



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

Appeal Number: UI-2023-005231  
First-tier Case No: HU/05656/2020

**THE IMMIGRATION ACTS**

**Decision & Reasons Promulgated  
On 26 June 2024**

**Before**

**DEPUTY UPPER TRIBUNAL JUDGE WOODCRAFT**

**Between**

**K A A  
(Anonymity order made)**

Appellant

**and**

**SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Respondent

**Representation:**

For the Appellant: Unrepresented

For the Respondent: Ms S Mackenzie, Home Office Presenting Officer

**DECISION AND REASONS**

**Heard at Field House on 11 June 2024**

**The Appellant**

1. The Appellant is a citizen of Nigeria born in the United Kingdom on 24 March 1998. He was granted indefinite leave to remain on 11 June 2008 when he was ten years old. His appeal against a decision of the respondent dated 9 July 2019 to refuse a human rights claim was allowed by Judge of the First-tier Tribunal Andrew Davies on 12 October 2022. The respondent appealed that decision and in a determination dated 23 January 2024 I found a material error of law such that the decision of the First-tier was set aside. I directed that the appeal be retained in the Upper Tribunal and be re-heard. I now set out my decision following that

rehearing. Attached to this determination is a copy of my decision finding an error of law in the First-tier determination.

2. **Anonymity**

Pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008, the appellant has been granted anonymity, and is to be referred to in these proceedings by the initials KAA. 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.**

3. On 8 July 2019 a deportation order was made by the respondent under section 32(5) of the UK Borders Act 2007 following the appellant's conviction on 27 January 2021 for possession with intent to supply controlled drugs class A (crack cocaine and heroin), being concerned in supplying heroin and assaulting a police officer. The appellant was sentenced to four years imprisonment on 20th April 2021. The appellant had previous convictions and detention in 2017 for drug dealing and attempted robbery.

**The Appellant's Case**

4. The appellant argued that he was socially and culturally integrated into the United Kingdom despite his history of offending. He had never visited Nigeria and had some mental health problems. If returned to Nigeria his mother would not offer him any support as she could not afford to. He relied on a report from Dr Farrelly consultant clinical psychologist, who concluded that the Appellant's mental health problems arose from the risk of him being deported. The Appellant's mental health was fragile. The Appellant was the victim of trafficking for criminal exploitation specifically for 'county lines' exploitation. There was a positive reasonable grounds decision issued by the NRM in October 2022.

**The Explanation for Refusal**

5. The respondent gave the following reasons why the appellant could not satisfy the very compelling circumstances test:

"As the exceptions to deportation do not apply to you, consideration has been given to whether there are very compelling circumstances such that you should not be deported. There is significant public interest in deporting you. This is because: You have been convicted of serious criminal offences and your sentence fits the criteria for automatic deportation. In order to outweigh the very significant public interest in deporting you, you would need to provide evidence of a very strong Article 8 claim over and above the circumstances described in the exceptions to deportation. You have stated that although your father is in Nigeria, you have had no contact with him since you were born. It is

noted from your mother's completed Bio data form that, she has 7 sisters in Nigeria. It is therefore considered that, you will be able to get support from your mother's side of her family to help you to integrate. Moreover, you are an adult and it is reasonable to expect you to live an independent life with the support from your mother from the UK.

"Therefore, having considered the facts of your case, it is not accepted that there are very compelling circumstances which outweigh the public interest in seeing you deported ....it is considered that your deportation would not breach the UK's obligations under Article 8 ECHR because the public interest in deporting you outweighs your right to private and family life. "

