Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: DA/02570/2013

Heard at Nottingham Magistrates Court on 28th November 2014

Determination Promulgated on 10th December 2014

THE IMMIGRATION ACTS

Before

UPPER TRIBUNAL JUDGE HANSON
UPPER TRIBUNAL JUDGE REEDS

Between
AJMAL MOHAMMED
(Anonymity direction not made)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellant: Mr Sarwar instructed by M A Consultants (Blackburn).
For the Respondent: Mrs Johnson – Senior Home Office Presenting Officer.

DETERMINATION AND REASONS

1. This is an appeal against a determination of a panel of the First-tier Tribunal (hereinafter referred to as 'the Panel') composed of First-tier Tribunal Judge North and Ms J Endersby who, in a determination promulgated on the 8th April 2014, dismissed the Appellants appeal against the order for his deportation from the United Kingdom.

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Background

2. The Appellant was born on the 10th October 1967 and is a national of Pakistan. His immigration history and that of his wife and other family members is set out at paragraph 1 of the determination under challenge.

3. The Appellant is the subject of a deportation order as a result of his conviction on 3rd December 2007 at Preston Crown court of rape of a female under 16; sexual assault on a female by penetration; sexual activity with a female child under 16; and sexual assault on a female. On 13th February 2008 he was sentenced to five indeterminate sentences of imprisonment for public protection, each with a separate minimum term of five years and six months.

4. Relevant parts of the sentencing remarks of HHJ Slinger QC are as follows:

> "You come before this court today to be sentenced in relation to five charges and five convictions arising from an incident on the night of the 15th and 16th February last year involving offences under the sexual offences Act 2003 in relation to a young girl then aged fourteen years of age. The charges are of committing an offence with intent to commit a sexual offence. That is taking her out of the control of her parents intending to commit a sexual offence. Secondly, rape. Thirdly, assault by penetration indulging in sexual activity with that young girl, and finally, a matter to which you pleaded guilty, a sexual assault upon her.
>
> You had pleaded not guilty to those charges, the four charges, and although during the course of your evidence before the court you made certain admissions, and although at the first opportunity before the court, once the reality of what you had done had been shown by that fifty-one second clip, you pleaded guilty to one matter, the general position was that you denied these offences. And this fourteen-your-old girl had to go through the trauma and stress of waiting for a trial and then giving evidence. Finally, having denied it all along, you now admit that all that was said about you and what you have done was true.
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> …….
>
> The background to this case is that whilst driving through Accrington you saw this young girl and her friend, who was older, by a bus stop. You effectively picked them up. Within a very short time you began a sexual relationship with the friend, there was noting illegal about that, although it might have some relevance when I consider the testimonials as to your character. There was nothing illegal. But in carrying out that relationship you were in regular contact with [DH]. You well knew how old she was. You knew she was only fourteen years of age.

In February of last year, by which time you had known them for some months, there was a suggestion that you, the former girlfriend [NB], and her then lover your friend Mr Hussain and [DH] should all go off to Blackpool to stay overnight together. There was evidence before the court which I accept that you were a moving spirit in that decision; that you specifically asked [DH] to come, and you well knew that the other two would be together; you intended to stay the night with her.

You were the driver of the vehicle it was your car in which you went. You went particularly to pick up alcohol from a stash which you kept at someone else's house so that your family would not know about your drinking habits. You encouraged the other three in their heavy drinking on the way, and you were well aware that this fourteen-year old girl was completely drunk and incapable of making rational decisions when you got her into that hotel. I shall not go into the precise details of what you did to her and what you videoed yourself doing, but you penetrated her in a number of ways. You put yourself against her and you raped her. The rape took place when she was barely conscious, but objected. After she tried to get help from her friend, and nobody comes out of this episode with any credit whatsoever, after she tried to get help from a friend and your friend she was left stranded still in this hotel. You again went to a bedroom with her and committed further sexual activities.

