Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: DA/01054/2014

THE IMMIGRATION ACTS

Heard at Newport (Columbus House)	**Decision & Reasons Promulgated**
On 19 July 2016	**On 28 July 2016**

Before

UPPER TRIBUNAL JUDGE GRUBB

Between

K G A
(ANONYMITY DIRECTION MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr S Khan instructed by CASA UK, Solicitors
For the Respondent: Mr I Richards, Home Office Presenting Officer

DECISION AND REASONS

1. The anonymity order imposed in my decision sent on 26 May 2016 remains in force.

Introduction

2. The appellant is a citizen of the Cameroon who was born on [ ] 1976. He entered the United Kingdom on 16 June 2010 with leave as the spouse of a

British citizen ("M") whom he had married in Venice on 31 October 2008. On 10 September 2012, the appellant was granted indefinite leave to remain as a spouse.

3. On 18 February 2014, the appellant was convicted at the Blackfriars Crown Court, after a trial, of the offence of "possession of a false identity document with intent". He was sentenced to a period of fifteen months' imprisonment.

4. On 11 March 2014, the appellant was served with a notice of his liability to automatic deportation under the provisions of the UK Borders Act 2007 (the "2007 Act"). In response, representations were made by the appellant that he should not be deported because to do so would breach Art 8 of the ECHR. In particular, the appellant relied upon his relationship with his wife and her children and grandchild.

5. On 3 June 2014, the Secretary of State rejected the appellant's representations and made a decision that s.32(5) of the 2007 Act applied because the appellant's deportation would not breach Art 8.

The Appeal

6. The appellant appealed to the First-tier Tribunal. In a determination promulgated on 15 May 2015, Judge I Ross dismissed the appellant's appeal. The judge found that the appellant could not succeed under the Immigration Rules (HC 395 as amended), in particular para 399(b) on the basis of his "genuine and subsisting relationship" with his wife (which the judge accepted existed) because he concluded that the appellant's deportation would not be "unduly harsh" either for the appellant's wife or for the appellant and that there were not "very compelling circumstances over and above those described in paragraphs 399 or 399A" to outweigh the public interest in deportation. The judge also found that Exceptions 1 and 2 set out in s.117C(4) and (5) of the Nationality, Immigration and Asylum Act (the "NIA Act 2002") did not apply.

7. The appellant appealed to the Upper Tribunal against that decision on the basis that the judge had failed properly to consider the issue of whether his deportation would be "unduly harsh".

8. Permission to appeal was initially refused by the FtT but was granted by the Upper Tribunal (UTJ Blum) on 4 August 2015.

9. The appeal initially came before me on 17 May 2016. In a decision dated 26 May 2016, I concluded that the First-tier Tribunal Judge had erred in law and set aside his decision. The appeal was adjourned to be listed for a resumed hearing in order to remake the decision in respect of Art 8.

10. That resumed hearing was listed before me on 19 July 2016.

The Resumed Hearing

11. Neither the appellant nor his wife attended the resumed hearing. Following enquiries, Mr Khan, who represented the appellant, informed me that the appellant was providing support to his niece who was receiving medical treatment and neither he nor his wife would be attending the hearing. His instructions were to proceed with the hearing on the basis of submissions only in the absence of the appellant.

12. I note that the appellant did not attend the previous Upper Tribunal hearing although he and his wife did attend the First-tier Tribunal hearing. In the circumstances, I considered it proper to proceed with the hearing, on the basis proposed by Mr Khan on behalf of the appellant, in the interests of justice.

The Applicable Law

13. The appellant relies upon Art 8 of the ECHR. He is a "foreign criminal" falling within para 398 of the Immigration Rules (HC 395 as amended) and s.117D(2) of the NIA Act 2002 as a result of being sentenced to a period of imprisonment of at least twelve months.