### **The Expert Reports**

6. At first instance the appellant relied on three reports from experts from different disciplines. None of the reports have since been updated. The first was from Dr Farrelly, consultant psychologist who noted that the appellant suffered from depression. He commented that "it will be difficult for [KAA's] depression and/or anxiety to resolve in the context of the ongoing threat of deportation.... [KAA] might also benefit from accessing substance misuse programmes and/or support whilst in custody. [KAA] does not consider this necessary, he may underestimate the ease at which he can refrain from further substance misuse."
7. The second was from Dr Inge Amundsen, Senior researcher, a Country of Origin expert on Nigeria who reported that English was the official language of Nigeria, there being over 500 other languages spoken. He commented: The facts that [KAA] has his family in the UK, that he has been in the UK for all of his life, and that he would have very limited reliable support (if any) from social networks, friends, and family members in Nigeria, means that he will have very few (if anybody) to assist him in finding a place to live, to find a job, to integrate socially, etc. This, aggravated by his lack of higher education and lack of professional skills and work experiences, his lack of skills in local languages, and his criminal record, puts [KAA] at high risk of destitution if returned to Nigeria."
8. The third report relied upon at first instance was from Christine Beddoe, a specialist advisor on human trafficking and child exploitation. She noted that the appellant and his mother "did not consider applying for British citizenship for KAA when he was a teenager and only made an application to naturalise [KAA] as a British citizen after his first criminal sentence, however it was refused due to his criminality." She concluded: "A conclusive trafficking determination must be issued without delay to allow [KAA] access to all his Convention rights and entitlements as a victim of trafficking. This includes specialist support for his particular needs, material assistance, medical and mental health provision and legal advice on compensation and other matters... In my opinion he is at a very high risk of being re-trafficked if he does not get immediate

interventions. This risk will escalate rapidly if he is deported and has no job, no place to stay and worsening mental health.”

9. The First-tier Tribunal judge had before him an OASys report on the appellant which he summarised: “the OASys report pointed to concerns about the Appellant’s behaviour in prison. He was a medium risk to prison staff. He had twice been discovered with makeshift weapons. There was a gang culture in prison. Prison staff regarded him as an experienced offender. He had seven negative IEPs since his recall to prison in January 2021 as well as three positive IEPs. He was involved in seven adjudications. His behaviour was poor generally. He had been disruptive after a transfer. The Appellant was assessed as presenting a medium risk to the public, a known adult, staff and prisoners.

### **The Hearing Before Me**

10. The appellant was not represented at the hearing before me, although he had been represented both in the First-tier and at the error of law stage. There was no request for an adjournment. On 10 May 2024 he filed a short statement which said:

1. I have never been issued with a Nigerian passport
2. I have been working full time since being released from prison and I’m still employed at the same place which shows I have changed from my previous ways and have learned from my mistakes.

11. In oral testimony the appellant stated that he had never been to Nigeria and had no family living there. His mother worked full-time and could not look after herself or provide support for him. He would not be able to integrate in Nigeria where he would be ridiculed. He was released from prison in July 2023 and obtained work the following month and has been working ever since at the same place as a Tesco warehouse operative. He had passed his probation period. He had turned his life around. His mother did not know anyone in Nigeria either. He had no contact with his father. His mother had family in Nigeria but she was not in contact with them any more. He would be homeless if deported to Nigeria. He had previously been found to be a victim of trafficking because he was forced into selling drugs when he was younger.
12. In cross-examination he said he had not heard of the National Referral Mechanism (NRM) for victims of trafficking. He had not submitted a claim to that organisation to be recognised as a victim of trafficking. He was told by his psychologist (Dr Farrelly) that he was a victim of trafficking. He could not say for sure whether he had had an official diagnosis of being trafficked. He would not be able to learn any of the other languages of Nigeria. The employment rate in Nigeria was very poor and he could not see how he could get a job. He last spoke to his father at age 10 and did not know where his father was. He had a close friend who was his maternal cousin but he had never been to Nigeria either. He was asked what evidence he had to show that he had been on courses to

address his offending and he replied that his probation officer would know. He was no longer in touch with the gang members who had got him into drug dealing.

13. In closing submissions for the respondent, reliance was placed on the refusal letter. The appellant had to show very compelling circumstances over and above the exceptions in the 2002 Act. The appellant had not provided evidence of such circumstances. The respondent had been told that the appellant would have difficulty returning to Nigeria because of the language but the appellant would be returning as an adult and he still had family members in the United Kingdom who could assist him. There was no evidence to say the appellant could not integrate into Nigeria and no evidence to say he could not find work. He had not heard from the NRM who had never provided a decision on conclusive grounds. The appellant's criminal conduct showed that he had failed to integrate into UK society. There was no evidence to show the appellant had rehabilitated. There was still a risk of reoffending. The appeal should be dismissed.
14. In conclusion the appellant said he completely disagreed with what the respondent had said about the possibility of obtaining family support. Everything he did, he did independently. He had never had a job before the present job working at Tesco's. He had not been arrested since he was released from prison. He wanted to get his life on track. If deported to Nigeria he would have nowhere to live. Nigeria was an unstable country where he would not survive if deported.

