Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: DA/01172/2014

THE IMMIGRATION ACTS

At: Manchester Civil Justice Centre **Decision & Reasons Promulgated**
On: 2nd July 2019 **On: 9th July 2019**

Before

UPPER TRIBUNAL JUDGE BRUCE

Between

CTW
(anonymity direction made)

Appellant

And

The Secretary of State for the Home Department

Respondent

For the Appellant: **Mr Karnik, Counsel instructed by Howells Solicitors**
For the Respondent: **Mr McVeety, Senior Home Office Presenting Officer**

DECISION AND DIRECTIONS

1. The Appellant is a national of Sierra Leone born in 1993. He appeals on human rights grounds against the Respondent's decision to deport him from the United Kingdom.

2. The chronology of events leading to this appeal is as follows:

23.7.09	The Appellant enters the UK aged 15. Appellant granted Indefinite Leave to Enter as the child of a person present and settled in the UK (his mother)
1.11.12	The Appellant convicted at Bury and Rochdale Juvenile Court of possession of a Class C drug, using threatening behaviour. Received a community order
2.11.12	The Appellant convicted at Manchester Crown Court of robbery. Received a sentence of 2 years' imprisonment
2.1.13	The Appellant served with a liability to deportation notice
25.9.13	The Appellant served with a Deportation Order
8.1.13	The Respondent withdrew the Deportation Order
10.6.14	The Respondent signs second Deportation Order
5.9.14	First-tier Tribunal Judge de Haney allows appeal
28.10.14	Upper Tribunal Judge Coker sets the decision of Judge de Haney aside on the grounds that he erred in law in failing to adequately weigh the public interest into his assessment of whether it would be 'unduly harsh' for the Appellant's son if he were to be deported. The matter is remitted for re-hearing.
21.8.15	The First-tier Tribunal (Judge McClure) dismisses appeal
16.6.16	Upper Tribunal (Judge Clive Lane) upholds the decision of First-tier Tribunal Judge McClure and dismisses the Appellant's onward appeal
2.12.17	Upper Tribunal refuses permission to appeal
24.10.18	Supreme Court hand down judgment in KO (Nigeria)(FC) v Secretary of State for the Home Department [2018] UKSC 53 holding that upon proper construction the test "unduly harsh" should be evaluated without reference to the public interest
8.11.18	Court of Appeal grant permission (Lord Justice Holroyde)

8.1.19 Consent Order sealed in the Court of Appeal. Statement of Reasons explains that the Respondent accepts that following the decision in KO (Nigeria) the decision would need to be remade, and that remittal to the UT would therefore be appropriate.

3. At a hearing before me on the 24th May 2019 the parties agreed that the effect of the consent order is that the decision of the First-tier Tribunal is set aside for error of law, namely the incorrect approach to the question of whether it would be "unduly harsh" for the Appellant's young son to remain in the United Kingdom without him. They invited me to remake the decision *de novo*, addressing that issue and further considering whether there were "very compelling circumstances" such that deportation action should no longer be pursued. Since it has now been approaching four years since Judge McClure made his findings of fact about the Appellant's circumstances, this would need to be with regard to updated evidence. This is particularly so since the intervening years have seen the Appellant fall victim to a serious assault which has left him with a number of physical and mental difficulties which may arguably impact upon his ability to re-establish himself in Sierra Leone. I therefore adjourned the initial hearing in order that such further evidence could be prepared and presented.

4. When the hearing reconvened on the 2nd July 2019 I heard live evidence from the Appellant, and from his mother, Mrs H. I was provided with up to date medical evidence and witness statements from other witnesses, including the mother of the Appellant's child, whom I shall refer to as OO.

The Evidence

5. I preface this summary of the evidence by recording that I found both the Appellant and Mrs H to be wholly credible witnesses. Their evidence was detailed and consistent, and at times obviously heartfelt, particularly when they were discussing the position of the Appellant's son, S. In his submissions Mr McVeety acknowledged that no issue was taken with any of it, and that it was a matter for me whether I found it to disclose circumstances that would engage one of the exceptions at section 33 of the Borders Act 2007.