14. It is clear from a consistent series of decisions of the Court of Appeal that the Rules (in particular paras 398-399A) read with Part 5A of the NIA Act 2002 (in particular s.117C) create a "complete code" for determining, in deportation cases, whether a decision breaches Art 8 (see MF (Nigeria) v SSHD [2013] EWCA Civ 1192; LC (China) v SSHD [2014] EWCA Civ 1310; SSHD v AJ (Angola) [2014] EWCA Civ 1636 and NA (Pakistan) and Others v SSHD [2016] EWCA Civ 662).

15. As a "foreign criminal" falling within s.32 of the 2007 Act, the appellant is subject to the automatic deportation provision in that Act. As a consequence, his deportation is "conducive to the public good" (see s.32(4)) and the Secretary of State is required to make a deportation order unless the individual falls within one of the exceptions set out in s.33 of the 2007 Act. In this appeal, the appellant claims to fall within Exception 1 in s.32(2)(a) of the 2007 Act, namely that his deportation would breach Art 8 of the ECHR.

16. As applicable to the appellant, para 398 of the Rules provides as follows:

> "Where a person claims that their deportation would be contrary to the UK's obligations under Article 8 of the Human Rights Convention, and
>
> .... (b) the deportation of the person from the UK is conducive to the public good and in the public interest because they have been convicted of an offence for which they have been sentenced to a period of imprisonment of less than four years but at least twelve months;
>
> .... the Secretary of State in assessing the claim will consider whether paragraph 399 or 399A applies and, if it does not, the public interest in deportation will only be outweighed by other factors where there are very compelling circumstances over and above those described in paragraphs 399 and 399A."

17. In this appeal, the appellant does not rely upon para 399A which addresses any claim based upon the appellant's private life. He cannot satisfy the requirement in 399A(a) that he has been "lawfully resident in the UK for most of his life".

18. Instead, the appellant relies upon para 399(b) which addresses the appellant's claim based upon his relationship with his wife. So far as relevant, para 399(b) provides as follows:

> "This paragraph applies where paragraph 398(b) or (c) applies if –
>
> …. (b) the person has a genuine and subsisting relationship with a partner who is in the UK and is a British citizen or settled in the UK, and
>
> (i) the relationship was formed at a time when the person (deportee) was in the UK lawfully and their immigration status was not precarious; and
>
> (ii) it would be unduly harsh for that partner to live in the country to which the person is to be deported, because of compelling circumstances over and above those described in paragraph EX.2. of Appendix FM; and
>
> (iii) it would be unduly harsh for that partner to remain in the UK without the person who is to be deported."

19. Paragraph EX.2. of Appendix FM which is relevant when considering para 399(b)(ii) provides that:

> "'Insurmountable obstacles' means the very significant difficulties which would be faced by the applicant or their partner in continuing their family life together outside the UK and which could not be overcome or would entail very serious hardship for the applicant or their partner."

20. Mr Khan, on behalf of the appellant submits that it would be "unduly harsh" for the appellant's wife to live with him in the Cameroon and further that it would be "unduly harsh" for his wife to remain in the UK if he were deported to the Cameroon.

21. As para 398 states, if an individual cannot establish that he falls within either para 399 or 399A then the public interest will "only" be outweighed by other factors where:

> "there are very compelling circumstances over and above those described in paragraph 399 and 399A."

22. In applying that provision, all factors must be taken into account including factors that fell, in principle, within para 399 or para 399A even though they did not result in a finding in the individual's favour under the respective rule (see NA (Pakistan) and Others v SSHD at [28]-[37]).

23. The relevant Immigration Rules must, however, be applied in conjunction with Part 5A of the NIA Act 2002. That set outs a number of matters concerned with the "public interest question" which a Court or Tribunal

must "have regard" to when determining whether there is a breach of Art 8 (see s.117A(1) and (2)). The "public interest question" refers to the proportionality issue under Art 8.2 (s.117A(3)).