### **Discussion and Findings**

15. As I noted in my error of law decision, the appellant in this case has a very bad criminal record. He has had two lengthy periods of imprisonment imposed upon him for drug trafficking and offences of violence. He has not been assessed as a low risk of reoffending rather he was assessed as a medium risk of offending particularly against prison staff. The appellant has been subject to a number of adjudications against him whilst in prison. As the judge at first instance acknowledged the public interest in the deportation of the appellant was very high.
16. There were however a number of factors which the appellant could pray in aid. To satisfy Exception 1 (the public interest does not require the appellant's deportation) the appellant needed to show three separate points. Firstly that there would be very significant obstacles to his reintegration into Nigeria. This was a finding made by the First-tier judge which I preserved following the error of law decision. The obstacles arose because the appellant was born in this country, had never visited Nigeria and could only speak English albeit that was one of the official languages of Nigeria. He would have what appeared on his evidence to be limited family support in Nigeria. He claimed not to have any family living in Nigeria and that his own family in the United Kingdom would be unable to support him. Secondly the appellant can show that he has lived lawfully

in the United Kingdom for most of his life. Thirdly he must show that he is socially and culturally integrated into the United Kingdom. The appellant's persistent and serious offending argues against integration.

17. Even if the appellant can show integration into the United Kingdom, (and thus satisfy Exception 1) the issue remains whether the appellant could bring himself within the very compelling circumstances test prescribed by section 117 C (6) of the 2002 Act. As the appellant was sentenced to a term of imprisonment of 4 years or more that section applies. It provides that the public interest requires deportation unless there are very compelling circumstances, over and above those described in exceptions 1 and 2. Because of the length of the prison sentence the appellant received he could not stop at Exception 1, very significant obstacles to integration, but had to go on to show that there were very compelling circumstances over and above exception 1. What the appellant had to show is that his return to Nigeria would not be merely harsh but would be unduly harsh.
18. That the appellant was a victim of trafficking was never finally determined. The appellant has only filed a brief updating statement since the First-tier proceedings, see paragraph 10, above which does not deal with the matter. His then representatives filed a Rule 24 submission dated 12 January 2024 which portrayed the respondent's grounds of onward appeal as a mere disagreement with the result at first instance, a submission I have previously rejected. In his oral evidence to me the appellant indicated he had never received an official communication from any organisation dealing with trafficking to indicate that he had been found to be a victim of trafficking. Although the expert evidence the appellant had relied upon at first instance suggested there was a reasonable grounds decision it does not appear that there was ever a conclusive grounds decision issued in this case. This lessens the weight that can be placed on the claim of being trafficked in the proportionality exercise.
19. The sentencing judge in the criminal proceedings (whose sentencing remarks were in the consolidated bundle for the hearing before me) was aware of the appellant's mitigating circumstances. These were that the appellant had been groomed by a gang (and had apparently recruited others) but the judge in the criminal proceedings nevertheless imposed a lengthy prison sentence. The grooming referred to cannot excuse the appellant's own responsibility for his offending and the sentence imposed by the judge in the criminal proceedings confirms that. Although the appellant argues that he has turned his life around and now holds down a job he appears if anything to be more separated from his family than he was before as they did not attend the hearing with him. This implies that they at least do not place great reliance on a change of heart by the appellant.
20. Even though no one attended with the appellant for the hearing, it is clear even from the appellant's own evidence that at some point his

family members have had connections to Nigeria. His mother told the respondent (in an earlier application) she had seven sisters living in Nigeria. Her non attendance meant she could not be questioned about this. I do not consider that the tribunal has been given a full assessment by the appellant of just what family connections he would have if returned to Nigeria and who would be available to help him. This is important in assessing whether deportation to Nigeria is disproportionate. The burden of proof rests on the appellant and I find he has not discharged that burden by reason of the significant omissions in the evidence presented to the Tribunal. These were matters he could have dealt with even if he was unrepresented.

