



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: DA/02109/2013

THE IMMIGRATION ACTS

Heard at Field House, London
On 14 August 2018

Decision & Reasons Promulgated
On 04 September 2018

Before

LORD BECKETT SITTING AS AN UPPER TRIBUNAL JUDGE
UPPER TRIBUNAL JUDGE CANAVAN

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

MM

(ANONYMITY DIRECTION MADE)

Respondent

Anonymity

Rule 14: The Tribunal Procedure (Upper Tribunal) Rules 2008

Anonymity was granted at an earlier stage of the proceedings because the case involves a child. We find that it is appropriate to continue the order. Unless and until a tribunal or court directs otherwise, the original claimant (MM) is granted anonymity. No report of these proceedings shall directly or indirectly identify him or any member of his family. This direction applies both to the claimant and to the Secretary of State.

Representation:

For the appellant: Mr P. Deller, Senior Home Office Presenting Officer

For the respondent: In person

DECISION AND REASONS

1. The Secretary of State appeals with permission against the decision of the First-tier Tribunal (FtT) allowing the claimant's appeal against deportation as a foreign criminal. The issue to be determined relates to the application of Part 5A of the Nationality, Immigration and Asylum Act 2002 and the Immigration Rules paras 398, 399 and 399A and how provisions and rules concerning exceptions to requirements for deportation of "foreign criminals" fall to be interpreted. This appeal comes after much procedure following the Secretary of State making a deportation order on 14 October 2013 having refused the claimant's claim for international protection and a claim under ECHR article 8.
2. The claimant was born in Uganda in 1983 but was brought here as a child in 1990 along with two sisters and a brother. He and a brother left and returned to Kenya and Uganda (the latter only very briefly) for two years between 1997 and 1999. His daughter, who is a British citizen, was born here in December 2004.
3. On 7 September 2012 he pleaded guilty to four charges relating to the supplying of class A drugs. The sentencing judge took a serious view of the case and, after making a generous discount for the pleas of guilty, reduced sentence to imprisonment for 22 months concurrently on each of the charges.
4. The Secretary of State's decisions of 14 October 2013 were appealed and on 29 August 2014, two judges of the First-tier Tribunal dismissed the appeal on asylum grounds and in respect of the Immigration Rules, but allowed it on article 8 human rights grounds. In doing so they erroneously applied an earlier version of the Immigration Rules.
5. The Secretary of State was granted permission to appeal against the sustaining of the appeal on article 8 grounds. The claimant did not seek to cross-appeal the decision to dismiss the appeal on the Refugee Convention grounds.
6. The appeal was heard and refused by the then President of the Upper Tribunal Immigration and Asylum Chamber on 10 November 2014. He noted that the amended rules had not been applied which was an error of law, but determined that it was not material as the FtT had taken account of all relevant facts. He also noted findings from an adjudicator in 2002 that return to Uganda would for both the claimant and his brother have extremely harsh and damaging consequences for these young people and cause them to suffer severe shock, which finding he considered should be accepted on the *Devaseelan* principle. The Secretary of State had also proceeded on this basis as explained in the Notice of Decision of 14 October 2013, paras 44-45. The Upper Tribunal noted that the FtT had concluded, on the basis of social work opinion, that the deportation of the claimant "would have a devastating effect on his daughter's emotional development." She was then aged 9 and is now 13. She had not been living with him before his imprisonment for some time but they had an ongoing relationship which continued whilst he was in prison through regular telephone calls and a visit. The Upper Tribunal regarded the apprehended

effect on MM's daughter as "the stand out finding," which was so strong that the outcome would be the same under the new provisions and associated Immigration Rules. The Secretary of State's appeal was refused.