24. Section 117B (apart from s.117B(6)) deals with "public interest considerations applicable in all cases" including deportation cases. Section 117B provides as follows:

> "**117B Article 8: public interest considerations applicable in all cases**
>
> (1) The maintenance of effective immigration controls is in the public interest.
>
> (2) It is in the public interest, and in particular in the interests of the economic well-being of the United Kingdom, that persons who seek to enter or remain in the United Kingdom are able to speak English, because persons who can speak English–
>
> (a) are less of a burden on taxpayers, and
>
> (b) are better able to integrate into society.
>
> (3) It is in the public interest, and in particular in the interests of the economic well-being of the United Kingdom, that persons who seek to enter or remain in the United Kingdom are financially independent, because such persons –
>
> (a) are not a burden on taxpayers, and
>
> (b) are better able to integrate into society.
>
> (4) Little weight should be given to –
>
> (a) a private life, or
>
> (b) a relationship formed with a qualifying partner, that is established by a person at a time when the person is in the United Kingdom unlawfully.
>
> (5) Little weight should be given to a private life established by a person at a time when the person's immigration status is precarious.
>
> (6) In the case of a person who is not liable to deportation, the public interest does not require the person's removal where –
>
> (a) the person has a genuine and subsisting parental relationship with a qualifying child, and
>
> (b) it would not be reasonable to expect the child to leave the United Kingdom."

25. Additional considerations to be applied in deportation cases involving foreign criminals are set out in s.117C as follows:

> "**117C Article 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."

26. As will be apparent, Exception 1 in s.117C(4) and Exception 2 in s.117C(5) closely mirror para 399A and para 399 respectively of the Rules. Likewise s.117C(6) mirrors the provision in para 398 (where the individual has been sentenced to a period of imprisonment of at least four years) namely that deportation will be in the public interest unless there are "very compelling circumstances, over and above those described in Exceptions 1 and 2".

27. In NA (Pakistan) and Others, the Court of Appeal acknowledged that Parliament had sought to reflect the same substantive content in s.117C as the Rules as amended following the inclusion of Part 5A by the Immigration Act 2014 with effect from 28 July 2014 (see [26]) . In that regard, the Court of Appeal held that s.117C(6) – which is on its face restricted to foreign criminals who have been sentenced to a period of imprisonment of at least four years - must also apply to foreign criminals who have been sentenced to a period of at least one year but less than four years where neither Exceptions 1 or 2 in ss.117C(4) and (5) do not apply. In that instance, the Court reasoned, the public interest will require the individual's deportation unless there are "very compelling circumstances over and above those described in Exceptions 1 and 2" (see [27]).

28. In this appeal, Mr Khan's submission focused on the impact upon the appellant's spouse such that it would, he submitted, be "unduly harsh" for her to live in the Cameroon or to remain in the UK if the appellant were deported. That is in substance a reliance upon para 399(b)(ii) and (iii) and Exception 2 in s.117C(5). In addition, Mr Khan relied upon the "very compelling circumstances" provision in para 398 and s.117C(6) of the NIA Act 2002. In addition to not relying on the private life provisions in para 399a and Exception 1 in s.117C(4), Mr Khan did not rely upon any "parental relationship" with his wife's children and the impact upon them being "unduly harsh".

29. What, then, is meant by "unduly harsh"? There had been a different of view expressed in the Upper Tribunal in the two decisions of MAB [2015] UKUT 435 (IAC) and KMO [2015] UKUT 543 (IAC). The former excluded consideration of the gravity of the offender's criminality and required focus simply upon the impact on the individual; the latter included consideration of the gravity of the offending as part of a balancing exercise weighting the public interest against all the circumstances.

30. In MM (Uganda) v SSHD [2016] EWCA Civ 450, the Court of Appeal approved the approach in KMO and overruled MAB. The Court of Appeal concluded that the phrase "unduly harsh" required a decision maker to have regard "to all the circumstances including the criminal's immigration and criminal history" (see [26]). The Court of Appeal subsequently considered itself bound by MM even where the Court expressed doubts as to its correctness tentatively preferring the approach in MAB (see R(MA(Pakistan) and others) v Upper Tribunal [2016] EWCA Civ 705 at [43] *per* Elias LJ with whom King LJ and Sir Stephen Richards agreed).

