IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2024-004648

First-tier Tribunal No: HU/62684/2023
LH/02644/2024

THE IMMIGRATION ACTS

Decision & Reasons Issued:
On 30 January 2025

Before

UPPER TRIBUNAL JUDGE HANSON
DEPUTY UPPER TRIBUNAL JUDGE PICKERING

Between

RD
(ANONYMITY ORDER MADE)

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellant: Mr Ahmed instructed by Riaz Khan & Co.
For the Respondent: Ms Z Young, a Senior Home Office Presenting Officer.

Heard at Phoenix House (Bradford) on 15 January 2025

Order Regarding Anonymity

Pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008, the appellant and any member of his family 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 and/or other persons covered by this order. Failure to comply with this order could amount to a contempt of court.

DECISION AND REASONS

1. The Appellant appeals with permission a decision of First-Tier Tribunal Judge Saffer ('the Judge'), promulgated following a hearing at Bradford on 8 August 2024, in which he dismissed the appeal against the refusal of an application

made on 10 November 2022 for leave to remain on human rights grounds, relied upon as an exception to the Secretary of State's power to deport him from the United Kingdom.

2. The Judge notes the Appellant arrived in the UK on 2 March 2006 aged 16 and was granted Indefinite Leave to Enter to join his mother, PB as her dependent. The Appellant was born on 5 April 1989 and is a male citizen of Zimbabwe.
3. In relation to his offending and immigration history the Judge writes:

    3. On 14 January 2008 when aged 17 for theft from a car he was conditionally discharged, this being later varied to a Community Order.

    4. On 5 March 2008 he was fined for disorderly behaviour and threatening threatening/ insulting/abusive words intending to cause harassment alarm or distress.

    5. On 8 December 2008 when aged 18 for burglary he given a 12-month Community Order with an unpaid work requirement.

    6. On 28 April 2009, 18 February 2010, and 30 March 2010 when aged 20, he was convicted of breaching the Community Order which was then revoked on 15 June 2010 when he was 21 and replaced with 8 weeks imprisonment. This was his first jail sentence.

    7. On 22 October 2010 when aged 21 he was convicted of having an article with a blade in a public place. On 17 November 2010 he was convicted of affray. He was sentenced to 8 months' imprisonment for each offence to be served consecutively therefore totalling 1 year and 4 months. This was his second jail sentence.

    8. On 10 January 2011 he was served with a notice of liability to deportation and on 26 May 2011 he was served with a deportation order and reasons for deportation letter.

    9. On 12 October 2011 his appeal (IA/17741/2011) was allowed on Article 8 grounds only. The Judges noted that Miss C was then an Albanian national and their child R (born on 8 December 2008) was British. They were not satisfied that Mr D and Miss C were in a relationship, it having ended in November 2008, but there were plans to resume it. The psychologist said at that time that there was no reason to believe he was a danger to the public. It was noted that his relationship and paternity had not prevented his offending. It was noted that his stepfather RB was a reliable, candid, and impressive witness. The Judges noted Mr D had been untruthful about not having family in Zimbabwe. The Judges found that he had a grandmother, an aunt, an uncle, and cousins living in Zimbabwe, and his grandmother owns land which is farmed. His immediate family were all in the United Kingdom. His first language was Shona.

    10. On 25 April 2012 when aged 23 he was fined for shoplifting.

    11. On 17 August 2012 he was fined for being drunk and disorderly.

    12. On 4 February 2013 he was ordered to pay compensation for causing criminal damage.

    13. On 27 March 2013 he was fined for shoplifting.

    14. On 9 July 2013 when aged 24 he was given a Community Order for possessing a knife.

    15. On 22 July 2013 he was given a conditional discharge for shoplifting.

16. On 24 January 2014 he was convicted of racially/religiously aggravated intentional harassment, having an article with a blade in a public place, assault by beating, common assault, child abduction and using threatening, abusive, insulting words or behaviour and was sentenced on 28 February 2014 to a total of 3 years imprisonment. This was his third jail sentence.