7. Permission for a second appeal was granted by the Court of Appeal.
8. The Court of Appeal concluded that the expression "unduly harsh," in section 117C(5), did not mean that the position of the child should be looked at in isolation in order to consider whether the consequences of deportation would be "excessively harsh" for the child, observing that: "What is due depends on all the circumstances, not merely the impact on the child or partner in the given case." The circumstances include the prominent consideration of the public interest in the removal of foreign criminals.
9. On 20 April 2016, the Court of Appeal allowed the Secretary of State's appeal, *MM (Uganda) and Another v Secretary of State for the Home Department* [2016] Imm. AR 954. It determined that, in light of the enactment that it is in the public interest that foreign criminals are deported, a tribunal must make a proportionate assessment having regard to all of the circumstances including the criminal's immigration and criminal history. This structured assessment is to be made within the framework of the relevant Immigration Rules (para 16).
10. The FtT had not done this, it had erred in proceeding on the basis that the only question was whether the case involved exceptional circumstances and remitted to the Upper Tribunal for further determination to be taken in accordance with Part 5A of the Nationality, Immigration and Asylum Act 2002 and the Immigration Rules as amended with effect from 2014.
11. The appeal was heard in the Upper Tribunal on 14 August 2018 and we now give our decision and reasons.
12. In light of the Court of Appeal's determination that the FtT erred in applying previous Immigration Rules when it should have applied those introduced in 2014, we set aside the decision by the FtT on 29 August 2014.
13. Mr Deller for the Secretary of State adopted the position that any factual findings made by the FtT on 29 August 2014 were unaffected by the error and that factual findings made in a determination promulgated on 29 November 2002 also still stood.

Relevant legislation and rules

14. The claimant is not a British citizen and, having been sentenced to 22 months for drugs supplying charges, is a foreign criminal within the scope of section 32 of the UK Borders Act 2007 rendering him liable to automatic deportation unless he falls within exception 1 in section 33, which subsists where removal of the foreign criminal in pursuance of the deportation order would breach his Convention rights.

15. It is necessary to examine the relevant provisions and rules starting with certain provisions in part 5A of the 2002 Act which was introduced on 28 July 2014:

“117A Application of this Part

- (1) This Part applies where a court or tribunal is required to determine whether a decision made under the Immigration Acts –
 - (a) breaches a person's right to respect for private and family life under Article 8, and
 - (b) as a result would be unlawful under section 6 of the Human Rights Act 1998.
- (2) In considering the public interest question, the court or tribunal must (in particular) have regard –
 - (a) in all cases, to the considerations listed in section 117B, and
 - (b) in cases concerning the deportation of foreign criminals, to the considerations listed in section 117C.
- (3) In subsection (2), “the public interest question” means the question of whether an interference with a person's right to respect for private and family life is justified under Article 8(2).”

16. Section 117B provides that the maintenance of effective immigration controls is in the public interest and sets out general principles which are relevant in all immigration decisions where article 8 is relevant.

17. Section 117C is in these terms:

- “(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.”

18. Immigration Rules 398, 399 and 399A now provide:

“398. Where a person claims that their deportation would be contrary to the UK's obligations under Article 8 ... and

- (a) 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 at least 4 years;
- (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 4 years but at least 12 months; or
- (c) the deportation of the person from the UK is conducive to the public good and in the public interest 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, 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.

399. This paragraph applies where paragraph 398 (b) or (c) applies if –

- (a) the person has a genuine and subsisting parental relationship with a child under the age of 18 years who is in the UK, and
 - (i) the child is a British Citizen; or
 - (ii) the child has lived in the UK continuously for at least the 7 years immediately preceding the date of the immigration decision; and in either case
- (b) it would be unduly harsh for the child to live in the country to which the person is to be deported; and
- (c) it would be unduly harsh for the child to remain in the UK without the person who is to be deported; or
- (d) 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.

399A. This paragraph applies where paragraph 398(b) or (c) applies if –

- (a) the person has been lawfully resident in the UK for most of his life; and
- (b) he is socially and culturally integrated in the UK; and
- (c) there would be very significant obstacles to his integration into the country to which it is proposed he is deported.”