31. At [24] in MM Laws LJ (with whom Vos and Hamblen LJJ agreed) set out the correct approach as follows:

> "Accordingly the more pressing the public interest in his removal, the harder it will be to show that the affect on his child or partner will be unduly harsh. Any other approach in my judgment dislocates the 'unduly harsh' provisions from their context, it would mean that the question of undue hardship would be decided wholly without regard to the force of the public interest in deportation in the particular case. But in that case the term 'unduly' is mistaken for 'excessive' which imports a different idea. What is due or undue depends on all the circumstances, not merely the impact on the child or partner in the given case. In the present context relevant circumstances certainly include the criminal's immigration and criminal history."

32. The impact upon an individual must, no doubt, reach a relatively high threshold to be characterised as "harsh" at all rather than merely producing a situation which is difficult, inconvenient or disruptive but whether any particular impact is "undue" must take into account the public interest reflected in the deportee's offending. The stronger the public interest reflected in the individual's criminality, the greater the impact will need to be for it to be "undue" than where the public interest is weaker and a comparatively lesser impact may suffice for it to be "unduly" harsh.

The Submissions

33. On behalf of the appellant, Mr Khan relied upon a witness statement from the appellant (at pages 1-2 of the FtT bundle) and a witness statement from his wife (at pages 3-6 of the FtT bundle). Whilst both the appellant and his wife gave evidence before the First-tier Tribunal, Judge Ross merely recorded that they gave "oral evidence in accordance with witness statements adopted as true". There was, of course, no oral evidence given at the hearing before me.

34. Mr Khan first addressed the issue of the "seriousness" of the appellant's offence. In addition, Mr Khan drew attention to passages in the OASys assessment dated 5 August 2014 (at pages 8-39 of the FtT bundle). Mr Khan also placed reliance upon a number of documents dealing with courses undertaken by the appellant whilst in prison (at pages 88-108 of the FtT bundle). Mr Khan also relied upon the sentencing remarks of the Crown Court Judge (at B1-B4 of the respondent's bundle).

35. Mr Khan accepted that the appellant had been sentenced to a period of fifteen months' imprisonment but, he submitted, on examination the offence was towards the "less serious end of the scale" reducing the public interest in deporting the appellant. He relied upon the sentencing judge's remarks that the appellant was a "foot soldier" within the organisation when the appellant used a false French ID card to obtain money. Mr Khan submitted that the appellant was not someone who was involved in the planning or organisation of the offence.

36. In addition, Mr Khan pointed out that the appellant was a man of previous good character. He referred me to the OASys Report which identified that the appellant was at a "low" risk of re-offending (page 32), that the offence was "not indicative of serious harm" (page 15) and that the appellant had no adjudications or write-ups against him whilst in prison (page 26). Mr Khan submitted that the appellant had shown remorse and there had been no subsequent offending. He relied upon the certificates at pages 88-108 of the bundle demonstrating that the appellant had made efforts to reform.

37. In respect of the appellant's relationship with his wife, Mr Khan pointed out that they had been married since 2010. The evidence was that his wife was in the middle of a degree course in childminding and that she had just set up a business in childminding. She would have to give these up if she was to move to the Cameroon. Mr Khan also pointed out that the appellant's wife had an 18 year old daughter who was in college and lived with her and the appellant. She was still dependent on the appellant's wife. He also relied on the evidence, in the statements, that the granddaughter of the appellant's spouse visited and stayed with them on weekends.

38. Mr Khan submitted that the appellant's wife, who was a British citizen, had no links with the Cameroon and did not speak French, which is the main

language in the Cameroon and that it would be unduly harsh for her to relocate there. He further submitted that without the appellant in the UK, it would be unduly harsh for his wife to remain here. He relied upon her evidence in her witness statement that she would not be able to continue her studies and business without him.