This is a most serious case. You must, however it is dealt with, go into custody for a very substantial period. Mr Andrews has said all that can be said on your behalf, he acknowledges that this case contains almost every aggravating feature so far as a case of this kind is concerned. You knew she should have been at home with her mother you took her away you foisted alcohol upon her. You did this when she was unable physically to resist because of that drink. She was young. You filmed her whilst you did it and you were something like twenty over twenty years older than she, and we now find, which was not a matter before the jury, that in fact you knew you suffered from an illness which could lead to a serious infection in this young girl. Unprotected sex. Knowing the dangers to her. And the stress upon her must have been considerably enhanced when she found out about that and had to wait for the results of the tests. We have heard of the effect on this young woman. Any person who is raped will suffer trauma and damage. She, we know, took an overdose within a matter of days of this happening, and it was though that that what happened came to light.

.....

Taking them in the order that I have got them: for committing an offence with intent to commit a sexual offence you will go to prison for you would on a determinate sentence, you would on a determinate sentence, go to prison for four years; for rape, with all those aggravating features, a proper sentence would be eleven years; for the assault by penetration six years; sexual activity with the child, five years, and the sexual assault, to which you pleaded guilty, three

years. So the proper determinate sentence, to my view, would be eleven years in custody.

5. The Appellant relies upon the exception to be found in section 33 UK Borders Act 2007 that his removal pursuant to the deportation order will breach his rights under Article 8 ECHR.

6. The Panel considered the evidence made available to them. Their findings can be summarised as follows:

   i. The Appellant has two-step children Rabia Mehmood aged 19 and Hamid Mehmood aged 20. They are neither emotionally, financially or otherwise dependant upon the Appellant in any way that can be considered exceptional [6].

   ii. The Appellant has a genuine and subsisting relationship with his step-son Tayyab born in 1997 and his two sons Qasim and Abdul born in 2001 and 2004 respectively. He has maintained contact with them whilst he has been in prison. The children miss their father who visited them prior to his imprisonment following the separation from their mother. At that time, and since, the primary carer for the children was their mother. There is nothing persuasive to show their mother will not continue to be the primary carer with the support of her two adult children if required. The Appellant has not contributed to the financial support of the children or their mother since he was sentenced [7].

   iii. A degree of separation occurred within the family prior to the Appellants imprisonment. The Appellants removal from the United Kingdom will mean face to face contact is reduced but some contact can be maintained by other means [8].

   iv. Section 55 BCIA 2009 makes the best interests of the children a primary consideration. The report for Blackburn Childrens Services dated 20/12/12 has been considered. The impact of the Appellants conviction upon the children is noted. The difficulties faced by the children in adjusting to the Appellants detention are accepted. It was not clear that re-engagement with their father after his release would not require similar re-adjustment [8].

   v. The children’s mother has been offered support by local social services and it is not unreasonable to expect that she can obtain support in the future if required [9].

   vi. The Appellants removal will have little detrimental effect upon the best interests of the children who will remain in the United Kingdom in the sole care of their mother [10].

vii. The Appellant and his wife intended to live together after his release. The evidence was that they separated due to problems between his wife and members of her family and the Appellants family in Pakistan. The nature of such problems was not made clear. The Panel were not satisfied the Appellant and his wife would have separated merely as a result of differences between family in Pakistan had they been in a genuine and subsisting relationship. The relationship had broken down but recommenced during the Appellants imprisonment. If the Appellant is deported that will not cause significantly more interference with the relationship than has been caused by their voluntary separation and by the Appellants imprisonment [11].

viii. The Appellant entered the United Kingdom in 1999 aged 32. He spent fifteen years in the United Kingdom, only eight of which were outside prison. The skills the Appellant has acquired will be available to him in Pakistan [12].

ix. Although the index offence is his first conviction, the Appellant was cautioned for persistent soliciting in November 2008. The Sentencing Judge took into account that three years previously the Appellant had taken a different fourteen year old girl to a hotel room and plied her with alcohol as a result of which he had received a specific warning in respect of being involved with young girls. The Sentencing Judge also accepted evidence showing the Appellant had been in touch with other young girls, all of whom had been vulnerable and in the care of local authorities and whom the Appellant was aware were under the age of 16 and vulnerable. As a result the Panel were not satisfied the Appellant was involved in a productive and responsible life in the United Kingdom before his imprisonment [13].

x. The Appellant can re-adjust to life in Pakistan where he has maintained contact with his family. He has skills obtained through work in the United Kingdom. He has no significant illness or incapacities such as to make it unusually harsh for him to return to Pakistan. He has maintained an interest in Islam [14].