The offences

19. In 2012, the claimant pleaded guilty in the Crown Court at Taunton to four charges of supplying class A drugs; supplying cocaine on 6 December 2011 and 9 January 2012, and supplying diamorphine on 12 December 2011 and 9 January 2012. A concurrent sentence of imprisonment for 22 months was imposed after discount from a headline sentence of four years, with 156 days spent on remand to count towards the sentence. In passing sentence, the judge observed that being involved in supplying class A drugs is treated seriously by the courts. He also observed that the claimant had become involved because he was under pressure from people to whom he owed money for buying drugs, this being a situation the claimant had brought on himself.
20. An offender risk and needs (OASys) assessment which was prepared on 25 April 2014 suggests that the claimant had supplied drugs to undercover police officers, but that does not diminish the gravity of his offending. The four charges involve two class A drugs, cocaine and diamorphine. They are classified according to their harmful effects. It is well understood that those who involve themselves in supplying drugs contribute to the misery of addiction with all of the resulting social problems, injury to health and costs which the community is left to bear. There is legitimate public concern about such offending and its consequences and the public are entitled to expect that it will be dealt with in accordance with the law as laid down by Parliament. The claimant was offending on three separate occasions, albeit within one month.
21. These were serious offences, properly viewed as such by the sentencing judge. There is accordingly a strong public interest in the deportation of the offender; section 117C (1) and (2). A low risk of reconviction is not a complete answer as that is only one aspect of the public interest in deporting foreign criminals although it is not entirely irrelevant. The deterrent effect which deportation of foreign criminals should have in deterring others from offending is a material aspect of the public interest in this context along with ensuring that the public will have confidence that offenders will be properly punished. We note that in *Ali v Secretary of State for the Home Department* [2016] 1 WLR 4799 Lord Wilson, giving his judgment in the Supreme Court agreed with Lord Kerr that the emotive language he had used in referring to reflecting public revulsion, *OH (Serbia) v Secretary of State for the Home Department* [2009] INLR 109 ought not to be used.

Related information and criminal history

22. A pre-sentence report by a probation officer was before the court. The claimant had no previous convictions and one caution for theft in 2010 having used a friend's identification to get into a nightclub. He was considered to recognise the impact and consequences of his offences on the community. He had trained as a motor mechanic and worked as such for three years after which he had worked in warehouses. Whilst remanded before trial he had become drug free and had self-referred to a drug support team. He told the reporting probation officer that he did not think he should be made subject to a drug rehabilitation requirement, he thought he should serve a prison sentence, emerge drug-free and make a fresh start. Although the report refers to his giving up employment in 2008 whilst he was caring for his daughter, we should make it clear that he had already had sole residency of her since November 2006 when an order was made to that effect. That was accepted to be the position by the Secretary of State (para 59 of decision letter).
23. By virtue of having supplied class A drugs, he was assessed as presenting a medium risk of causing serious harm. Risk assessment suggested a low likelihood of reconviction for general offending.
24. On 6 March 2014, the probation officer who supervised his release on licence reported that he was released on 18 October 2013. She found that his proposed accommodation with his sister was suitable and she understood that he had a close relationship with his nephew and his daughter whom he saw regularly. His sister had ensured that the claimant's relationship with his daughter continued whilst he was in custody and since his release. He had complied with, and engaged well with, supervision. He had remained drug free and had not been arrested.
25. The OASys assessment of 25 April 2014 reveals that the claimant accepted full responsibility for his offending but reiterated that he had been pressured to supply drugs. There was nothing to suggest that he was living a criminal lifestyle since his release from prison and he was drug-free. He had engaged well with supervision. He was very motivated to address his offending. There was nothing to suggest that he had pro criminal attitudes. His risk of reoffending was low. Whilst since his release he was living with his sister, he had previously had his own flat where he lived with his daughter of whom he had custody. She was now with her mother and maternal grandmother. He was continuing to spend time with his daughter.
26. At the hearing on 14 August, Mr Deller confirmed that there were no further convictions since the claimant was released from his sentence.

Immigration history

27. Given a concession from Mr Deller for the Secretary of State that the claimant meets the criterion in section 117C (4) (a), he has been lawfully resident in the UK for most of his life, we need not examine the history in undue detail, but will summarise it briefly according to findings made in earlier proceedings. The concession is well-founded because the claimant's uncle had applied for asylum on the claimant's

behalf and the claimant was allowed leave to remain until he was ultimately granted indefinite leave to remain as detailed below; *Secretary of State for the Home Department v SC (Jamaica)* [2018] 1 WLR 4004.

