious, the appellant entered in breach of a deportation order. There is a strong deterrent argument in both the claim that those involved in drug-related offences should be aware that the likelihood is that they will be deported and that re-entry when a deportation order is in force must be discouraged, in addition to the other matters.
77. I therefore find that whilst it is in the children's best interests for this family unit to stay together, and whilst both the appellant and NT would rather he was allowed to remain in the UK, the appellant has failed to establish an entitlement to do so, and that the Secretary of State has shown, on the balance of probabilities, that the decision is proportionate.
78. On the basis I find that the appeal against refusal to revoke the deportation order must fail and the appeal be dismissed

Notice of Decision

79. Appeal dismissed.

C J Hanson
Judge of the Upper Tribunal
Immigration and Asylum Chamber
2 January 2024