IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2023-003242

First-tier Tribunal No: HU/55742/2021

THE IMMIGRATION ACTS

Decision & Reasons Issued:

3rd January 2025

Before

UPPER TRIBUNAL JUDGE STEPHEN SMITH
UPPER TRIBUNAL JUDGE MANDALIA

Between

Jermaine Stewart
(NO ANONYMITY DIRECTION MADE)

Applicant

and

Secretary of State for the Home Department

Respondent

Representation:
For the Appellant: Mr A. Beech, Counsel, instructed by Nelson Singleton Solicitors
For the Respondent: Mr A. Mullen, Senior Home Office Presenting Officer

Heard at Royal Courts of Justice (Belfast) on 17 May 2024
(Proceedings stayed post-hearing until 4 November 2024)

DECISION AND REASONS

1. By a decision dated 4 April 2023, First-tier Tribunal Judge Gillespie ("Judge Gillespie") dismissed an appeal against a decision of the Secretary of State dated 16 September 2021 to refuse the appellant's fresh claim dated 22 November 2020. The appeal was heard under section 82(1) of the Nationality, Immigration and Asylum Act 2002 ("the 2002 Act").

2. The appellant now appeals against the decision of Judge Gillespie with the permission of First-tier Tribunal Judge Singer.

CAO v Secretary of State for the Home Department

3. This is an appeal which concerns, in part, the best interests of the appellant's children, the Secretary of State's approach to those best interests, and, in turn, Judge Gillespie's analysis of those issues. At the date of the hearing before us, the then extant authority on the issue in Northern Ireland was the judgment of the Northern Ireland Court of Appeal in *CAO v Secretary of State for the Home Department* [2023] NICA 14 ("CAO CA"). That judgment was itself then under appeal to the Supreme Court. Mr Beech invited us to stay the proceedings pending the Supreme Court's judgment. We decided to hear the parties' submissions on all issues on the basis of the law as then stood, and reserved both the issue of whether to stay the appeal, and our substantive judgment.

4. Following the hearing of this appeal, we decided to stay the proceedings pending the judgment of the Supreme Court in *CAO*. We sent directions to the parties in the following terms:

> "Each party may supplement its submissions in these proceedings within 21 days of the Supreme Court's judgment in *CAO* being given. The Upper Tribunal will then consider whether further case management directions are required before resuming its substantive consideration of the matter, in light of the judgment in *CAO*. Either party may apply to amend these directions, or for further directions, on notice to the other party."

5. The Supreme Court's judgment in *CAO v Secretary of State for the Home Department* [2024] UKSC 32 was given on 23 October 2024 ("CAO SC"), allowing the Secretary of State's appeal against CAO NI and restoring the order of the Upper Tribunal. On 4 November 2024, we issued further directions to the parties which lifted the stay and recalled the terms of the directions quoted above. Neither party made further submissions or sought directions concerning the onward case management of this issue within the permitted 21 days. Nothing was received in the time that followed during which this judgment was prepared.

6. We consider that we are in a position fairly and justly to deal with this appeal on the basis of the submissions we have already heard, in light of the judgment in *CAO*.

Factual background

7. The appellant is a citizen of Jamaica. He was born in 1983. He was granted indefinite leave to remain on 10 November 2013, having entered with a spousal visa in 2009. The Secretary of State seeks to deport him in light of his conviction for the rape of a female aged over 16, and subsequent sentence of six years' imprisonment imposed by the Crown Court at Liverpool on 3 November 2015.

8. By a decision dated 19 July 2018, the Secretary of State refused an earlier human rights claim brought by the appellant in response to her decision to deport him. The appellant appealed. The appeal was heard by First-tier Tribunal Judge Saffer ("Judge Saffer"), and dismissed by a decision dated 10 October 2018. On 22 November 2020 the appellant made further submissions to the Secretary of State based on Article 8 of the European Convention on Human Rights ("the ECHR") and the Refugee Convention.