21. The appellant's family are all from Nigeria and even though the appellant himself has not visited the country he will have been brought up in a household with connexions to Nigerian culture. As a result his unfamiliarity with day to day life in Nigeria does not weigh so heavily on his side of the scales in the proportionality exercise and the consideration of very compelling circumstances. The appellant also claims that he will be unable to find work. Leaving aside the point that I do not consider I have been given an accurate account of the help the appellant could receive in Nigeria, it is the case that the appellant has now on his own evidence established a work history and acquired skills which will be of assistance to him in the Nigerian job market.
22. It is important to point out that the appellant has never updated the reports he relied upon at first instance and still relies upon. They are now some two years old. One report indicates that the appellant had somewhat unrealistic expectations on whether he could avoid substance abuse, see paragraph 5 above. Beyond the appellant's own assertion that he has changed his life, there is no supporting evidence, not even from his own family and certainly not from any expert reports.
23. In **HA Iraq [2022] UKSC 22** the process for assessing very compelling circumstances was approved: "A full proportionality assessment is required, weighing the interference with the Article 8 rights of the potential deportee and his family against the public interest in his deportation." In this case it is not suggested that the appellant has a partner or children. The appellant claims he has turned his life around but **HA Iraq** also approved the following: "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." In this case there is no updated experts reports dealing with the issue and no evidence of courses attended by the appellant. Little weight can be given to this factor in the overall proportionality assessment.
24. In response to the question whether the appellant can show very compelling circumstances over and above the very significant obstacles to his reintegration into Nigeria I do not find that the appellant can show such very compelling circumstances. There is a very high public interest

in the appellant's deportation given the lengthy nature of his offending, many of the appellant's offences involve offences of violence as well as drug dealing and his conduct in prison was also marked by getting into trouble with the prison authorities. I have examined the factors on the appellant's side of the scales but for the reasons I have given I do not find that they outweigh the public interest in this case. In the absence of very compelling circumstances the appellant cannot successfully rely on the provisions of section 117C (6) of the 2002 Act. The public interest outweighs the appellant's circumstances. That being so I dismiss the appellant's appeal against the respondent's refusal of leave outside the immigration rules.

**Notice of Decision**

Appellant's appeal dismissed.

I continue the anonymity order made herein.

Signed this 18th day of June 2024

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Judge Woodcraft  
Deputy Upper Tribunal Judge





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

Appeal Number: UI-2023-005231  
First-tier Case No: HU/05656/2020

**THE IMMIGRATION ACTS**

**Decision & Reasons Promulgated**

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**Before**

**DEPUTY UPPER TRIBUNAL JUDGE WOODCRAFT**

**Between**

**K A A  
(Anonymity order made)**

Appellant

**and**

**SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Respondent

**Representation:**

For the Appellant: Mr R Spurling, Counsel

For the Respondent: Mr N Wain, Home Office Presenting Officer

**DECISION AND REASONS**

**Heard at Field House on 15 January 2024**

**The Appellant**

1. The Appellant is a citizen of Nigeria born in the United Kingdom on 24 March 1998. He was granted indefinite leave to remain on 11 June 2008 when he was ten years old. His appeal against a decision of the respondent dated 9 July 2019 to refuse a human rights claim was allowed by Judge of the First-tier Tribunal Andrew Davies on 12 October 2022. The respondent appeals with leave against the decision of the First-tier. Thus the matter comes before me as an appeal by the respondent,

nevertheless for the sake of clarity I will continue to refer to the parties as they were known at first instance.

2. On 8 July 2019 a deportation order was made by the respondent under section 32(5) of the UK Borders Act 2007 following the appellant's conviction on 27 January 2021 for possession with intent to supply controlled drugs class A (crack cocaine and heroin), being concerned in supplying heroin and assaulting a police officer. The appellant was sentenced to four years imprisonment on 20th April 2021. The appellant had previous convictions and detention in 2017 for drug dealing and attempted robbery.

### **The Appellant's Case**

3. The appellant argued that he was socially and culturally integrated into the United Kingdom despite his history of offending. He had never visited Nigeria and had some mental health problems. If returned to Nigeria his mother would not offer him any support as she could not afford to. He relied on a report from Dr Farrelly consultant clinical psychologist, who concluded that the Appellant's mental health problems arose from the risk of him being deported. The Appellant's mental health was fragile. The Appellant was the victim of trafficking for criminal exploitation specifically for 'county lines' exploitation. There was a positive reasonable grounds decision issued by the NRM in October 2022 which the judge described as "effectively ... vetoed by the Secretary of State".