6. The family history is as follows.

7. Mrs H came to study in the United Kingdom in 2002. She had left the Appellant, then aged almost 8, with the only relative that she had in Sierra Leone at the time. This was a lady whom he referred to as his grandma but was, more accurately, his great-aunt. He called this lady Mrs Alladin and she looked after him until he came here. The Appellant explained in his oral evidence that whilst under Mrs Alladin's care he had led a very sheltered life. She was afraid to let him out and as a result he did not have friends as such. He was not used

to going about his own business. I interpolate that this evidence appears to be consistent with the country background evidence which shows that Sierra Leone suffered a brutal and protracted civil war between 1991 and 2002 characterised by the forced recruitment of vulnerable children into the various militias. It is further consistent with the evidence given to the Judge who dealt with the Appellant's entry clearance appeal in March 2009. Immigration Judge Crawford recorded Mrs H's evidence at that time to be that Mrs Alladin was stressed when the Appellant left the house, and that the Appellant was in turn complaining to his mother that she was restricting him.

8. So it was that when the Appellant arrived in the United Kingdom in the summer of 2009 he was a fifteen year old with very limited life experience; such experience that he did have did not equip him well for his new life in Manchester. The Appellant explained in his oral evidence that he started attending school as soon as he arrived but there was no way that he was going to be able to catch up with his peers. He had gone from grade 8 in Sierra Leone to joining a class who were about to take their GCSEs. He therefore found school difficult. It is appropriate to note at this point that the Appellant speaks with a quite a severe stutter. He states that he was bullied at school because of this speech impediment and this further obstructed his settling in. He was moreover not used to the freedom. He told me in live evidence that he "couldn't really cope". When he did make friends, he chose badly. He started hanging around with the wrong people.

9. Mrs H found this behaviour very difficult to cope with. She had held high hopes for her son and was obviously distraught that he was not making the most of the opportunity he had been given when he came to the United Kingdom. They fought; he fought with her then husband, his stepfather. Mrs H had not seen him at all between the years 2002 and 2009 and found it hard to discipline him. There was frequently conflict between them. In March 2012 his mother gave birth prematurely (to the Appellant's second brother 'B2'). The Appellant felt responsible for this because of all of the fighting and so he decided that he should leave the family home and live on his own. He was at that stage 18 years old.

10. On the day that the Appellant left his mother's home he went with a 'friend' into Manchester city centre. What transpired there is described in grim detail in the sentencing remarks of HHJ Wigglesworth, who in November 2012 sent the Appellant to prison for robbery. The Appellant and this associate were in a bookmaker's near Piccadilly Gardens when they observed an elderly customer collecting substantial winnings. The pair of them left the shop and followed this gentleman to where he was boarding his bus. They got on the bus and sat on that bus for approximately 40 minutes, all the while planning to rob him. When the man disembarked in Walkden he proceeded to a taxi rank where the two young men set about him, knocking him to the ground and punching him as he lay on the floor. Judge Wigglesworth rightly comments "it must have been for

him, a terrifying experience". He noted that the aggravating features of the offence were a) the age of the victim – he was 77, b) the fact that the two acted in concert, c) that it occurred in the hours of darkness and d) that they planned the attack. I would add in respect of the latter feature of the case that a 40 minute bus ride is a long time to think about what you are about to do and change your mind. That the Appellant did not speaks to his state of mind at the time and the very serious nature of this offence. Judge Wigglesworth sent the Appellant to a Young Offenders Institution for two years.

11. He was released in October 2013 and immediately returned to his mother's home. Prior to his sentencing he had been staying with his girlfriend, OO, but the contemporaneous notes from social services and the probation service record that it was the Appellant's decision to go back to living with his mother and stepfather in an attempt to stabilise his life, and to support them in looking after his two younger brothers. He has lived there ever since. The Appellant now enjoys a close relationship with his mother, who has been particularly reliant on him since her marriage broke down in 2016. Mrs H is employed full time by Manchester City Council where she has worked, in various capacities, since 2005. She told me that over the years the Appellant has been of enormous help to her in looking after his brothers/collecting them from school etc. This has enabled her to carry on working to support the family. The younger boys have not seen their father for approximately three years. Mrs H was able to secure 'CSA' payments from him through the intervention of that agency, but he has declined to have any contact with his sons. Mrs H told me that social services have contacted him with a view to facilitating some reconciliation but he "is not interested". It is in that context that Mrs H feels it is particularly important for her younger sons to have a meaningful relationship with their elder brother.