xi. The Panel agree with the assessment by the Parole Board issued on 26th January 2014 that the Appellant poses a higher risk of causing serious harm to children but low risk of violence or non violent offending and RM2000 indicates he poses a low risk of re-offending sexually or violently. The comments of the Parole Board regarding the structure of any release cannot be viewed in isolation from the real concerns of the Sentencing Judge and the fact the Appellant was cautioned in the past and ignored warning in respect of his contact with underage girls

prior to the offence for which he was convicted. Neither can be viewed without regard to the fact the Appellants removal is deemed by law to be conducive to the public good [15].

xii. The Respondents decision is proportionate [16]

7. Permission to appeal to the Upper Tribunal was sought on three grounds (a) the Panel erred in their assessment of Article 8, (b) the Panel erred in their assessment of the children's best interests pursuant to section 55, and, (c) the Panel erred in failing to give reasons. Permission was granted by another judge of the First-tier Tribunal on the basis that whilst given the many adverse matters affecting the Appellants conduct in the UK, such that he should not be unduly optimistic, all grounds may be argued.

Discussion

8. We find the Panel considered the written and oral evidence made available to them with the required degree of anxious scrutiny a case of this nature required as a reading of the determination amply demonstrates.

9. We also find the Panel set out the correct self direction in relation the applicable immigration rules in force at that time. Since 9th July 2012 the Secretary of State's interpretation of Article 8 has been set out in the Rules. In relation to deportation appeals this is to be found in 398, 399 and 399A, as was accepted at the hearing. These Rules are a complete code when assessing the proportionality of deportation. In MM (Lebanon) and others [2014] EWCA Civ 985 it was said that where the relevant group of Immigration Rules, upon their proper construction, provide a "complete code" for dealing with a person's Convention rights in the context of a particular Immigration Rules or statutory provision, such as in the case of "foreign criminals", then the balancing exercise and the way the various factors are to be taken into account in an individual case must be done in accordance with that code, although references to "exceptional circumstances" in the code will nonetheless entail a proportionality exercise.

10. It was conceded before the Panel that the Appellant is unable to meet the requirements of paragraphs 399 or 399A, which do not apply in any event as the Appellant was sentenced to more than four years imprisonment. It will only be in exceptional circumstances therefore that the public interest in deportation will be outweighed by other factors. Paragraph 398 states:

Deportation and Article 8

398. Where a person claims that their deportation would be contrary to the UK's obligations under Article 8 of the Human Rights Convention, and

(a) the deportation of the person from the UK is conducive to the public good because they have been convicted of an offence for which they have been sentenced to a period of imprisonment of at least 4 years;

(b) the deportation of the person from the UK is conducive to the public good because they have been convicted of an offence for which they have been sentenced to a period of imprisonment of less than 4 years but at least 12 months; or

(c) the deportation of the person from the UK is conducive to the public good because, in the view of the Secretary of State, their offending has caused serious harm or they are a persistent offender who shows a particular disregard for the law, the Secretary of State in assessing that claim will consider whether paragraph 399 or 399A applies and, if it does not, it will only be in exceptional circumstances that the public interest in deportation will be outweighed by other factors.

11. The term ‘exceptional circumstances has been considered in case law. In **Kabia (MF: para 298 - "exceptional circumstances") 2013 UKUT 00569 (IAC)** it was held: (iii) The new rules speak of "exceptional circumstances" but, as has been made clear by the Court of Appeal in MF (Nigeria), exceptionality is a likely characteristic of a claim that properly succeeds rather than a legal test to be met. In this context, "exceptional" means circumstances in which deportation would result in unjustifiably harsh consequences for the individual or their family such that a deportation would not be proportionate".