9. While the further submissions were under consideration (and during a period of challenge to the initially non-appealable nature of the decision) and following the sentence of imprisonment, the appellant began to cohabit with Ms D and the

children in March 2021, in Northern Ireland. The relevant social services team was aware of his presence in light of his conviction for a serious sexual offence, but in 2022 indicated that they had no concerns arising from the continued presence of the appellant in the family home.

10. At the hearing before Judge Gillespie, the appellant dropped reliance on the protection limb of his further submissions, focusing instead on his fresh human rights claim based on his family life. The appellant's Article 8 family life claim was based on his relationship with his British partner, Ms D, and the three children they have together. A, a boy, was born in 2013; B, a girl, was born in 2015; C, a boy, was born in 2022. The appellant also has another daughter, T, who was born to his previous partner. There was no evidence that he has any role in her life, and it appears that the appellant did not seek to rely on his relationship with her before Judges Saffer or Gillespie, and does not seek to do so before us.

11. Judge Gillespie directed himself (para. 12) that he was to take Judge Saffer's decision as his starting point. He went on to summarise the evidence from the appellant, Ms D, the family GP and the children's school about the positive impact the appellant had in the life of the children. Without him, they would struggle. A's separation anxiety would increase. Ms D would not have his support, and would not be able to rely on his support for her intended further study. See paras 14 to 24.

12. Judge Gillespie's operative analysis began at para. 31. He accepted that the family were close-knit, despite the appellant's criminal record, and observed that A would have been around 19 months old when he, the appellant, was imprisoned. B was then yet to be born.

13. The judge found that the appellant's offending was undoubtedly serious. Since the sentence exceeded four years' imprisonment, the appellant was deprived of the benefit of either of the exceptions to deportation contained in section 117C(3) and (4) of the 2002 Act. Having identified (para. 41) that the appellant was subject to section 117C(6) of the 2002 Act, the judge's operative analysis was at para. 42. He found that it was not surprising that A had suffered adverse effects from the appellant's absence. Judge Saffer had been critical of the way in which A had been misled by his parents about the appellant's imprisonment. It was not until March 2021 that the appellant commenced any significant living experience with the family, by which time A was 8 and B was 5. That would have caused disorientation and confusion.

14. There had been a total of eight years while the appellant either lived away from the family in Liverpool, or was in prison. Removal of the appellant from that scenario would not give rise to very compelling circumstances over and above the consequences described in exception 2, found Judge Gillespie. The judge said that it would "undoubtedly be very difficult for Ms D and upsetting for the children, at least to begin with, and I'm sure further counselling and professional support will be needed with the wider family rallying to help." The judge noted that the "great distress" that Holroyd LJ acknowledged in *PG (Jamaica) v Secretary of State for the Home Department* [2019] EWCA Civ 1213 would usually be present in deportation cases, was absent in these proceedings.

15. At para. 43, the judge said that the appellant's deportation would not be unduly harsh on his partner and children. Even if it were, it would not give rise to very compelling circumstances.

16. As to the best interests of the children, at para. 45, the judge said:

> "the Secretary of State addresses her responsibility to safeguard the welfare of the children under section 55 of the Borders, Citizenship and Immigration Act 2009 and it is said that she has taken into account the best interests of the children as a primary consideration. Her reasoning is set out at paragraphs 47 to 53 of the decision notice."

17. See also paras 46 and 47:

> "46. Judge Saffer made a number of pertinent findings in regard to the best interests of the children which remain relevant. He did not accept it was in their best interest to leave the United Kingdom. They were cocooned within a large, loving, supportive family here and were British. A was at the time within the education system, albeit at the start of it. They had at that time never lived with the appellant. Their concept of family life was having a single mum with significant support from grandparents, and aunts and uncles, and daily contact with those relatives. He mentioned a Mrs Fenton who lived only 3 houses away. Whilst it would not be unduly harsh for them to swap what they had here from what they would have in Jamaica, it was not in their best interests to do so.
>
> 47. [Judge Saffer] said it was in the best interest for Ms D to accept that the appellant raped a woman. Their continued denial of this based on his word was naive and debilitating, this being the only area of concern he had about what was plainly a wonderful family. The judge found the two children at the time were at the heart of a loving family with wider family support."