39. Mr Khan submitted therefore, that the appellant met the "unduly harsh requirement" in the Rules and s.117C(5) and that there were "very compelling circumstances" to outweigh the public interest.

40. On behalf of the Secretary of State, Mr Richards invited me to conclude that the appellant's offending was "serious". He relied upon the sentencing judge's remarks that the offence was "extremely serious indeed". Mr Richards acknowledged that the sentencing judge had commented that the appellant's offence did not involve a "sophisticated forgery" but, Mr Richards submitted, he was being used by other criminals in order very possibly to launder money which was a serious offence.

41. Mr Richards submitted that the position of the appellant's wife had to be seen in the light of the seriousness of that offending. He submitted that the likely adverse consequences of the appellant's deportation, in particular to his wife were not "unduly harsh" when viewed against the seriousness of the appellant's offending. Although the appellant's wife did not want to go to the Cameroon because she was studying and in business, it was inevitable that there would be some disruption to their family life if the appellant were deported. Mr Richards submitted that there were no insurmountable obstacles to her living in the Cameroon with the appellant. The appellant had studied and obtained qualifications which would no doubt, Mr Richards submitted, stand him in good stead in the Cameroon. Mr Richards submitted that there was no reason why his wife could not continue her line of business in the Cameroon and the difficulties could be overcome. Likewise, Mr Richards submitted that as regards her family in the UK, contact could be maintained.

42. Mr Richards submitted that given the seriousness of the appellant's offending, the difficulties faced by the appellant or his wife and family did not reach the threshold of "unduly harsh".

Discussion

43. The appellant met his wife in Venice in 2008 and they were married shortly thereafter on 31 October 2008. They have, therefore, now been married for seven years. I accept that they have lived together in the UK since the appellant entered with leave as a spouse on 16 June 2010. They have a genuine and subsisting marriage.

44. I also appears from the witness statement of the appellant's wife that she has two children (see para 4 of her statement). Mr Khan was not able to clarify the position with any certainty but one of the children (whom it is not suggested is a minor) appears to live in Bristol although not with the

appellant and his wife. I will proceed on the basis that there is a 'second' (albeit adult) daughter. She has a child – the grandchild of the appellant's wife – and the granddaughter visits and spends every other weekend with the appellant and his wife. The other daughter of the appellant's wife is now 18 years of age. She is in education but continues to live with the appellant and his wife.

45. The appellant's wife in her statement dated 15 May 2015 states that she has finished the first year of a three year degree course in childcare. That is a year ago and (in the absence of any updating evidence to the contrary) it is logical to conclude that she has now completed two of the three years of her degree. In addition, she has begun a childminding business.

46. The home of the appellant and his wife, at least in part, is subject to a mortgage which his wife states, in her witness statement, as at May 2015 had ten years remaining.

47. I accept the appellant's evidence that he has no close family in the Cameroon. Both his parents are dead and there is no evidence that he has any siblings there. His aunt, in the Cameroon, has also died. Nevertheless, the appellant is not without any family in the Cameroon. His wife refers in her witness statement to a visit to the Cameroon in 2009 when they saw "very distant relatives".

48. I accept that there would be some difficulties for the appellant if he were deported to the Cameroon. It was not made clear to me at the hearing either in submissions or by evidence when precisely the appellant left the Cameroon. Prior to him coming to the UK in 2010, clearly he had been living in Italy for some years as he met his wife there in 2008. He was resident there (see para 12 of Judge Ross' determination). It was not suggested before me, and there is no evidence supporting a contrary position, that the appellant has lost all his cultural ties with the Cameroon. It is not suggested that he no longer speaks French.

49. Nevertheless, I do not accept that the appellant would, as he and his wife claim, be destitute on return to the Cameroon. He managed to live and reside without any apparent problems in Italy for some years and he has worked in the UK. Further, as the many certificates in the bundle illustrate, he has studied here and I am in no doubt that he has the resources and wherewithal to obtain employment and support himself (indeed himself and his wife) in the Cameroon.