28. In a determination of 29 November 2002, an adjudicator allowed an appeal on human rights grounds as a result of which indefinite leave to remain was granted to the claimant and his brother GM on 21 January 2003. He made findings in fact about their immigration history.
29. On 19 September 1990, at the age of 7, the claimant was brought with three siblings from Uganda to the UK by JM, as a dependant. JM was the claimant's uncle and he claimed asylum on his own behalf and on behalf of the four children as his dependants. On 17 June 1993 JM was refused asylum but he and the children were granted exceptional leave to remain until 17 June 1994. On 11 May 1994 all of them were granted exceptional leave to remain until 1 June 1997. On 3 July 1997, all four were granted further exceptional leave to remain until 17 July 2000.
30. The claimant and GM must have left the country at some point prior to 6 July 1999 when they returned to the UK. The claimant, GM and JM said that they left in the summer of 1997, but this was not capable of being verified. In light of conflicting evidence, the adjudicator tentatively found that they were taken to Kenya by JM before being taken briefly to see their mother in Uganda, perhaps for little more than a week, before returning to Kenya where they were abandoned by JM in the care of a friend of his.
31. Following interview by an immigration officer on 23 February 2000, they were granted exceptional leave to remain until 17 June 2001. JM was granted indefinite leave to remain on 2 June 2000.
32. The claimant and his brother GM applied for indefinite leave to remain at a time when they were in foster care, placed by Hillingdon Social Services, which was refused for want of timely production of documents and again after further representations in October 2001. The appeal against this decision by the claimant and his brother GM was allowed on human rights grounds in November 2002 and indefinite leave to remain was granted on 21 January 2003.
33. The claimant is 35. Leaving out two years from 1997-1999 when he was out of the UK, he was lawfully in the UK between September 1990 and October 1993 when the deportation decision was made; for 21 of his 35 years he has been lawfully resident here.

Personal history

34. It was found that the claimant and siblings lived briefly with their uncle, then their father and then their father's girlfriend on arrival in this country after which they were placed in care for some months. They then returned to the care of their uncle. On their return here in 1999, the claimant and his brother were again taken into care.

35. In a determination promulgated on 29 November 2002, Mr J Varcoe, Adjudicator, found in respect of both the claimant and his brother, on the evidence before him, that;

“In short, it is clear that, by now, they have become useful and apparently well-adjusted members of a community with cultural norms and attitudes related solely to life in this country.”

36. He added:

“Both these young people are, in my view, British in outlook and their friends are exclusively in this country. Their father died a few years ago in the United Kingdom and their mother is still living in Kampala. I accept, in the absence of evidence to the contrary, that there is in effect now no contact between her and her children in this country.”

37. He concluded that, at that time, deportation;

“would have extremely harsh and damaging consequences for both of these young people. Here they have, despite the somewhat impersonal experience of being in care for quite a long time in this country, built up a network of relationships with foster carers and their own circle of friends, as well as enjoying a particularly close relationship within their own sibling group. They both left Uganda at a comparatively young age and their whole lifestyle, as well as their cultural background, has now become firmly identified with the United Kingdom. Whilst there is little evidence about the mother’s financial and other circumstances, I consider it reasonable to conclude that both appellants would suffer severe shock if they had now to return to Uganda with little guarantee that they could be adequately accommodated and supported.”

Family circumstances

38. The claimant gave evidence in a straightforward manner giving every impression of candour and we found him to be a credible witness who was generally reliable, the exception relating to his recollection of certain dates. There was very little cross-examination and he was not challenged on any of the evidence he gave. We accepted his evidence. We find the following facts established
39. The claimant’s father and also JM are deceased. There is no evidence that the claimant has had any contact with his mother since 1997 and we accept his evidence that he has no relatives with whom he is in contact in Uganda. He says that he has no relatives there known to him but we cannot determine if his mother is alive or dead. There is no evidence that she has died.
40. The claimant’s relationship with the mother of his daughter broke up but the claimant has continued to be involved in his daughter’s life. In November 2006, a residence order was made as a result of which he had sole care of his daughter at a time when her mother was unable to cope. He continued to be her primary carer for a number of years until she returned to live with her mother in about 2010. These facts were accepted by the Secretary of State in her Notice of Decision 14 October 2013, at paras 58 and 59.