12. In McLarty (Deportation- balance) [2014] UKUT 00315 it was held that there can be little doubt that in enacting the UK Borders Act 2007 Parliament views the object of deporting those with a criminal record as a very strong policy, which is constant in all cases (SS (Nigeria) v SSHD [2013] EWCA Civ 550). The weight to be attached to that object will, however, include a variable component, which reflects the criminality in issue. Nevertheless, Parliament has tilted the scales strongly in favour of deportation and for them to return to the level and then swing in favour of a criminal opposing deportation there must be compelling reasons, which must be exceptional; (ii) What amounts to compelling reasons or exceptional circumstances is very much fact dependent but must necessarily be seen in the context of the articulated will of Parliament in favour of deportation; (iii) Where the facts surrounding an individual who has committed a crime are said to be "exceptional" or "compelling", these are factors to be placed in the weighing scale, in order to be weighed against the public interest; (iv) In some other instances, the phrase "exceptional" or "compelling" has been used to describe the end result: namely, that the position of the individual is "exceptional" or "compelling" because, having weighed the unusual facts against the (powerful)

public interest, the former outweighs the latter. In this sense “exceptional” or “compelling” is the end result of the proportionality weighing process.

13. An example of the application of this element has been recently given by the Court of Appeal in LC (China) [2014] EWCA Civ 1310. In that case the Appellant had been here since 2002, he had 2 children with British citizenship and he was sentenced to two terms of 5 years for serious robberies. It was held that where a person is sentenced to a term of 4 years or more, the weight to be attached to the public interest in deportation remains very great and the fact that children have British nationality and would be separated from their father for a long time, was insufficient to constitute exceptional circumstances, of a kind which would outweigh the public interest in deportation.

14. In ZZ (Tanzania) v Secretary of State for the Home Department [2014] EWCA Civ 1404 the Court summarized relevant case law as follows:

> 21. In *OH (Serbia) v Secretary of State for the Home Department* [2008] EWCA Civ 694 the Court of Appeal summarised the propositions of law arising in this type of deportation case:
>
> "(a) The risk of reoffending is one facet of the public interest but, in the case of very serious crimes, not the most important facet.
>
> (b) Another important facet is the need to deter foreign nationals from committing serious crimes by leading them to understand that, whatever the other circumstances, one consequence of them may well be deportation.
>
> (c) A further important facet is the role of a deportation order as an expression of society's revulsion at serious crimes and in building public confidence in the treatment of foreign citizens who have committed serious crimes.
>
> (d) Primary responsibility for the public interest, whose view of it is likely to be wider and better informed than that of a tribunal, resides in the respondent, and accordingly a tribunal hearing an appeal against a decision to deport should not only consider for itself all the facets of the public interest but should weigh, as a linked but independent feature, the approach to them adopted by the respondent in the context of the facts of the case.".
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> 22. In *MF (Nigeria) v Secretary of State for the Home Department* [2014] 1 WLR 544 Lord Dyson MR, giving the judgment of this court, said that:
>
> > "43. The word "exceptional" is often used to denote a departure from a general rule. The general rule in the present context is that, in the case of a foreign prisoner to whom paras 399 and 399A do not apply, very compelling reasons will be required to

> outweigh the public interest in deportation. These compelling reasons are the "exceptional circumstances".
>
> "44. We would, therefore, hold that the new rules are a complete code and that the exceptional circumstances to be considered in the balancing exercise involve the application of a proportionality test as required by the Strasbourg jurisprudence."

23. *SS (Nigeria) v Secretary of State for the Home Dept* [2013] EWCA Civ 550 considered the interrelation between the interests of the public in effecting the foreign criminal's deportation and the interests of his child or children. Laws LJ said:

> "43 I will next describe two characteristics, one positive, the other negative, which the learning shows apply in Article 8 cases involving children. The first is that the interests of the child or children are a primary consideration. The second (which applies to all removal cases, whether or not there are children) is that there is no rule of "exceptionality": that is, there is no class of case where the law stipulates that an exceptional Article 8 case must be shown in some situations but need not be in others........
>
> "54......while the authorities demonstrate that there is no rule of exceptionality for Article 8, they also clearly show that the more pressing the public interest in removal or deportation, the stronger must be the claim under Article 8 if it is to prevail. The pressing nature of the public interest here is vividly informed by the fact that by Parliament's express declaration the public interest is injured if the criminal's deportation is not effected. Such a result could in my judgment only be justified by a very strong claim indeed."