17. On 6 January 2015 when aged 25 he was served with the Stage 1 Notice of a decision to deport. On 22 January 2015, he responded raising protection issues that were taken as a claim for asylum. On 8 January 2016 he was served with a notice of decision to refuse a protection and human rights claim and a signed deportation order pursuant to s32(5) of the UK Borders Act 2007 and s5(1) and 3(5)(a) of the Immigration Act 1971. The decision was certified under Section 94 of the Nationality, Immigration and Asylum Act 2002 as his protection and human rights claim was considered to be clearly unfounded and therefore his right of appeal against that decision could only be exercised after he left the United Kingdom.

18. On 24 October 2017 when aged 28 he was fined for travelling on a railway without paying the fare.

19. On 19 June 2018 when aged 29 he was convicted of wounding/ inflicting grievous bodily harm for which he was sentenced on 31 July 2018 to 2 years and 3 months imprisonment. He was also convicted of possession of an imitation fire-arm with intent to cause fear of violence for which he was sentenced to 12 months imprisonment. The sentences were consecutive, amounting to a total sentence of 3 years and 3 months imprisonment. The Judge noted that he had a worrying list of previous convictions for violence, affray, and carrying or using knives. This was his fourth jail sentence.

20. On 6 March 2020 further representations on human rights grounds were submitted in which it was said he had integrated here, had obtained certificates in motor vehicle engineering, and had previously secured employment in customer services. He is extremely remorseful for his actions. He has been diagnosed with anxiety, depression, PTSD, and psychosis for which he has been prescribed medication.

21. On 16 September 2020 when aged 31 he was convicted of 2 counts of possessing a knife blade/sharp pointed article in a public place and on 18 January 2021 he was sentenced to 8 months imprisonment. This was his fifth jail sentence.

22. On 10 July 2021 his human rights claim was refused.

23. On 4 July 2022 it was identified that there were conclusive grounds to believe that he was a potential victim of modern slavery. On 30 September 2022 the NRM decided that a grant of Discretionary Leave was not appropriate.

4. Having considered the written and oral evidence, including the OASys report completed on 19 July 2022, the psychological evidence in a report from Dr Salma Latif a Chartered Psychologist dated 27th February 2024, and relevant submissions, the Judge sets out his findings from [74] of the determination under challenge which may be summarised in the following terms:

(i) Length of time the appellant has been in the UK, importance of family life and positive duty to promote it is noted at [74].

(ii) There is documentary evidence to support the assertion Mr D has any health issues that meet the relevant threshold to be found in Articles 3 or 8 in relation to health claims, and that he had failed to adduce any evidence to counter the evidence in the Respondent's refusal letter that treatment is available and accessible in Zimbabwe. The Judge was satisfied that it is [75].

(iii) The Appellant has family life and a genuine relationship with Miss C. The Judge was not satisfied they had been in a continuous relationship since she fell pregnant at 16. The Judge was satisfied the relationship with Miss C ended in 2014 but began again in December 2022 when the Appellant was released from his latest prison sentence. Between those dates are Judge finds the Appellant saw R (his son) occasionally, sent Miss C small amounts of money and may have had occasional sex, which the Judge finds may have had greater meaning for Miss C than the Appellant [76].

(iv) The Judge accepts the OASys report reflects the fact that Mr D has had at least three other relationships of sufficient note. His relationship with a 15-year-old specifically referred to as being sexual, she being 15 and he 24, that led to Mr D being jailed in 2014. The Judge finds being satisfied Mr D had lied to him and that he had sexual relationships with all the girls and did so as he was living many miles from Miss C and, from his perspective, was not in a relationship with her. Mr D has convictions for dishonesty and was found not to have been truthful in his earlier appeal regarding family life in Zimbabwe for example, and that he has a propensity to lie [77].