50. The position of the appellant's wife is somewhat different. She is a British citizen and has her roots in the UK even though originally she came from Jamaica. She has family in the UK, in particular two daughters and a grandchild. I accept that she has a close relationship with her family and her one daughter lives with her whilst in education as an adult. She has close contact with her grandchild who stays with her and the appellant every other weekend and, as she sets out in her witness statement, she

also has other involvement in her granddaughter's life, for example picking her up from nursery from time to time.

51. In addition, the appellant's wife is undertaking a three year degree course of which she would appear to be completing her second year. She also has a childminding business which she has commenced in the UK.

52. If the appellant's wife moved to the Cameroon with the appellant I accept that there would be a significant disruption to her life including her current course of study and her work. Likewise, despite modern methods of communication including Skype, there would be a significant disruption to her relationship with her grandchild who could not be expected to leave the UK. No submissions were made to me in relation to the "best interests" of that child but, it seems to me, on the material before me that it would be in her grandchild's best interest to maintain her existing relationship with the appellant's wife. Further, there would undoubtedly be difficulties for the daughter who currently lives with the appellant and his wife if left in the UK without her mother. It is far from clear that the appellant and his wife would be able to maintain their home in the UK and consequently, there is a risk that the daughter would have to find her own accommodation. There was no evidence of her ability or inability to do so but I note that she is currently a student. There may, therefore, be difficulties for her but there was no evidence that she would not be able to support herself as a student. She could not, of course, be expected to leave the UK and live with her mother in the Cameroon. There was no material before me about the circumstances of the 'second' daughter.

53. I will turn shortly to deal with the "seriousness" of the appellant's offending which, following MM (Uganda), I must balance against the impact upon the appellant's wife in determining whether it would be "unduly harsh" for her to continue her family life with the appellant in the Cameroon. I have reached the conclusion that the impact upon the appellant's wife of leaving the UK to live in the Cameroon would be of such significance that it would be "harsh" and, even taking into account the seriousness of the appellant's offending, it would be "unduly harsh".

54. That, however, is not sufficient for the appellant to succeed in this appeal. In addition, he must establish that, if he were deported, it would be unduly harsh for his wife to remain in the UK.

55. As I have already indicated, there would be disruption to the appellant's relationships both with his wife and her family with whom, I accept, he has contact including one daughter living with them since he came to the UK in 2010. I have no specific evidence concerning his relationship with his step-daughters or his step-grandchild. I am, however, on the basis of the written statements of both the appellant and his wife content to accept that he has a close relationship with them. His deportation to the Cameroon would inevitably disrupt those relationships. However, such disruption is the natural consequence of the deportation of a foreign

criminal in accordance with the automatic deportation provisions of the 2007 Act.

56. I do not accept that, if the appellant is deported, his wife will not be able to continue to any significant degree her life in the UK. She is currently studying and working and there is nothing in the evidence to suggest she was unable to do so whilst the appellant was in prison. No doubt his absence added some burden to her life but she survived both financially and practically without him. I do not accept that she would be unable to continue to work and study if he were deported. The impact upon her would not, in my judgment, be "harsh" despite the loss of her husband's support and marital companionship.

57. Further, I do not accept that there are insurmountable obstacles to the appellant living in the Cameroon despite the absence of close family. The threshold for that is high requiring "very significant difficulties". As I have already indicated, I see no reason to doubt that he is a sufficiently resourceful and educated man that he could not financially survive and live in the Cameroon. Any disruption to the relationship that he has with his step-grandchild, and to the extent that it is in her best interests to maintain a relationship with him, cannot in my judgment prevent his deportation. His step-grandchild will continue to live with her mother and enjoy her relationship with her grandmother in the UK.

58. Whilst, therefore, I accept that there will be some disruption to the appellant's family and private life on deportation, I am not satisfied that that disruption is significant to be characterised as "harsh" and, in any event, as "unduly" harsh when seen in the light of his offending despite what was said on his behalf by Mr Khan about his post-conviction circumstances.