24. *SE (Zimbabwe) v Secretary of State for the Home Department* [2014] EWCA Civ 256 again considered the balance to be struck between the interests of the State in deporting foreign criminals and the interests of those criminals and/or their families. The court confirmed that where someone has been convicted of a very serious crime, the need to deter and the need to express society's revulsion at such criminality are even more important factors to be taken into account than the risk of reoffending. The harm to the public that would result if deportation were not effected includes the failure to deter other potential foreign criminals.

25. The most recent relevant decision of this court, given on 9 October 2014, is *LC (China) v Secretary of State for the Home Department* [2014] EWCA Civ 1310. In that case the appellant had been sentenced to five years' imprisonment for burglary. His Article 8 claim relied on his relationships with his partner who had indefinite leave to remain in the UK and their two children who were British citizens. This court found that there were no exceptional, nor very compelling, circumstances and that it was proportionate to deport the appellant given the seriousness of his offending. Moore-Bick LJ emphasised at

> [24] that "the public interest in deporting foreign criminals is so great that only in exceptional circumstances will it be outweighed by other factors, including the effect of deportation on any children".

15. We have also reminded ourselves of the reported determination of VHR (unmeritorious grounds) Jamaica [2014] UKUT 367 (IAC) in which it was found that appeals should not be mounted on the basis of a litany of forensic criticisms of particular findings of the First Tier Tribunal, whilst ignoring the basic legal test which the appellant has to meet.

16. Grounds 1 does not specifically address the existence of exceptional circumstances but contains a criticism of the Panel's consideration of the evidence relating to the private life of the young adults and others and an assertion the Panel erred in their assessment of the Appellant's wife's family and private life. The witness statement of Hamid Mehmood, aged 20 at the date of the hearing, contains the following statement:

> 2. When my father went to prison, things became very difficult for my family. I had to give up on socialising with my friends, and in effect I took on the role of a father. I was a babysitter, father, but also providing comfort for my mother. I was about 12 years old at the time. Even little things like my father helping with homework was no longer available.
>
> 3. After my father went to prison, I would attend parent's evenings for the other children.

17. The evidence before the Panel appears to have been that as a result of the Appellant's conviction and sentence it was necessary for the family to reassess the way they lived and for adjustments to be made. The Panel, in paragraph 6 of the determination, confirm they have taken both the written and oral evidence of Hamid and his sibling Rabia, then aged 19, into account. The conclusion of the skeleton argument relied upon by Mr Sarwar before the Panel was to the effect that the children should not be denied an opportunity to live with their father in the United Kingdom which appears on the face of it to be a family life argument although family relationships can be both elements of family and private life. We do not find it established that the Panel did not take this evidence into account. When Mr Sarwar was asked whether there was any evidence that the disruption to other family members constituted exceptional circumstances he conceded that it was not a strong point. We find the material was considered and that it has not been established that the conclusion that exceptional circumstances were not made out has been shown to be tainted by legal error on the basis of this evidence.

18. In relation to the conclusion of the Panel relating to the Appellant's wife, at paragraph 11, that if the Appellant is deported it will not

cause significantly more interference with their relationship than that which has been caused by their voluntary separation by the Appellant's imprisonment, there may be an argument that the Panel have erred. The Panel refer to the fact the Appellant and his wife separated prior to his arrest and imprisonment but accept in paragraph 11 that they maintained contact during his imprisonment and that they have recommenced their relationship. It is not found that family life recognised by Article 8 does not exist between this married couple and so one element the Panel were required to consider was the impact on the future positive development of the relationship. It is possible to interpret paragraph 11 as being an assessment based upon the history of the relationship rather than an examination of the impact of separation following reconciliation. Even if such an interpretation could be put upon this finding, we find it has not been established that any error material to the decision has been made. The Panel record the history of the relationship, and it has not been shown any material aspects of the evidence were omitted, but did not find that the rights of the Appellant and family members under Article 8 in respect of both family and private life tipped the balance in favour of the Appellant. It has not been shown that the consequences of separation would have such an impact upon the Appellant’s wife other than the normal emotional and practical impact that may occur on separation. It has not been established that there will be any resultant exceptional circumstances or consequences.