### **The Decision at First Instance**

4. The judge had before him an OASys report on the appellant which he summarised at [44] of the determination: "the OASys report pointed to concerns about the Appellant's behaviour in prison. He was a medium risk to prison staff. He had twice been discovered with makeshift weapons. There was a gang culture in prison. Prison staff regarded him as an experienced offender. He had seven negative IEPs since his recall to prison in January 2021 as well as three positive IEPs. He was involved in seven adjudications. His behaviour was poor generally. He had been disruptive after a transfer. The Appellant was assessed as presenting a medium risk to the public, a known adult, staff and prisoners.
5. The judge was satisfied that the Appellant was a victim of trafficking and forced labour although he said that did not absolve the Appellant from a great deal of blame for the criminal offending. The Appellant would have no close family ties in Nigeria. He had no contact with his biological father. His mother had a number of half-sisters (in Nigeria) but there was a family rift. The Appellant would have no family support in Nigeria. The Appellant's mental health issues would be an aggravating factor when considering other issues such as access to employment and accommodation. The Appellant had been lawfully resident in the United Kingdom for most of his life, was socially and culturally integrated into the United Kingdom and would face very significant obstacles to his

integration into Nigeria. He therefore satisfied Exception 1 contained in section 117C(4) of the 2002 Act.

6. As the appellant was sentenced to a term of imprisonment of 4 years or more however, section 117C(6) of the 2002 Act applied. This provides that the public interest requires deportation unless there are very compelling circumstances, over and above those described in exceptions 1 and 2. The judge found that it would be inappropriate to make any meaningful assessment about the risk of re-offending. The public interest in deportation was very strong. Nevertheless, the decisive factor in the case was that the Appellant was groomed and trafficked into a “particularly pernicious form of modern slavery”. Taking that into account and what the judge described as “the enhanced aspect of Exception 1”, the judge found that the Appellant met the ‘very compelling circumstances’ test. He allowed the appeal under Article 8.

### **The Onward Appeal**

7. The respondent appealed this decision on three main grounds. The first ground argued that inadequate reasons had been given for the finding that the appellant met exception 1 in section 117C. At [73] there was no supportive evidence for the finding of a family rift. The appellant has previously relied on the financial support of his mother and cousin and there was no reason why this support could not continue on the appellant’s return to Nigeria. The appellant was a healthy adult and had the necessary language skills to integrate. The appellant could rely on educational qualifications and employment skills obtained in the United Kingdom to help him in obtaining employment in Nigeria. The appellant had been raised in a household familiar with Nigerian customs and culture.
8. The second ground argued that the judge had failed to give adequate reasons for the finding that there were very compelling circumstances over and above the Exception 1 circumstances. The respondent cited **HA Iraq [2022] UKSC 22** that: “cases in which circumstances are sufficiently compelling to outweigh the high public interest in deportation will be rare.”
9. The third ground took issue with the judge’s conclusions in relation to the appellant being a victim of trafficking. The FTTJ failed to provide adequate reasons for finding that this so elevated the appellant’s circumstances the threshold of very compelling circumstances was crossed. The Crown Court imposed a four year sentence for the appellant’s offence(s) while still being aware of some level of coercion, see the sentencing remarks.
10. In granting permission to appeal the First-tier judge wrote: “The judge’s decision is well-written and detailed. The judge noted that in 2017 the appellant had been sentenced to 3 years and 10 months imprisonment, and in 2021 sentenced to 4 years imprisonment. In view of the serious nature of the convictions, reflected in the sentences, it may be open to

argument that the judge erred by giving inadequate reasons for the findings made bearing in mind the very strong public interest in favour of deportation. The matter must be explored further and therefore, there is an arguable error of law”.