59. I accept that the appellant was prior to his offending a person of good character. He had no previous convictions. I also accept, albeit on the limited evidence before me, that he is remorseful and that he has not committed any further offending. I also accept that, whilst in prison, he had no adjudications or write-ups against him.

60. Nevertheless, as the sentencing judge stated the appellant's offending was "extremely serious" indeed. His offending was part of an activities of an organisation as the sentencing judge made clear. Whilst I accept that the appellant was not involved in the planning or organisation of the criminal enterprise – the judge described him as a "foot soldier" – his offending remained "serious" in itself. I accept that the OASys Report puts the risk of re-offending as "low". Whilst the offending, including the sentence of fifteen months' imprisonment, did not put the appellant in the higher category of offending (namely imprisonment of four years or more), it fell within the automatic deportation provisions and, as the sentencing judge pointed out, the money obtained could be used "very possibly for money laundering purposes".

61. Applying the approach set out in MM (Uganda), I take into account all the circumstances of the appellant and the seriousness of his offence. Section 117C(1) states that the deportation of foreign criminals is "in the public interest". Section 117C(2) states that: "the more serious the offence committed by a foreign criminal, the greater is the public interest in deportation of the criminal."

62. Carrying out that balancing exercise, I am not satisfied that the impact upon the appellant (and his wife and family) if he is deported would be "unduly harsh" for the purposes of para 399(b) and Exception 2 in s.117C(5).

63. Consequently, the appellant can only succeed if there are "very compelling circumstances, over and above those" in Exception 2 in s.117C(5) and para 399(b) of the Rules (see s.117C(6)).

64. Mr Khan did not identify any aspects of the appellant's case specific to his claim that there were "very compelling circumstances" beyond those relevant to the issue of "unduly harsh". In my judgment, there are plainly none. I fully take into account all the circumstance including the circumstances (considered above) relevant to para 399(b) and s.117C(5) (see SSHD v JZ (Zambia) [2016] EWCA Civ 116 and NA (Pakistan) at [21]). In NA (Pakistan) at [32] the Court of Appeal explained the approach to the "very compelling circumstances" issue as follows:

> "… in principle there may be cases in which … an offender can say that features of his case of a kind described in Exceptions 1 and 2 have such great force for Article 8 purposes that they do constitute such very compelling circumstances, whether taken by themselves or in conjunction with other factors relevant to Article 8 but not falling within the factors described in Exceptions 1 and 2. The decision maker, be it the Secretary of State or a Tribunal, must look at all the matters relied upon collectively, in order to determine whether they are sufficiently compelling to outweigh the high public interest in deportation."

65. At [33] the Court of Appeal continued:

> "Although there is no 'exceptionality' requirement, it inexorably follows from the statutory screen that the cases in which the circumstances are sufficiently compelling to outweigh the high public interest in deportation would be rare. The commonplace incidents of family life, such as aging parents in poor health or the natural love between parents and children, will not be sufficient."

66. In this appeal, nothing put forward by Mr Khan on behalf of the appellant falling within para 399(b) and Exception 2 is of "such great force" to amount to very compelling circumstances. The inevitable disruption to the appellant's family life with his wife, step-children and step-grandchild cannot, in my judgment, amount to "very compelling circumstances".

67. Mr Khan placed no reliance upon para 399A or Exception 1 in s.117C(4). The focus of his submissions was on the impact upon the appellant's family life if deported. He did not address me on any other matters dealt

with in s.117B of the NIA Act 2002. The focus was, again, on the deportation context and the matters set out in s.117C and para 399(b).

68. For the above reasons, the appellant has failed to establish that the public interest in deporting him is outweighed by all the circumstances of his case. He has failed to establish a breach of Art 8 of the ECHR.

Decision

69. The decision of the First-tier Tribunal having previously been set aside, I remake the decision dismissing the appellant's appeal on the basis that it has not been established that his deportation would breach Art 8 of the ECHR.

Signed

A Grubb
Judge of the Upper Tribunal
28 July 2016