41. The claimant explained that he was in regular telephone contact with his daughter when he was in prison but there was only one personal visit after which he did not wish her to return to prison as it was too painful.
42. Since his release from prison at the end of 2013, he has been seeing his daughter, now aged 13, regularly. There are no difficulties between him and his former partner who is content for him to see their daughter as often as he wishes. Since his release his daughter would often stay weekends with him at his sister's address in Kensington. She stayed for more than two weeks with him. His daughter lives in Hayes. He said that he now sees her four or five times each week and they have a close relationship. She is performing well at school and he approves of and supports her ambitions. They have become closer as they spend more time together as she has got older. She does not fully understand his situation, but she hated it when he was in prison and has said that her life would not be the same without him around. With his own experience of spending parts of his childhood in care, he is desperate to be around to support his daughter as she grows up.
43. In the Secretary of State's Notice of Decision letter of 14 October 2013 (at para 60), it was recorded that Hillingdon Social Services conducted a home visit with the claimant's daughter and her mother and there were no concerns about her care there, but:

"They concluded that your deportation would have a devastating impact on [her] emotional development."
44. The claimant has been in a relationship with a partner who is a British citizen for most of the last 3 years but they do not live together. She would not go to Uganda with him. He lives with his sister, who came to the UK with him in 1990 and who is now training to be a social worker. He is close to her son who is aged 9. The claimant is close to his brother and sees him most days when brother is not at work.
45. The claimant deeply regrets having committed the crimes which he did but it is in the past now. He served his time in prison and learned his lesson. He is a changed man. He has not been in trouble since his release. He would like to complete his training as a mechanic and work. He has been unable to work since his release from prison due to these proceedings.
46. He does not recall life as a child in Uganda and he cannot picture what life would be like there now. He would not know where to start. He has lived here virtually all his life and cannot grasp being removed to somewhere he does not know. He has not been back to Uganda since he was briefly taken there in 1997 when still a child of 14. He is not aware of having any family there, his only family is in London. London is his home.
47. In discussing how he would feel if deportation disrupted the relationship he has with his daughter he stated:

“It would kill me to be honest. I don’t want to think about it. You are used to having someone in your life for so long. I am no longer there. I grew up in care. It is very devastating, I can understand how she would feel.”

Submissions

48. Mr Deller for the Secretary of State confirmed that the Secretary of State would not consider it to be reasonable for the claimant’s daughter to go to live in Uganda should he be deported.
49. Drugs offences should be viewed seriously and the claimant should have thought of the consequences before he became involved in drug dealing. He had brought this situation on himself. Notwithstanding the position of the claimant’s daughter and the difficulties for him in returning to Uganda after living most of his life here, the public interest outweighed the interests of the claimant and his daughter. The decision of the Court of Appeal in *MM (Uganda)* stressed that whether the effect of deportation on the child was unduly harsh fell to be measured against the strong public interest in deportation where serious crimes are committed by a foreign criminal. In making that assessment, the court should have regard to all relevant circumstances.
50. The claimant repeated some of what he had said in his evidence and urged the tribunal not to punish his daughter for the crimes he committed and for which he had been punished.

Analysis

51. Parliament has provided that the deportation of foreign criminals is in the public interest and that the more serious the offence committed by a foreign criminal, the greater is the public interest in deportation of the criminal. There are several aspects to the public interest in this regard as we have noted at para 20 and 21 above and we keep them clearly in view.
52. This cluster of four offences committed on three occasions within one month and involving two types of class A drugs was very serious offending and it resulted in a sentence of imprisonment for 22 months. It points strongly to deportation as being necessary in the public interest in this case.
53. In considering all of the criminal history, we should note that despite a very unsettled upbringing the claimant had no previous convictions and he has committed no further offences since he was released in 2013 which tends to bear out the probation officer’s assessment that he presented a low risk of re-offending. He cooperated well on licence gaining favourable reports. He was and is remorseful.
54. The situation is governed by the provisions we have identified and particularly section 117C. We will consider whether any of the exceptions in that section are

made out whilst bearing in mind the strong public interest in deportation expressed by Parliament and inherent in the circumstances of this case.