18. As to the best interests of the children, Judge Gillespie said at para. 50, with emphasis added:

> "In the Secretary of State's assessment, the best interests of the children remained in living with [Ms D], and her household nestled within the wider [D] family in Ballymoney. **What has changed since Judge Saffer's decision? The appellant has lived for about two years in the family home and all the children are a bit further along in their development. A third child has been born.**"

19. The final operative conclusion was at para. 51:

> "As far as I can ascertain he was back in the family home for only a few weeks at that date. All the findings of Judge Saffer were valid, and the halting of his removal enabled him to re-enter the family home, while his latest claims were assessed, and that is an unprepossessing sequence of events, particularly having regard to the fact that the judge had already commented adversely on his claim. Judge Saffer's conclusions remain overwhelmingly valid. I find there are no exceptional circumstances, when their best interests are weighed in the balance against the other competing issues in this case. I find the children will be able to adapt. I am not persuaded he has played a consistent and essential role in their development to date. He has made no financial contribution to the family. Their best interests are

> with their mother in the UK. His deportation is a proportionate interference with his and the other family members article 8 rights."

20. The judge dismissed the appeal.

Issues on appeal to the Upper Tribunal

21. There are three grounds of appeal, which in summary are as follows

    a. Ground 1: the judge failed properly to apply the *Devaseelan* guidelines, applying the decision of Judge Saffer without adequately taking into account the evidence and submissions concerning developments post-dating those findings.

    b. Ground 2: the judge erred when applying Part 5A of the 2002 Act, failing to assess the impact of the appellant's pre-March 2021 role in the lives of Ms D, A and B, and failed to take into account the impact of A's mental health conditions. At para. 51, the judge impermissibly held the fact that the appellant and Ms D are in a genuine and subsisting relationship against the appellant. The judge's analysis featured irrational reasoning and failed to take into account material factors. The judge double counted the impact of the appellant's sentence, ascribing significance to the seriousness of the offence in addition to taking account of its length.

    c. Ground 3: the judge erred when finding that the Secretary of State had complied with her duties under section 55, thereby failing to remedy those breaches, as required by CAO CA. The judge erred by not conducting his own detailed and structured analysis of the best interests of the children. This infected the judge's proportionality analysis.

22. Mr Beech expanded upon the grounds of appeal in his oral submissions. Mr Mullen invited us to dismiss the appeal. He submitted that the judge reached a decision that was open to him on the evidence, for the reasons he gave.

Ground 1: no error applying the *Devaseelan* guidelines

23. The requirements of the *Devaseelan* guidelines are well known: see [2002] UKIAT 000702 at paras 39 to 41. Relevant to these proceedings are the first guideline (the first decision should always be the starting point) and the second guideline (facts happening since the first decision can always be taken into account). The question for our consideration is whether Judge Gillespie applied those principles in relation to Judge Saffer's findings and the subsequent evidence, or whether, as Mr Beech contends, there was no proper analysis of the developments subsequent to the decision of Judge Saffer.

24. In our judgment, Judge Gillespie's application of the *Devaseelan* guidelines did not involve an error of law. Judge Gillespie referred to *Devaseelan* at para. 12, directing himself that Judge Saffer's decision was his starting point. He referred to the guidance "therein" concerning the approach to later evidence. That self-direction was entirely appropriate and did not need to be repeated later in the decision.