12. Because of these domestic arrangements there was a good deal of evidence about the Appellant's two younger half-brothers.

13. B1 was born in 2006 and it became apparent when he was at a young age that he had very significant behavioural and learning issues. Mrs Hibbert told me that B1 was excluded or suspended every year that he was in primary school, and I can see from the various letters from his then school in the Respondent's bundle that this is indeed the case. The child was repeatedly excluded or punished for assaulting other children or members of staff, on at least one occasion causing a teacher to have to attend hospital; on another he was witnessed by a Child Psychologist to be throwing chairs at other children, one of whom was cut in the face. He has subsequently been diagnosed with autism and is now, at the age of 12, attending specialist boarding school four nights a week.

14. I have read all of the documents before me relating to B1. Three clear points emerge. First, that B1 has quite extreme learning disabilities and behavioural

difficulties. He was under the care of Manchester CAMHS from the age of five until very recently. He remains under assessment but at present the diagnosis is autism. Second, that these disabilities have presented the family as a whole with a long term and stressful challenges. Managing the care of B1 has not, for instance, been limited to having someone available to pick him up from school at the normal time. His violent outbursts have meant that his family members have been called to collect him at various points of the day and that planning is very difficult. Those logistical issues however pale into insignificance next to the emotional strain that his needs have placed the family under. Third, that it has been the consistent view of his mother and independent observers that B1 has an extremely strong attachment to the Appellant. In January 2014 Independent Social Worker Mr Charles Musendo was told by B1's then school that B1's behaviour had significantly improved after the Appellant was released from prison and returned to the family home. He had, whilst the Appellant was imprisoned, only managed one day in school at a time before being sent home; the 'team' working with B1 reported to Mr Musendo that after the Appellant was released B1 immediately managed a five day straight run. Mrs H told me that the two remain very close and that B1 looks forward to coming home at weekends where he is able to spend time with the Appellant. He was only a toddler when the Appellant arrived and he has always been part of his life.

15. B2 was born in March 2012 and is almost exactly the same age as the Appellant's own son, S, who was born in January of the same year. Although it does not appear that the Appellant and S's mother OO stayed together for very long after S was born, it is the consistent evidence of the witnesses that she has maintained a close and warm relationship with the family as a whole. Mrs H told me that when the Appellant was in hospital in Liverpool and she was stuck for childcare it was OO who came and babysat, allowing her to make the long round trip on public transport. She stayed in contact with the family when the Appellant was in prison and ever since. As a consequence, S and B2 are more like brothers than nephew and uncle. They are extremely close and ever since they were young children if the Appellant was doing something with S – cinema, football, MacDonalds – he would take B2 along as well. As a result B2 has also developed a strong bond with the Appellant, a bond that has inevitably strengthened as his relationship with his own father has come to an end.

16. The only other member of the family living in Manchester is Mrs H's foster mother, whom the Appellant treats and refers to as his 'Nana'. The consistent evidence of both witnesses is that this lady is now very elderly and requires the support of her family. Before his 'accident' the Appellant would go to her flat twice a week to give it a clean, get her shopping and run errands for her. Now obviously he is unable to do this but he continues to see her on a weekly basis. Mrs H visits her mother three times a week and when she does she leaves her sons with the Appellant.

17. That is the evidence relating to the Appellant's family background. I now turn to address the evidence relating to personally to him.

18. The Appellant started a relationship with Nigerian national OO sometime in 2011. They were both then 17. Their son S was born in Manchester in January 2012. The Appellant did spend some time living with his new family prior to his imprisonment in November of that year, but the relationship with OO did not survive his conviction. OO was unable to attend the hearing before me as one of her other children was unwell, but I note that she has come to court on two previous occasions, appearing before Judge de Haney and Judge McClure. As far as Mr McVeety was aware no issue has ever been taken with any of her evidence. Her witness statement dated 10th June 2019 was admitted into the evidence.