55. We are obliged to consider the best interests of the claimant's 13 year old daughter as a primary consideration and we will first consider Exception 2.
56. In doing so we recognise that whilst this is a primary consideration it is not required to be the paramount consideration in this context and also that, as the Court of Appeal observed in *NA (Pakistan) v Secretary of State for the Home Department* [2017] 1 WLR 207:

“... it is a consequence of criminal conduct that offenders may be separated from their children for many years, contrary to the best interests of those children. The desirability of children being with both parents is a commonplace of family life. That is not usually a sufficiently compelling circumstance to outweigh the high public interest in deporting foreign criminals. As Rafferty LJ observed in *CT (Vietnam) v Secretary of State for the Home Department* [2016] EWCA Civ 488 at [38]: “Neither the British nationality of the **respondent's** children nor their likely separation from their father for a long time are exceptional circumstances which outweigh the public interest in his deportation.”

For completeness we note that in *CT (Vietnam)*, the claimant had been sentenced to imprisonment for seven years in 1997 for attempted murder and possession of a firearm with intent to endanger life and in 2009 he was sentenced to a total of seven-and-a-half years' imprisonment for conspiracy to cultivate and supply cannabis and possession of a firearm and ammunition. Accordingly his was a four years or more case where only the criteria in section 117C (6) could render deportation unnecessary in the public interest.

57. Having lived here since her birth in 2004 as a British citizen, the claimant's daughter is a qualifying child with whom he has a genuine and subsisting parental relationship; rule 399(a). She lives with her mother in England and the Secretary of State does not contend that the child could reasonably be expected to go to live in Uganda if her father is deported; Notice of Decision para 58. It is not feasible but would also be unduly harsh for the child in our view.
58. We have no doubt that it would be in her best interests for her father to stay in this country and continue his parental relationship with her and we do not find that his offending more than six years ago suggests otherwise. He has insight into his wrongdoing, he has expressed remorse and he has not offended again since.
59. It is a feature of this case that the claimant had the sole care of his daughter from the age of 2 to 6. He has maintained regular contact with her ever since and their relationship has become closer since his release from prison in 2013. As she enters adolescence and approaches the stage where she will be sitting public exams at school, he is an ever more important figure in her life.
60. It has already been found in this case, in light of information from social services, that the claimant's deportation would be devastating for his daughter's emotional

development. She was 9 when that assessment was made. The Secretary has of State accepted that that was the position. In the present circumstances where she is now 13 and their relationship is closer with very substantial contact, we consider that it would be no less devastating now than it was when that assessment was made.

61. We have considered the availability of electronic means of communication by telephone and via the internet as the Secretary of State did in the Notice of Decision at para 51. Whilst it may be comparable in character to the father-daughter relationship as it was when the claimant was in prison, we do not consider that it is a meaningful substitute for the role which the claimant currently plays in his daughter's life, and has done since his release from prison in 2013.
62. Serious though the claimant's offending undoubtedly was, in considering the criminal history we have noted the absence of convictions before 2011 for a man of 35 who entered the UK in 1990 at the age of 7. We note the claimant's attitude to his offending and we note that he has not offended since he was released in 2013. There is nothing adverse in his immigration history since he was brought here as a young child, a situation over which he had no control. Whilst the policy expressed in the legislation is abundantly clear, the legislation and the rules do allow for exceptions.
63. Whilst we have not lost sight of the gravity of the offences and the strong public interest, in all its aspects, in deportation, in the particular circumstances of this case we have come to the conclusion that, even set against these considerations deriving from section 117C (1) and (2), the claimant's deportation now for crimes committed six years ago would have an unduly harsh effect on his daughter.

Exception 1

64. The claimant has been lawfully resident in the UK for most of his life as we found on examining his history at paras 27 to 33 above and as Mr Deller conceded.
65. The facts found in 2002 and set out in paras 35-37 above, go a long way to establish that even at that stage the claimant was socially and culturally integrated in the UK. Even allowing for the potential for his serious offending to undermine such a conclusion, having regard to the whole history, the evidence of the claimant and the impression we formed of him on hearing him speak about his life, we are satisfied that he is socially and culturally integrated in the UK.
66. In considering the third criterion we note that the claimant is 35, apparently in good health and he has worked in garages having completed most of an apprenticeship in motor mechanics. It is reasonable to assume that he might be able to find work in Uganda. We also note the statutory language and what was said about it in *Kamara v Secretary of State for the Home Department* [2016] 4 WLR 152.