25. We also consider that Judge Gillespie accurately applied the *Devaseelan* guidelines in the course of his substantive analysis of the evidence and issues in the case. His decision is replete with references to the findings of Judge Saffer,

the subsequent evidence and submissions, and his updated assessment in light of those developments. Paragraphs 14 to 24 summarise the evidence relied upon by appellant at some length. It is not necessary for us to set those paragraphs out here, other than to observe that Judge Gillespie was sitting as an expert judge of a specialist tribunal. He would have had the evidential impact of the evidence he heard at the forefront of his mind.

26. Judge Gillespie accepted that A experienced difficulties in a number of areas in his life. The anxiety that A lives with post-dated the hearing before Judge Saffer. The issue for the judge was to assess the impact of the appellant's prospective permanent absence from the family unit, in light of the anxiety and other conditions presently experienced by A, and the views of those who knew him best, including Ms D, the family GP and his school. By definition, those were matters that post-dated Judge Saffer's decision. The judge considered them all.

27. Throughout his analysis Judge Gillespie referred back to the earlier findings reached by Judge Saffer. It would have been an error of law for Judge Gillespie *not* to have done so, since he was required to take the findings reached by Judge Saffer as his starting point. Some of Judge Saffer's findings of particular note (described by Judge Gillespie as "pertinent" at para. 46) concerned the strong and supportive community enjoyed by Ms D, A and B. The evidence before the judge was that that strong and supportive community continued. The appellant had relied on letters of support and broader family support, including by supporters attending the hearing itself, as part of the appeal. It was therefore entirely appropriate for Judge Gillespie to ascribe significance to Judge Saffer's findings in this respect. The supportive community that surrounded Ms D in 2018 continued to do so in 2023. That was significant because it went to the issue of what would await Ms D and the children in the event of the appellant's deportation if they stayed here. Judge Saffer found that the family benefitted from a supportive community in 2018; Judge Gillespie found that they would in 2023. This is an example of the judge reaching findings he was entitled to reach.

28. Mr Beech has not demonstrated that other aspects of Judge Gillespie's reliance on Judge Saffer's decision were in error. For example, at para. 48, Judge Gillespie recalled findings reached by Judge Saffer that the money Ms D had spent visiting the appellant in prison in England (approximately £4,000) could be put to use visiting the appellant in Jamaica. There is nothing before us to demonstrate that that was anything other than a finding of fact which the judge was entitled to reach. In turn, that went to the issue of the impact of the appellant's deportation on the family, and the possibility of their continued ability to have some face-to-face contact with him. On this aspect of Judge Gillespie's analysis, the appellant's deportation would not mean that his family would never see him again. Just as they had been able to fund travel to visit him in England during his incarceration, so too they would be able to travel to see him in Jamaica. Again, this is an example of Judge Gillespie reaching findings he was entitled to reach.

29. We have quoted para. 50 of Judge Gillespie's decision, above. We emboldened the words "what has changed since Judge Saffer's decision?" to demonstrate that the judge expressly asked himself the very question that Mr Beech contends he failed to address. That question was what had changed since Judge Saffer previously ruled that it would not be unlawful under section 6 of the Human Rights Act for the appellant to be removed from the United Kingdom? As Upper Tribunal Judge Mandalia observed at the hearing, para. 50 highlighted three broad themes of development in relation to which there had been changes since

Judge Saffer's decision: the passage of time; the children's development; and the birth of C. Mr Beech was unable to demonstrate an error in Judge Gillespie's approach, in light of those paragraphs. The judge had already addressed the impact of the separation anxiety experienced by A. Accordingly, the identification of three factors highlighted by Judge Gillespie at para. 50 was entirely appropriate, and was consistent with the guidelines in *Devaseelan*.

30. It is against that background that Judge Gillespie's concluding analysis at para. 51 must be viewed. The conclusions reached by Judge Saffer remained overwhelmingly valid. Judge Gillespie concluded that the appellant had played a limited role in the circumstances of his children's lives, and found that the children would be able to adapt. The best interests of the children would be to remain with their mother, in the United Kingdom. That was an evaluative assessment that was open to the judge.