19. OO states that the Appellant has "always been there" for S, and that he has always made it clear to her how important it is to him that S has what he did not, a father. Prior to the Appellant being assaulted in Liverpool (that is to say between his release from custody in October 2013 and the 17th March 2018) S saw his father three times a week, with overnight stays. The Appellant was working at The Alchemist in Manchester at that time and he would give her £100 per week in maintenance money. Since he was injured the Appellant has had to give up work but still gives her £150 per month; he also takes S clothes shopping and buys him things he needs. The Appellant now regularly sees S every two weeks for a full weekend, plus holidays. OO states that she is also close to Mrs H and that their support has been a big help to her and S.

20. OO states that the assault on the Appellant was an incredibly stressful time for S. Mrs H told her not to take S to the hospital because it would be too distressing for him to see his father like that, but S continued to regularly visit his father's house, staying with his grandmother and uncles. After the Appellant was transferred to a hospital in Trafford S was able to start seeing him again. S understands that his father's injuries have been life-changing, and that he is not able to do the things that he used to do, like play football all the time. S is however seeing his dad every two weeks at the moment, with the hope that this will increase as the Appellant's condition improves. OO describes the relationship between S and his father as "very intense".

21. One aspect of the Appellant's relationship with S that OO wishes to stress is the efforts he has gone to in helping his son understand and connect to his Sierra Leonean heritage. As a dual-heritage child living in the United Kingdom OO believes that it is very important for S to be familiar with, and have respect for, his background. He can understand Krio, and has been taught about his family history by his father – the Appellant describes going online with S to find articles about his great-grandfather CA Kamara-Taylor, who was a politician in the 1970s and 80s. OO closes her statement by offering her assessment that the Appellant's deportation would have a "devastating" impact on her son.

22. In March 2018 the Appellant was subject to an assault whilst on a night out in Liverpool. The trial of his alleged assailant is not until later this year but in broad terms he was knocked to the ground and kicked, including in his head. There was snow on the ground and the Appellant lay in it unconscious for several hours before he was discovered. He therefore had hypothermia when he was admitted to the critical care unit at Aintree University Hospital, where he required intubation, ventilation and dialysis. He remained in a coma for several days. Mrs H told me that the Appellant was in hospital until August.

23. The medical evidence before me indicates that there continue to be two consequences of that event. First, that the Appellant has sustained significant neurological damage in that he suffers daily from pains in his legs and feet, and occasionally hands, which are entirely attributable to nerve damage. He is unable to control or flex his toes, particularly on his left foot, so that walking any distance is difficult and creates other problems such as damage to his feet, cramps and lower back pain. He told me that his knees are often very painful such that he finds it difficult to move. He is unable to bend over, for instance to tie his shoelaces. I was able to observe that his movements are obviously impaired. He was receiving three sessions of physiotherapy per week but that has now reduced, with the Appellant undertaking independent exercise to promote his rehabilitation. He continues to see the physio once per fortnight, sees a speech therapist and attends a group physio session once per week. The Appellant takes several painkillers: iboprufen, codeine, gabapentin and duloxetine, which are specifically prescribed to deal with neuropathic pain symptoms. A recent assessment by the clinical lead physiotherapist with the Manchester Local Care Association (MLCO), Ms Joanne Ritchie, revealed that the Appellant was able to walk for 350 metres with crutches before he needed to stop and rest.

24. The second sequala of the event is the impact upon the Appellant's mental health. He has reported suffering from increased anxiety, flashbacks and nightmares (although I note that Mrs H has also observed that these sometimes relate to wartime Sierra Leone). He is unable to sleep and has been diagnosed with depression. A letter dated May of this year from MLCO confirms that the Appellant is seeing a psychologist and has been referred for CBT; a letter dated 30th April 2019 from Laura Plant of Greater Manchester Mental Health foundation trust states that the appellant continues to receive treatment for symptoms of Post Traumatic Stress Disorder. He is prescribed 30mg propranolol per day to help deal with these symptoms.