"14. In my view, the concept of a foreign criminal's "integration" into the country to which it is proposed that he be deported, as set out in section 117C(4)(c) and paragraph 399A, is a broad one. It is not confined to the mere ability to find a job or to sustain life while living in the other country. It is not appropriate to treat the statutory language as subject to some gloss

and it will usually be sufficient for a court or tribunal simply to direct itself in the terms that Parliament has chosen to use. The idea of “integration” calls for a broad evaluative judgment to be made as to whether the individual will be enough of an insider in terms of understanding how life in the society in that other country is carried on and a capacity to participate in it, so as to have a reasonable opportunity to be accepted there, to be able to operate on a day-to-day basis in that society and to build up within a reasonable time a variety of human relationships to give substance to the individual's private or family life.”

67. We recognise that the facts of the cases are different but they always are. This is so commonplace as hardly to require vouching, but there is authoritative support, in this context, to be found in *KE (Nigeria) v Secretary of State for the Home Department* [2018] 1 WLR 2610 at paras 30 and 31. The evaluation is inevitably fact sensitive from case to case. We recognise that there were features in Mr Kamara’s case which are not demonstrated in the claimant’s. We must make our evaluation on the facts which have been found previously and those which we have found in the particular circumstances of the claimant’s case.
68. It has not been established that the claimant’s mother is dead but we accept his evidence that since he left Uganda at the age of 7, the only contact he has had with her occurred during a week or so in 1997. We accept his evidence that he knows of no family in Uganda. We note also the findings in 2002 which we set out at para 36.
69. We note also that the claimant would be separated from his brother and sister with whom he is very close; from his nephew; and from his daughter. Whilst we recognise that what we have narrated at para 47 was expressed in somewhat dramatic and emotional language, we think that the difficulty of being separated from his daughter would be something of a barrier to his integration and merits at least some consideration along with the rest of the circumstances.
70. We accept the claimant’s evidence that he now knows nothing of what life is like in Uganda. He was unrepresented and no country information was provided to us. We are an expert tribunal with experience of assessing the circumstances in a variety of African countries, including Uganda. We take judicial notice of the fact that, in the absence of a developed welfare state, a network of family support is of great importance if a person is to establish himself in a country such as Uganda. We consider that the claimant’s lack of any relationship with family members in Uganda is particularly significant. Even if he is capable of work, he has no understanding of the culture there and no contacts to assist him to establish himself in work. He would be removed to an isolated situation where he has no family or friends. Given his length of residence in the UK, it is highly unlikely that the claimant would be able to become enough of an insider to understand life in Uganda, to participate in it, be accepted, to operate effectively or to build relationships that would give substance to his private and family life.
71. We note that the Secretary of State accepts the adjudicator’s findings in 2002. We set store by the 2002 findings. At that time the claimant was 19 and had been away from

Uganda for almost all of 12 years. Having arrived in London at the age of 7 and having now been away from Uganda for 28 years (other than a week or so when he was 14) we consider that it is an almost completely alien environment for him. Whilst at 35 the claimant may be more mature and resourceful than he was at 19 after he had been away from Uganda for 12 years, 28 years have now passed. Given that he has been in the UK almost continuously since the age of 7, and that he has no real family connections in Uganda, we consider that there are very significant obstacles to his becoming integrated in the sense explained in *Kamara*.