19. Paragraph 14 of the determination is challenged on the basis that when considering the Appellant's return to Pakistan the Panel found "the Appellant does not have any significant illness or incapacities which would make it and usually harsh him to return to Pakistan.” We find no arguable legal error material to the decision in this submission. Whilst the phrase ‘usually harsh’ does not appear in any authorities, the term ‘unduly harsh’ or ‘reasonable in all the circumstances’ does. It is clear that the Panel were analysing the Appellant's connections to Pakistan, which include extended family members, his ability to readjust to life there on his return including ability to obtain employment, and the lack of any illnesses or incapacities that would create difficulties for him on return. The clear finding of the Panel is that it had not been established that any such obstacle to return exists. The Upper Tribunal accepts there may be practical difficulties in relocation but it has not been established on the evidence that the consequences for the Applicant on return cross the exceptional circumstances threshold. It was accepted before the Upper Tribunal that it could not be submitted that the available material showed that the consequences of removal would result in such exceptionality.

20. In relation to the section 55 ground, this asserts that the Panel misdirected themselves in reaching their conclusions regarding the impact upon the children and failed to take into account the written

and oral evidence of the children in making their assessment. Paragraphs 13 and 14 of the pleaded grounds were withdrawn as the cases quoted therein are not deportation cases. In relation to this matter, Mr Sarwar was asked what finding he believes the Panel should have made which he stated was that it was in the children's best interests to live with their mother and father in the family home. Even if the evidence had supported such a finding the difficulty for the Appellant is that the best interests of the children are not the determinative factor. The children's situation is examined in detail in paragraphs 8, 9, and 10 of the determination. The minor children at the date of the hearing were 12, 13 and 16. The Panel correctly directed themselves to the fact that section 55 Borders Citizenship and Immigration Act 2009 makes the best interests of the children a primary consideration. The Panel took into account all the available material, including the report from Blackburn Children's Services received by the Secretary of State on 20th December 2012.

21. The material indicates there had been referrals to the Children's Services which were investigated but that it was not deemed necessary to take any further action. The Panel's findings are that the children's mother was the primary carer and that she could rely on the support of her adult children in the Appellant's absence. Whilst that latter finding is challenged before us the only evidence before the Panel was of difficulties and inconvenience in the adult children having to rearrange their lifestyle to assist their mother, not that they would abandon her if she requires help and assistance. On the available material we do not find that the statement by the Panel that the children's mother could rely on the support of her adult children in the Appellant's absence is infected by any legal error material to the decision. In any event, the Panel also noted that the mother had been offered support by the local Social Services department and that it was not unreasonable to expect that she could obtain support in the future if needed. It is of note that notwithstanding the referrals to social services there has been no statutory intervention or attempt to seek a care order or to remove the children, indicating that even though the Appellant is not in the family home Social Services are satisfied that the children are receiving an appropriate standard of care and parenting above the threshold for intervention. It was conceded before the Upper Tribunal that there was no up-to-date independent evidence produced by the Appellant to show otherwise. Even if the finding should have been that the children's best interests are served by living in a two-parent household it has not been shown that this would have been the determinative factor, especially in light of the other evidence indicating that even if released the Appellant would not be allowed to return to the family home as a result of the risk he poses to the public. It has not been shown that the impact upon the children of removing their father would have consequences such as to enable it to be found that exceptional circumstances exist.

22. The grounds also contain a 'reasons' challenge but we find this has no arguable merit. A reader of the determination can understand clearly why the Appellant lost his appeal. Although in paragraph 5 the Panel state that the tribunal was required to consider whether of it will be proportionate under Article 8 to remove the Appellant rather than referring to the requirement for exceptional circumstances, that term in itself indicates a proportionality assessment has to be undertaken. Whatever label is given to it, this is precisely what the Panel did. They noted the serious nature of the Appellant's offending, the findings that have been made by the sentencing judge in relation to the risk the Appellant poses to those within the United Kingdom, the legitimate aim relied upon by the Secretary of State which in this case contains a significant deterrent element, and weighed that against all the evidence they had been asked to consider, before concluding that the decision to deport was proportionate to the legitimate aim pursued by the respondent.