11. The appellant responded to the grant in submissions made pursuant to Rule 24 of the Tribunal Procedure (Upper Tribunal) Rules 2008. In respect of ground one, it was argued that the judge had considered the issue of very significant obstacles with care. This ground merely disagreed with the judge’s findings. The appellant was unable to speak Yoruba and his accent would mark him out as a foreigner which would be likely to expose the appellant to the risk of ridicule, stigma, discrimination and extortion. That finding was not speculative it was based on the expert report of Dr Amundsen.
12. Ground 2 was misconceived. The judge was plainly aware that the public interest can only be defeated by ‘a very strong claim indeed’ because he directed himself to that effect at [93]. Ground 3 was also misconceived. The judge did not base his conclusions on a risk of re-trafficking, but on the finding that, on these particular facts, the ‘county lines’ trafficking to which the appellant had been subjected in the UK was capable of being very compelling circumstances that defeated the public interest in deporting a man who was born and had lived all his life in the United Kingdom to Nigeria.

### **The Hearing Before Me**

13. In consequence of the grant of permission the matter came before me to determine in the first place where there was a material error of law in the decision of the First-tier Tribunal such that it fell to be set aside. If there was then I would make directions on the rehearing of the appeal. If there was not the decision at first instance would stand.
14. In oral submissions the respondent argued (under ground 1) that the appellant was previously reliant on his mother and cousin the judge had not explained why that could not continue nor why that would create very significant obstacles to integration. English was one of the official languages of Nigeria but the judge had not explained why speaking English would put the appellant at a very significant disadvantage. The appellant’s mental health circumstances had improved and it was not explained why that would contribute to significant obstacles to integration. The appellant had not sought the treatment that was recommended by the psychologist Dr Farrelly. The judge had not dealt with what treatment would be available in Nigeria and whether that would help the appellant.
15. Grounds 2 and 3 related to a claim of inadequacy of reasons. The judge relied on the argument that the appellant had been trafficked since he found that the appellant’s mental health problems did not reach a higher threshold. The judge used the finding of trafficking as a point of exceptionality. He had used trafficking as a trump card to enable the

appellant to meet the threshold of exceptional circumstances. The mere fact of being trafficked did not of itself mean that the appellant reached that threshold.

16. In reply counsel relied on his rule 24 response. The principal submission was that the respondent's appeal was a mere disagreement with the findings of the First-tier. No error of law had been identified. It was insufficient for the Upper Tribunal to say "that is not the conclusion I would have reached on those facts". The respondent did not appear to be challenging the findings of fact but was arguing that the findings were not strong enough to pass the threshold test. That was a matter for the judge. In finding very significant obstacles, the judge had done everything he was supposed to do. The appellant's mental health difficulties were an aggravating feature. The judge had looked at the financial support available to the appellant see [84] of the determination. The expert report of Dr Amundsen addressed the general situation in the labour market and described what would be the appellant's difficulties in getting a job. The appellant would be at a significant disadvantage.
17. The judge had identified what he considered to be the point that crossed the threshold of exceptional circumstances which was that the appellant had been trafficked. He did not use trafficking as a trump card. He said the appellant had vulnerabilities. The judge was entitled to say that trafficking was a very compelling circumstances as long as he reasoned it which he had. In another case trafficking might not cross the threshold of very compelling circumstances. It was a matter of weight as to how compelling the circumstance was.
18. Finally and in conclusion the respondent argued that the losing party needed to be able to understand the reasons for a decision against them, which the respondent could not do in this case. Although There was no explanation from the judge why the fact of trafficking crossed the higher threshold. That was the respondent's complaint. In the event that the decision was set aside the appellant reserved his position as to where any further hearing should take place.

### **Discussion and Findings**

19. The appellant in this case has a very bad criminal record. He has had two lengthy periods of imprisonment imposed upon him for drug trafficking and offences of violence. He has not been assessed as a low risk of reoffending rather he has been assessed as a medium risk of offending particularly against prison staff. The appellant has been subject to a number of adjudications against him whilst in prison. As the judge at first instance acknowledged the public interest in the deportation of the appellant was very high.
20. The issue was whether the appellant could bring himself within the very compelling circumstances test prescribed by section 117 C of the 2002 Act. The judge found that the appellant could meet exception one (very significant obstacles) but that because of the length of the prison

sentence the appellant could not stop there but had to go on to show that there were very compelling circumstances over and above exception 1. The judge also acknowledged that although the appellant was born in the United Kingdom and had never visited Nigeria, that of itself was not a very compelling circumstance without more, as the judge acknowledged at [94].