31. Drawing this analysis together, therefore, we conclude that the judge correctly directed himself in accordance with *Devaseelan*, appropriately took Judge Saffer's decision as his starting point, and addressed the developments postdating that decision in a manner that was open to him, for the reasons he gave.

32. This ground is without merit.

Ground 2: no error analysing the appellant's deportation

33. We respectfully consider this ground to be a series of disagreements of fact and weight which do not reveal an error of law.

34. The question for our consideration is, in summary, whether the judge's analysis of the regime established by Part 5A of the 2002 Act (the requirements of which we need not set out in this decision) involved a public law error. The judge's assessment of whether there were "very compelling circumstances over and above" the statutory exceptions to deportation was an evaluative assessment. Our task is not to perform that assessment for ourselves, but to consider whether the judge was wrong by reason of some identifiable flaw in his treatment of the question to be decided, such as a gap in logic, a lack of consistency, or a failure to take account of some material factor which undermines the cogency of his conclusion. We will take Mr Beech's criticisms of Judge Gillespie's reasoning in order.

35. Mr Beech submitted that the judge failed to address the impact of the appellant being a very real presence in the lives of Ms D and the children since October 2020, while he remained in Liverpool, before moving to Northern Ireland to live with the family in March 2021. Nothing turns on this. The judge was plainly aware of the chronology of the appellant's involvement with the family, and was not required expressly to address all submissions advanced. Nothing could have turned on the appellant having a degree of pre-March 2021 involvement with the family following his release. What mattered was the evidence going to his cohabitation with Ms D and the children, which was both more recent and more relevant.

36. Mr Beech submitted that the judge failed to consider A's mental health conditions. That submission is without merit. Again, the judge was aware of those factors, having summarised them extensively (see, for example, para. 22). He addressed A's difficulties at para. 42, stating that he took the representations

made by the GP and the children's school into account. There is no merit to this criticism.

37. This ground contends that the judge failed to address the impact of the oral submissions on *HA (Iraq) v Secretary of State for the Home Department* [2020] EWCA Civ 1176. We presume that the grounds mean the decision of the Supreme Court in *HA (Iraq) v Secretary of State for the Home Department* [2022] UKSC 22, which had been handed down the year before the hearing before Judge Gillespie. This ground is a criticism of form over substance. The grounds do not highlight any specific passages of *HA (Iraq)* which the judge is said to have overlooked, but rather take issue with the judge's overall proportionality analysis at para. 51. As we set out below, the judge's approach to the seriousness of the appellant's offending was in line with *HA (Iraq)* in any event.

38. In our judgment, Judge Gillespie was rationally entitled to consider, as part of a broader proportionality assessment, the circumstances in which the appellant's Article 8 family life claim was able to develop. Contrary to what is asserted by the grounds, he did not hold the fact the appellant is in a genuine and subsisting relationship with Ms D and the children against either him or them.

39. The judge was entitled to ascribe significance to the minimal financial assistance provided by the appellant to the family. While the grounds contend that the judge failed to take account of the non-financial support provided by the appellant, we consider that to be a disagreement of fact and weight. In any event, the judge *did* take those factors into account: see para. 42.

40. We also consider that the judge was entitled (obliged, even) to address the seriousness of the appellant's offending. The offence of rape was particularly serious. The sentencing remarks were available to the judge, and he was able to look at the broader circumstances of the offence, as Judge Saffer had before him. That approach was consistent with *HA (Iraq)* at paras 66 and 67, which looked at a variety of factors going to the seriousness of an offence, not just the length of sentence, in circumstances where (as here) information is available pertaining to those wider circumstances. To the extent *Gordon (deportation; sentencing discounts)* [2021] UKUT 287 (IAC) militates in favour of a different approach, it pre-dated *HA (Iraq)*, and should no longer be followed.