23. In relation to the element of risk, the Panel properly noted the material relied upon by the Appellant in paragraph 15 of the determination from the Parole Board which was an assessment not made in relation to an application to be released, together with the sentencing judges finding's which are as follows:

> I now have to consider whether I find you to be dangerous for the purposes of the Act, the criminal Justice act of 2003, whether there must be imprisonment for public protection. Firstly, so far as the rape is concerned, although life is the maximum, I do not consider that this matter is sufficiently serious to justify a life sentence I should say that. In considering whether there is a significant risk of serious harm from further offences, I take into account all that I know about this case and what you did and the circumstances in which you did it and the background leading up to it. I also know, as did the jury, that some three years earlier, whilst a taxi driver, you had struck up a friendship with a foster-mother in charge of a 13 year old girl. On that girls fourteenth birthday you took her to Manchester, you booked a room overnight for the two of you and you plied her with alcohol. There was no evidence of any sexual activity you were not prosecuted for that and this court does not deal with you on the basis that there was sexual activity or any evidence of intention to have sexual activity.
>
> Nonetheless, you had taken a young child to a hotel in a city, a dangerous city, overnight and plied her with alcohol. You received a specific warning which although I referred particularly to [JB] by name nevertheless made it clear to you the sort of criminal offences which could be involved in becoming involved with the young girls. There is now before the court evidence which is accepted that you have, in fact, been in touch with other young girls all of whom have been vulnerable and in the care of local authorities; three of them you were friendly with their foster-mother and her husband. So you were well aware, with these youngsters, that they were vulnerable, they were young, they were under sixteen and were in the care of the local

> authorities. There is evidence with regard to two of them at least that your contact with them took place after the warnings about [JB]. Their mobile telephone numbers were found in the mobile phone the address book found on your mobile phone, and there is evidence of texting between you.
>
> So far as one of these girls is concerned, you were in direct contact with her son two days after you had raped [DH]. I deal with you, as I must, on the basis that there is no evidence that you had any sexual activity with any of them; that there is no evidence that you suggested sexual activity to them. Nonetheless, having regard to the warnings, of which you know, having regard to the contact you are making at around that time with the girl who you raped, it seems to me inevitable that where we have vulnerable young girls that they are in real danger from you, a man some twenty years or more older attempting regularly to be in touch with them. In my view, there is a significant a very real risk from you towards young girls and that, as shown by the case for which you are being sentenced, that can lead to serious harm to these young girls. There is then, in my view, a significant serious risk of serious harm to others from the commission of further such offences.

24. The sentence imposed upon the Appellant was therefore one of imprisonment for public protection.

25. We also refer at this stage to an entry to be found in the Pre-Sentence Report, at paragraph 4, where the author of that document records:

> Mr Mohammed has committed five extremely serious sexual offences against a very vulnerable girl, of 14 years. He claims that he only decided to commit these offences when he saw the girl was in an alcohol induced sleep. However, in my assessment and in analyse of events leading up to the offences (i.e. befriending the girl by her friend over a period of time/allowing the girl to drink a large quantity of alcohol/going to a hotel/booking a room etc) there is much evidence to suggest there was a high level of grooming/premeditation - which only adds to the seriousness of these matters. The psychological damage caused to the victim of these offences, in my assessment, is likely to be permanent - that he filmed himself whilst carrying out these acts adds to the callousness of his behaviour and demonstrates that he has extremely distorted sexual thinking patterns. In interview he was given an opportunity to speak about the consequences of his behaviour but rather than focus on the direct victim, he spoke instead about the shame he had brought on himself and his own family.

26. It is relevant when assessing proportionality and balancing the Respondent's case against the issues relied upon by an Appellant to take into account the nature and seriousness of the offence. In light of the nature of this offence, which the sentencing judge found contained a number of aggravating factors, and the public revulsion and need to deter others from offences of a similar nature, the conclusion that the issues relied upon did not make it a case in which

a finding should have been made in the Appellant's favour is, in reality, the only finding the Panel could have properly made in relation to this matter. We conclude by finding it has not been shown that the Panel have erred in law in a way material to their decision to dismiss the appeal.

Decision

27. **There is no material error of law in the First-tier Panels decision. The determination shall stand.**

Anonymity.

28. The First-tier Tribunal did not make an order pursuant to rule 45(4)(i) of the Asylum and Immigration Tribunal (Procedure) Rules 2005. The Upper Tribunal make that order pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008 but only in respect of the naming of the Appellant’s victims.

Signed...
Judge of the Upper Tribunal

Dated the 28th November 2014