(v) Mr D and Miss C have another child A, although he has brought chaos and instability through flitting in and out of their lives despite Miss C's good intentions [78].

(vi) Mr D has a family life and genuine relationship with R. The suggestion he can be a role model is found to be risible given his appalling criminal behaviour throughout R's life which did not act as a deterrent for his offending [79].

(vii) The Judge attaches little weight to a report of Dr Latif which the Judge describes as being "particularly troubling" and to which he attaches no weight as it is said Dr Latif failed to sufficiently engage with the extent of Mr D's criminality and intermittent involvement in their lives as possible causes for R's anxiety, and failed to consider that the greatest ability the children can have is for Mr D simply not to be part of their lives given his continued propensity to offend as detailed in the OASys report. The Judge finds Dr Latif failed to consider that R is almost 16 and will be able to do as he pleases when his 18 and see Mr D if he wishes. The Judge finds Dr Latif took at face value Mr D's claim that had been assessed as presenting a low risk in the community by the prison service when in fact he had not. The Judge notes the statistical assessment in the OASys and the fact that risk in the community to children is medium, the public high, unknown adults low, and finds chaos and criminality is therefore likely to continue. The Judge finds Dr Latif failed to engage with how that may impact upon R. The Judge finds that the report is so poor that Dr Latif had failed to establish on the basis of the report she is entitled to be treated as an expert [79].

(viii) The Judge noted R's wishes as expressed in the email from Miss C sent when he was 11, on which the Judge placed little weight given his age at that time and the more recent letter, as Mr D has plainly not been in his life for all of it given he has been in jail for about 6 years and 4 months of it, has lived away from them for other significant periods, and that although he has been in the background that did not mean he was in their lives in any significant or positive way [80].

(ix) The Judge has borne in mind the 2016 email from PB in which she is stated to diminish his culpability in his offending by saying he was in the wrong place at the wrong time and learned his lesson, which the Judge finds he plainly had not, and her email of 18 February 2020 which the

Judge finds "*absurdly suggest he is close to his family, when he was either in jail or running county line drugs many miles from them*". The Judge noted there was no more recent evidence [81].

(x) The Judge noted evidence from RB dated 2020 together with other witnesses [82].

(xi) The Judge notes evidence from the school regarding R's poor school attendance and notes that only relate to the period Mr D has been in the family home. The Judge notes he is the one supposed to be responsible for taking him to school yet R misses at least one day a week and that in failing to ensure he attends school Mr D is undermining his education and failing to be a good role model, a fact of the Judge finds Dr Latif failed to adequately consider [83].

(xii) Family life exists but each was created at a time they knew Mr D's immigration status was precarious.

(xiii) The Judge accepts consequences of gravity may flow from the decision to deport him but finds the decision to remove is in accordance with the law and pursuing the legitimate aim of preventing crime and disorder, bearing in mind the very serious nature of the multitude of offences over many years and ongoing risk posed as identified in the OASys report.

(xiv) The Judge finds a comparison between how Mr D and Miss C have embraced their immigrating since moving here as children is "simply staggering" for the reason stated.

(xv) In relation to his time in prison and offending the Judge writes at [88 – 90]:

> 88. Mr D, in summary, having arrived here lawfully aged 17 on 2 March 2006, was jailed for 8 weeks on 15 June 2010, 1 year and 4 months on 17 November 2010, 3 years on 28 February 2014, 3 years and 3 months on 31 July 2018, and 8 months on 18 January 2021. That is a total of 8 years and 5 months for multiple offences of violence and possession of offensive weapons including an imitation gun and knives, burglary, and breaching community penalties. Every offence bar the first was committed while an adult. Of those prison sentences it is likely he served about half with the rest on license. He remained in custody from 17 August 2020 until he was released on 19 December 2022 as he had been recalled on 10 August 2020 while on license to prison to complete the 2018 sentence. He was due to be released from that on 7 April 2020 on license but was detained by immigration officers, as noted in the OASys report. As he would have been released on license for each sentence he will have been in prison on the various occasions for 4 weeks, then 8 months, then 18 months, then from 31 July 2018 until 7 April 2020 being 1 year and 9 months, and then from his final arrest on 17 August 2020 to 19 December 2022 when he had been recalled on license and was jailed being 2 years and 4 months. That totals roughly 6 years and 4 months in prison between June 2010 and December 2022. Even if I am wrong on the exact amount of time in custody as opposed to being on license, it is still going to be around 5 to 6 years which is still very significant.
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> 89. Mr D has embraced a life of violence and dishonesty with the only years he did not appear in court for sentencing being 2007, 2011 (he was in jail for part of it), 2015 (he was in jail for part of it), 2016, 2019 (he was in jail for most of it), 2022 (he was in jail for almost all of it) and 2023. He was on license for periods after he was released from prison. He had Community Orders in 2008 and 2009 which he breached. He succeeded in a deportation appeal in 2011. He continued to offend and has been jailed 3 times since then. It was said in 2015 that will not offend again, it

is time to grow up, and he wants a second chance. PB said he has learned his lesson in 2016 and she hopes he has another chance. He continued to offend and has been jailed twice since then.

90. Mr Ahmed said this is his last chance. His first chance was in 2011 when his previous appeal was allowed and he received a warning letter. He treated that with contempt as shown by the offending behaviour that led to his prison sentence on 28 February 2014. He then received a liability to deport notice on 27 October 2014. He treated that with contempt as shown by the offending behaviour that led to his prison sentence on 31 July 2018. Despite knowing the Respondent's intentions he treated that with contempt as shown by the offending behaviour that led to his prison sentence on 18 January 2021. The submission that he was a lost young man may have been appropriate to the offences that led up to him being jailed when he was 18, and even possibly 21. It carries less much weight to when he was 24. It is plainly nonsense when he was 29 and 31.

(xvi) The Judge finds the suggestion Mr D is integrated into the UK "simply risible" as was the submission made on his behalf by Mr Ahmed that he has been very silly which did not do justice to the 15 years of serious criminality with multiple imprisonments. The Judge finds a submission he has not offended since December 2020 ignored the fact he was in jail until 19 December 2022. The Judge finds no evidential basis in the submission Mr D is a changed man who had finally acquired insight and was genuinely remorseful. The Judge finds the public interest in deporting Mr D is extremely high given the number of jail sentences and length of sentences, the nature of the crimes of violence, drugs, and dishonesty, continued nature of the criminality, and the number of times he is being given chances to mend his ways [91].

(xvii) When considering the impact upon family members the Judge writes:

92. Mr Ahmed submitted that Mr D has been a bad partner and put Miss C and R through hell. I have not accepted they were partners from 2014 until December 2022. He has indeed put them through hell and was a dreadful father given his lifestyle choice and the consequences of that. They are plainly victims of his behaviour. I accept Mr Ahmed's submission that R has been damaged by that behaviour. It would plainly be absurd to perpetuate that and put A in the same position. Despite the short term distress Miss C and R may feel if Mr D is removed, I am satisfied that her close loving family, and the professionals at school and in the community will be able to assist them come to terms with the separation and provide such practical support as Miss C may need. I have already noted that R is nearly 16, and once he is 18 can visit Zimbabwe if he wishes. The 2 years or so separation is entirely in keeping with the similar lengths they have been separated when Mr D has been in jail. I do of course accept that A is in a different position as she is only 9 weeks old. It will be many years before she can see her father. That is the natural consequence of his behaviour. I do not accept it is in R or A's best interest for Mr D to be a part of their lives given the 16 years of chaos he has caused through his lifestyle choice of criminality. A can be made aware of him and the reason for the separation in due course in an age appropriate manner.

93. Taking all this into account I am not therefore satisfied it would be unduly harsh on Miss C, R or A if Mr D is deported. They can get on with their lives in a more stable and less chaotic environment and receive such support as is required.