Ground 3: no error in the judge's assessments of the best interests of A, B and C

41. By this ground, Mr Beech contends that the judge failed to remedy the Secretary of State's alleged breach of section 55 of the Borders, Citizenship and Immigration Act 2009 ("the 2009 Act"). On this hypothesis, it was necessary for the judge to review the Secretary of State's analysis of the best interests of A, B and C, and remedy any deficiencies. Mr Beech submitted that the Secretary of State's analysis of the best interests of the children was in error, and that she had failed to have regard to the relevant guidance, *Every Child Matters: Change for Children: Statutory guidance to the UK Border Agency on making arrangements to safeguard and promote the welfare of children*, as required under section 55(3). We were not provided with a copy of the guidance, but it was referred to at length in *CAO CA*.

42. While Mr Beech's submissions were consistent with *CAO CA*, we respectfully consider that, in light of *CAO SC*, they are without merit. Para. 68 of *CAO SC* summarises the position in the following terms:

> "In those cases which proceed on appeal to the FTT [First-tier Tribunal], as in this case, the FTT's function is to act as primary decision-maker in assessing the best interests of a child for the purposes of its analysis of rights under article 8, not to review the decision-making at an earlier stage by the Secretary of State. So one would not expect there to be any close analysis of whether the Secretary of State and his or her officials have complied with section 55(3) or not."

43. Accordingly, it was not for the judge to scrutinise the Secretary of State's compliance with the duties to which she was subject under section 55. His role was to conduct his own assessment of the best interests of the appellant's children.

44. The remaining limb of this ground contends that the judge failed to conduct a detailed and structured analysis of the best interests of the children in these proceedings. It further contends that the judge failed to take proper account of the developments post-dating Judge Saffer's decision.

45. We consider that the judge's analysis of the best interests of the appellant's children could have been clearer. It may have been helpful had he expressly addressed their best interests before addressing the concepts of what would be unduly harsh, and whether there were very compelling circumstances over and above the exceptions. However, reading the decision as a whole, we consider that all relevant factors were considered. As the judge explained at para. 21:

> "I have to set out my reasoning in some sort of order but it is the entire evidence assessed against the Immigration Rules and statutory provisions that falls to be considered."

As an expert judge sitting in a specialist tribunal, he would have been well aware of the primacy of the best interests of children. We find that he did consider all relevant factors, in the round, for the following reasons.

46. First, the appellant's skeleton argument before the First-tier Tribunal identified the sole disputed issue before resolution as being:

> "Whether Article 8 ECHR is engaged and the best interests of the children under section 55 of the Border, Citizenship and Immigration Act 2009."

47. Those were the agreed issues as also reflected by para. 3 of the Respondent's Review. The best interests of the appellant's children were a central issue in the proceedings.

48. Secondly, in light of the centrality of the above agreed issues, the structure of the judge's reasoning demonstrates that the judge had the best interests of the children in mind. The first reference to the best interests of the children may be found at para. 11, in which the judge referred to having considered section 55 of the 2009 Act. Although it is now clear that section 55 binds the Secretary of State rather than the First-tier Tribunal, nothing turns on this for present purposes. The Supreme Court held at para. 63 of CAO SC that:

> "Since the FTT is obliged by article 8 and section 6 of the [Human Rights Act] to treat the best interests of a child who is affected by its

> decision as a primary consideration, its decision-making will in practical terms cover the matters to which section 55 is directed."

49. See also para. 64, which stated that there was "an undoubted overlap in terms of the relevant considerations in play" between section 55 and an Article 8-compliant assessment of the best interests of a child.

50. It follows that, from an early point in his decision, Judge Gillespie had the substantive requirements of the best interests of the appellant's children, as a facet of Article 8, in mind. That he summarised those principles by referring to "section 55" did not affect his underlying analysis.

51. Against that background, the judge's summary of the oral and written evidence adduced before him emphasised those aspects of it that pertained to the best interests of the appellant's children. Put another way, the judge marshalled the evidence to reflect the appellant's case concerning their best interests. That reveals that the focus of the judge's analysis was the best interests of the children.