Very compelling circumstances

72. We observe that the legislation and the rules reflect the judgment of Parliament and the Secretary of State on where a fair balance is struck for the purposes of article 8. Not all criminal offending carries the same significance for the public interest and there is an inbuilt gradation. Whilst the claimant's offending was serious for all of the reasons we have identified, he was sentenced to 22 months imprisonment and the structure allows for exceptions calculated to respect family life and private life under article 8.
73. In *NA (Pakistan)*, the Court of Appeal explained that in the case of criminals sentenced to less than four years imprisonment, there should be read into section 117C (3) wording to the effect; "*or unless there were very compelling circumstances, over and above those described in Exceptions 1 and 2.*" It also clarified that;
- "...The phrase used in section 117C(6) , in paragraph 398 of the 2014 rules and which we have held is to be read into section 117C(3) does not mean that a foreign criminal facing deportation is altogether disentitled from seeking to rely on matters falling within the scope of the circumstances described in Exceptions 1 and 2 when seeking to contend that "there are very compelling circumstances, over and above those described in Exceptions 1 and 2". As we have indicated above, a foreign criminal is entitled to rely upon such matters, but he would need to be able to point to features of his case of a kind mentioned in Exceptions 1 and 2 (and in paragraphs 399 or 399A of the 2014 rules), or features falling outside the circumstances described in those exceptions and those paragraphs, which made his claim based on article 8 especially strong."
74. The Court of Appeal also explained that relevant ECHR jurisprudence such as the principles found in *Üner v The Netherlands* (2006) 45 EHRR 14 and *Maslov v Austria* [2009] INLR 47 can and should be taken into account in considering whether the statutory exceptions such as the "unduly harsh" and the "very compelling circumstances" conditions are met.
75. Not all of the circumstances which we consider to be relevant fit neatly into the structure of the two statutory exceptions. The length of the claimant's stay in the United Kingdom, if lawful, is relevant to his meeting the condition in section 117C (4) (a), but as the court noted in *NA (Pakistan)* at para 31, it may have more significance than that having regard to *Maslov*.

76. For completeness, and noting what the Court of Appeal said at para 27 of its judgment in MM's case, we will consider all of the relevant circumstances together. In doing so, we bear in mind the observations of the court in *NA (Pakistan)* at paras 30-39.
77. We commence this consideration by reminding ourselves that deportation of foreign criminals is in the public interest for all of the reasons discussed above and that the claimant's four offences relating to class A drugs were serious offending pointing strongly towards deportation.
78. As against that very cogent consideration:
- The claimant was brought here by a relative at the age of 7 in somewhat opaque circumstances.
 - He did not choose to come to the UK.
 - Subject to an interval of two years when he was taken to Africa when he was 14 or so, he has lived in the UK lawfully since he was 7 and he is now 35.
 - His father has died. His uncle who brought him here has died. Since 1997, he has had no contact with his mother, who remained in Uganda, and he has no relationship with her.
 - He lives with his sister and has a close relationship with her and her son aged 9. He continues to have a close relationship with his brother who lives in the UK.
 - He has no relationship with any member of his family in Uganda if any is alive.
 - It was found in 2002 that the claimant was British in outlook, "with cultural norms and attitudes related solely to life in this country."
 - It was found in 2002 that for him to return to Uganda would be a severe shock which would have extremely harsh and damaging consequences for him.
 - In 2004 the claimant's daughter was born here and she is now 13. She is a British citizen. For at least four years he had the sole care of his daughter when she was young. He has maintained contact with her and now sees her several times each week.
 - Social services concluded on visiting her at home with her mother in 2013 that deportation of the claimant would have devastating consequences for the child's emotional development.
 - We have concluded that the consequences would be no less devastating for her if he is deported now.
 - Despite a turbulent upbringing, the claimant did not offend until 2011.
 - Whilst his offending was plainly serious, he has insight about it and he is remorseful. He cooperated on licence and was assessed as presenting a low risk of offending when he was released from prison in November 2013.
 - The claimant has not offended again since his release almost five years ago and it is more than six years since he committed the offences.

- The claimant now knows nothing of what life is like in Uganda.
79. Even allowing for the strong public interest, in all its aspects, in the deportation of a foreign criminal who committed the serious crimes at issue, we consider that this combination of circumstances amounts to very compelling circumstances such that deportation, exceptionally, is not required in the particular circumstances of this case.

Conclusion

80. We conclude that the First-tier Tribunal decision involved the making of an error on a point of law. The decision is set aside and is remade by the Upper Tribunal.
81. The Secretary of State's decision is dated 14 October 2013. The appeal was brought prior to the changes made to Part 5 of the Nationality, Immigration and Asylum Act 2002 by the Immigration Act 2014. For the reasons given above we conclude that the Secretary of State's decision is not in accordance with the immigration rules and is unlawful under section 6 of the Human Rights Act 1998.

DECISION

The First-tier Tribunal decision involved the making of an error on a point of law

The First-tier Tribunal decision is set aside

The claimant's appeal is ALLOWED

Lord Beckett sitting as an Upper Tribunal Judge

Date: 28 August 2018