(xviii) The Judge does not find very significant obstacles to Mr D reintegrating back into life in Zimbabwe for the reason stated at [94].

(xix) In summary, at [95] the Judge writes:

> 95. Having considered all the various factors, I am satisfied that the decision to deport Mr D is proportionate to the identified aims for the reasons I have given throughout the Determination section of this decision which I will not simply repeat. His right to respect for his family and private life is extremely heavily outweighed in this case by the need to protect the public from his likely very serious continued criminality and to deter others from committing similar crimes. There are no very compelling circumstances over and above those described in part 13 of the rules.

5. Mr D sought permission to appeal asserting the Judge had erred in law on the basis:

a) The FTT erred in law in its approach to the Appellant's case when assessing whether the Appellant's deportation would be a breach of his significant strong private life that he had established in the UK for over 18 years and his family life with his British partner and his two minor British children.

b) The FTT failed to properly balance all relevant factors when dismissing the Appellant's appeal.

c) Failed to properly balance the public interest in deportation against the impact on his private life/family life and section 55 BCIA 2009.

d) **The FTT failed to give proper weight adequately or at all to the expert report of Dr Saima Latif dated 27th February 2024 in regards to the impact that the Appellant's removal would have on the Appellant's eldest child- (she took the professional opinion that his deportation would impact on his mental health and it was not in his best interests to deport the Appellant father).**

e) Gave more weight to the question of public interest and less weight to the Appellant's private life/family life and exceptional/very compelling features in his case.

f) Gave insufficient/inadequate reasons in dismissing the Appellant's appeal.

g) Gave insufficient reasons why the Appellant's article 8 claim was not sufficiently strong to outweigh the public interest.

h) Failed to give any proper reasons why this case did not satisfy the very significant obstacles test.

i) Failed to properly take into account material matters or took into account immaterial matters.

6. Permission to appeal was granted by another judge of the First-tier Tribunal on 9 October 2024, the operative part of the grant being in the following terms:

> 2. The grounds are for the most part a generalised complaint about the weight given by the judge to aspects of the evidence. There is however a complaint about the approach taken to the Appellant's family life and the approach to Section 117 of the Nationality Immigration and Asylum Act 2002, and a complaint at paragraph 17 of the failure to explain why deportation would not be unduly harsh for the partner or children.

3. The Appellant is accepted to have a genuine and subsisting relationship with a British partner and two British children. There is nothing in the decision which could be read as directly engaging with Exception 2 under Section 117C (5) of the 2002 Act.

4. Whilst the grounds skirt around the very adverse credibility findings made in respect of the Appellant and his appalling record, and flaws in the approach taken by the expert I am just persuaded that the grounds as a whole are arguable.

5. Permission to appeal is granted on all grounds.

7. There is no Rule 24 response from the Secretary of State.

Discussion and analysis

8. In determining this appeal we have had regard to the guidance provided by the Court of Appeal in Volpi v Volpi [2022] EWCA Civ 462 at [2], Ullah v Secretary of State for the Home Department [2024] EWCA Civ 201 at [26], and Hamilton v Barrow and Others [2024] EWCA Civ 888 at [30-31].
9. There is no merit in the submission the Judge erred in law in relation to the question of whether he considered the evidence. It is important that the determination is read as a whole and when one does it is clear the Judge considered all the evidence with the required degree of anxious scrutiny and has made findings that are supported by adequate reasons. Reasons only need to be adequate, not perfect.
10. There is no merit in the challenge to the weight the Judge gave to the evidence as weight was a matter for the Judge. The Judge explains why he gave the weight he did to the evidence, individually and cumulatively, which has not been shown to be perverse or irrational.
11. There is specific reference to the weight the Judge gave the report of Dr Latif. It is not made out the Judge's findings in this respect were not reasonably open to the Judge. The Judge identifies a number of shortfalls in the report and a failure by Dr Latif to factor material aspects of the case into the assessment. These are the factors that were considered by the Judge.
12. We also find the Appellant fails to establish material legal error on the basis of his disagreement with the findings of the Judge. The question is not whether the Appellant likes or agrees with the outcome but whether the outcome is legally sound. We find it is.
13. We find no merit in the claim the Judge failed to balance all relevant factors when considering Article 8 ECHR or the impact upon any child pursuant to section 55 Borders, Citizenship and Immigration Act 2009. A reading of the determination shows the Judge clearly did.
14. The Judge was aware of the relevant applicable legal principles. As confirmed by the Court of Appeal in the guidance above, First-tier Tribunal judges are accepted as being experts in the field of immigration and asylum law, which includes deportation cases.
15. Section 117 (c) Nationality, Immigration and Asylum Act 2002, which it is claimed the Judge failed to consider, reads:

117CArticle 8: additional considerations in cases involving foreign criminals

(1) The deportation of foreign criminals is in the public interest.
(2) The more serious the offence committed by a foreign criminal, the greater is the public interest in deportation of the criminal.

(3) In the case of a foreign criminal ("C") who has not been sentenced to a period of imprisonment of four years or more, the public interest requires C's deportation unless Exception 1 or Exception 2 applies.
(4) Exception 1 applies where—
(a) C has been lawfully resident in the United Kingdom for most of C's life,
(b) C is socially and culturally integrated in the United Kingdom, and
(c) there would be very significant obstacles to C's integration into the country to which C is proposed to be deported.
(5) Exception 2 applies where C has a genuine and subsisting relationship with a qualifying partner, or a genuine and subsisting parental relationship with a qualifying child, and the effect of C's deportation on the partner or child would be unduly harsh.
(6) In the case of a foreign criminal who has been sentenced to a period of imprisonment of at least four years, the public interest requires deportation unless there are very compelling circumstances, over and above those described in Exceptions 1 and 2.
(7) The considerations in subsections (1) to (6) are to be taken into account where a court or tribunal is considering a decision to deport a foreign criminal only to the extent that the reason for the decision was the offence or offences for which the criminal has been convicted.

16. The Appellant relied on the two exceptions. Exception 1, section 117 C (4) is not satisfied as the Judge finds there will be no very significant obstacles to the Appellant's integration into Zimbabwe, which is a sustainable finding within the range of those reasonably open to the Judge on the evidence.
17. Exception 2, section 117C(5) requires an individual to prove there is a genuine subsisting relationship with a qualifying partner or a genuine subsisting parental relationship with a qualifying child, which the Judge makes clear findings upon, and that the effect of the Appellant's deportation on the partner and/or child will be unduly harsh.
18. The Judge clearly finds it will not be unduly harsh and the claim he gives no reasons is without merit. For example, at [92] the Judge specifically finds "*I do not accept it is in R or A's best interests for Mr D to be a part of their lives given the 16 years of chaos he has caused to his lifestyle choice of criminality*." At [93] the Judge specifically finds having taken all the previous findings into account, not being satisfied it would be unduly harsh on Miss C, R or A if Mr D is deported. That is a finding within the range of those reasonably open to the Judge on the evidence.
19. The Judge's conclusions have not been shown by our analysis to be wrong, nor can they be said to be contrary to the weight of the evidence. The Judge was uniquely placed to assess credibility, demeanour, themes in evidence, perceived cultural imperatives, family interactions and relationships. We find this to be a thorough and well-structured judgment which more than adequately explains how and why the Judge came to his ultimate conclusions, and that those conclusions are supported by the evidence.
20. We find the Appellant has not established the Judge has materially erred in law. The Appellant fails to establish any material legal error in the determination which has not been shown to be rationally objectionable.

Notice of Decision

21. There is no material legal error in the decision of the First-tier Tribunal. The determination shall stand.

C J Hanson

Judge of the Upper Tribunal
Immigration and Asylum Chamber

21 January 2025