52. Thirdly, at para. 46, having referred to the Secretary of State's own analysis of section 55 in the preceding paragraph, the judge took as his starting point Judge Saffer's analysis of the best interests of A and B in 2018, prior to the birth of C. Those findings were set out at paras 43 to 46 of Judge Saffer's decision, in which he found that it would be in the best interests of the children to remain in the United Kingdom, with their large, loving and supportive family here. Judge Saffer had significant concerns about the appellant's then continued denial of his responsibility for the offence of rape, and concluded that that impacted on the extent to which it was in the best interests of the children for their father to remain with them. That was based on Judge Saffer's analysis of the appellant's evidence, and that of Ms D, at the hearing in 2018. Accordingly, pursuant to the *Devaseelan* guidelines, those findings (including the qualifications arising from the appellant's continued denial of his responsibility and guilt, and their consequential impact on the findings pertaining to the children's best interests) represented the starting point for Judge Gillespie's findings.

53. While the evidence before Judge Gillespie indicated that the relevant social services team no longer had significant concerns about the appellant's contact with his children, there appears to have been little other evidence which required a departure from Judge Saffer's careful and detailed assessment of the children's best interests. The passage of time had progressed, of course, as the judge noted at para. 50, and in that time the appellant had lived with the family for two years, A and B were further along in their development, and C had been born. The evidence concerning A's counselling was limited and there was no expert medical report addressing the issue before the judge.

54. Fourthly, when reaching his global conclusion at para. 50, Judge Gillespie held that:

> "all the findings of Judge Saffer were valid… Judge Saffer's conclusions remain overwhelmingly valid. I find there are no exceptional circumstances, when their best interests are weighed in the balance against the other competing issues in this case. I find the children will be able to adapt. I am not persuaded [the appellant] has played a consistent and essential role in their development to date. He has made no financial contribution to the family. Their best interests are

> with their mother in the UK. His deportation is a proportionate interference with his and the other family members' Article 8 rights.".

55. Drawing this analysis together, therefore, the analysis of Judge Gillespie pertaining to the best interests of the children addressed all relevant considerations, and fed into (as a primary consideration) the overall operative conclusion he reached that there were no "very compelling circumstances over and above" either of the statutory exceptions to deportation. That was a conclusion the judge was entitled to reach, on the materials before him, for the reasons he gave.

56. As we conclude, there is one final point we wish to address, although it was not challenged by Mr Beech. As we have observed above, at para. 39 the judge quoted from *PG v Secretary of State for the Home Department*. The extract quoted by the judge included the statement that the impact of deportation in those proceedings "will not go beyond the degree of harshness which is necessarily involved for the partner or child of a foreign criminal who was deported…" It is now well established that there is no notional comparator against which the concept of "unduly harsh" must be assessed. Although Mr Beech did not address us on this issue or otherwise seek to rely on it, we have considered for ourselves whether the judge imported into his assessment an unlawful comparison with a notional child. Properly understood, we do not consider that that is what the judge meant. We consider that the proposition for which Judge Gillespie relied on *PG* was to establish what he described as the "elevated threshold" (para. 41) under section 117C(6) of the 2002 Act to which this appellant was subject. Moreover, Judge Gillespie's analysis was not benchmarked against a notional comparator. It was based on a case-specific examination of the circumstances in the appellant's case, by reference to what had changed since Judge Saffer's analysis of the same in 2018 (para. 50).

57. In conclusion, we find that the judge's analysis of the best interests of A, B and C did not involve the making of an error of law such that this tribunal must set it aside.

58. For these reasons, this appeal is dismissed.

NOTICE OF DECISION

This appeal is dismissed.

The decision of Judge Gillespie did not involve the making of an error of law such that it must be set aside.

Stephen H Smith

Judge of the Upper Tribunal
Immigration and Asylum Chamber

23 December 2024