21. What the judge found was the extra factor that enabled the appellant to succeed in the appeal was that the appellant had been a victim of trafficking. The respondent complained that that finding was inadequately reasoned, the appellant responded to that by saying that the respondent was merely disagreeing with the findings of the judge which were open to the judge on the evidence received in this particular case. Trafficking might not be sufficient in another case but it was allied in this case to the appellant's mental health problems.
22. That the appellant was a victim of trafficking was never finally determined. The judge complained that the respondent had prevented that final determination presumably by issuing deportation proceedings against the appellant. Such criticism is not fair given that the respondent is under a statutory duty to bring deportation proceedings against a foreign national offender who is given a sentence of imprisonment exceeding 12 months, see section 32(5) of the 2007 Act. The exception to that duty at section 33(6A) is where the respondent thinks that a deportation order would contravene the United Kingdom's obligations under the 2005 Trafficking Convention. It does not appear that any argument was made to the judge that the United Kingdom's obligations would be breached by the deportation order in this case.
23. Be that as it may the respondent makes a strong point in his grounds of onward appeal that the sentencing judge was aware of the appellant's mitigating circumstances that he had been groomed by a gang (and had apparently recruited others) but nevertheless imposed a lengthy prison sentence. The Tribunal has been reminded in the past that the sentencing remarks of a judge should be the starting point for an assessment of the seriousness of the offending. It is therefore difficult to see why the judge indicated that because the appellant had been a victim of trafficking that meant that there were compelling circumstances such that the appellant's appeal should be allowed under article 8.
24. I have some sympathy with the respondent's argument that that part of the determination was not properly reasoned, albeit that the judge did give more detailed reasons at an earlier stage why the appellant, all things being equal, would meet Exception 1. Leaving aside the ambiguity of the judge's phrase "the enhanced aspect of Exception 1", it is not at all clear why the fact that the appellant claimed to be a victim of trafficking should mean that he could establish very compelling circumstances.
25. I agree that the assessment of very significant obstacles was a matter for the judge. It involved taking into account the difficulties the appellant might have in obtaining work, in receiving support from his family and in

accessing health treatment but that was not sufficient to show very compelling circumstances over and above exception one, see the judge's conclusion on the mental health issue at [97]. The question in this case was what could the appellant identify were very compelling circumstances if his appeal was to be allowed. The judge's very brief conclusion at [102] that it was because the appellant had been trafficked was not an adequate explanation of how a very high threshold could be crossed. At [98] the judge found that the appellant had not received the help he would have got if a full trafficking decision was made but that is to speculate on what might have happened. It was not possible for the respondent to understand from this section of the determination why he had lost this appeal. The appellant's mental health problems had eased and did not cross the threshold of exculpating the defendant from his offending or indicate that the appellant might suffer a reduction in life expectancy.

26. In those circumstances I find that there was a material error of law in the judge's determination. I therefore set the determination aside and make directions for the rehearing of the appeal. I agree with counsel for the appellant's submission that the rehearing would be confined to a fairly narrow point. There would be very significant obstacles for the appellant to reintegrate into Nigeria because he was born in this country, had never visited that country, could only speak English albeit one of the official languages of Nigeria and would have what appear to be limited family support upon return. That is insufficient to constitute compelling circumstances over and above Exception 1 as the judge acknowledged. Whether the appellant can show that there would be very compelling circumstances is the point that needs to be resolved.
27. The judge made a finding that there would be very significant obstacles to reintegration which is preserved. It is therefore appropriate that the appellant's onward appeal is retained in the Upper Tribunal to be heard on the first open date with a time estimate of one and a half hours. The need for further fact finding is limited. The appellant may file and serve further evidence if he is so advised but this must be filed and served at least 14 days before the next hearing. The case will remain anonymized.

### **Notice of Decision**

The decision of the First-tier Tribunal involved the making of a material error of law and I have set it aside. I direct that the appeal be reheard in the Upper Tribunal on the first available date with a time estimate of one and a half hours on the issue of whether the appellant can show very compelling circumstances over and above Exception 1 in section 117C of the 2002 Act

Respondent's appeal allowed to that extent.

I continue the anonymity order made herein.

Signed this 23<sup>rd</sup> day of January 2024

.....  
Judge Woodcraft  
Deputy Upper Tribunal Judge