25. The totality of these medical issues has resulted in the Appellant being deemed eligible for Personal Independence Payments of over £75 per week.

26. Given the passage of time, and the fact that the Appellant has not been in any trouble since his 2012 conviction, it was no part of the Respondent's case that he

continues to present a risk of harm in the form of continuing criminality. It is however worth noting that he completed all the requirements of the probation service both before and after release; he was a model prisoner and professionals who interacted with him inside reported to his probation officer that he took part in programmes offered to him with "a high degree of application".

27. The last section of evidence that I must address is that relating to Sierra Leone. Again, none of this was challenged and the Secretary of State produced no evidence of his own. In broad summary:

    i) 75% of Sierra Leoneans live below the poverty line, and this "economic desperation has fuelled increases in crime" [US Overseas Security Advisory Council, 10.4.19];

    ii) Given the high rate of unemployment work opportunities for persons with disabilities were limited, and begging was commonplace [US State Department report 2019]

    iii) Unemployment rates are 70%. Life expectancy for men is 39 years [The Borgen Project, 15.7.18]

    iv) There is a severe shortage of mental health clinicians, with only two practising psychiatrists, two psychologists and 19 mental health nurses in a country of over 7 million people. Individuals with mental health disorders are commonly chained [WHO 29.3.18]

    v) Most of the drugs supplied from the central medical store to sub-medical stores across the country are either expired or close to expiry [Sierra Leone Telegraph 11.9.16].

Legal Framework

28. The legal framework is uncontroversial.

29. The Appellant is, by reason of his criminal conviction, liable to automatic deportation: s32(5) UK Border Act 2007. He can succeed in resisting deportation if he can show that any of the exceptions in section 33 of the UK Border Act 2007 apply. That section contains 6 exceptions, only one of which is potentially engaged on the facts: s33 (2)(a), that his deportation would breach his Convention rights, that is to say his rights under the European Convention on Human Rights.

30. The Appellant relies on Article 8, submitting that his deportation would be a disproportionate interference with both his private and family life in the United Kingdom. Because he seeks to rely on Article 8 I must have regard to the provisions in respect of the public interest set out in s117C of the Nationality, Immigration and Asylum Act 2002:

> (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.

31. It is not contended that the Appellant can meet 'exception 1' set out at s117C(4). Although he has lived in the United Kingdom with leave since 2012 he spent the preceding 15 years living in Sierra Leone. He has not therefore been lawfully resident here for most of his life. He does however contend that he can meet 'exception 2', which relates to family members, since he has a genuine and subsisting parental relationship with S. The Secretary of State accepts that this

relationship exists, but not that any interference with it would be 'unduly harsh'.

32. The courts have consistently held that to be a high test. In KO (Nigeria) v Secretary of State for the Home Department [2018] UKSC 53 the Supreme Court said this:

> "the word 'unduly' implies an element of comparison. It assumes that there is a 'due' level of 'harshness', that is a level which may be acceptable or justifiable in the relevant context. 'Unduly' implies something going beyond that level. The relevant context is that set by section 117C(1), that is the public interest in the deportation of foreign criminals. **One is looking for a degree of harshness going beyond what would necessarily be involved for any child faced with the deportation of a parent**. What it does not require in my view (and subject to the discussion of the cases in the next section) is a balancing of relative levels of severity of the parent's offence, other than is inherent in the distinction drawn by the section itself by reference to length of sentence. Nor (contrary to the view of the Court of Appeal in *IT (Jamaica) v Secretary of State for the Home Department* [2016] EWCA Civ 932, [2017] 1 WLR 240, paras 55, 64) can it be equated with a requirement to show "very compelling reasons". That would be in effect to replicate the additional test applied by section 117C(6) with respect to sentences of four years or more.

[at 23](emphasis added).

33. The parties were in agreement that should the Appellant be unable to demonstrate that test to be met, he could nevertheless succeed if he can show that there are in his case 'very compelling circumstances' over and above that, or an equivalent degree of harm: NA (Pakistan) & Another v Secretary of State for the Home Department [2016] EWCA Civ 662. It is therefore the case that the Appellant would need here to show that there were some circumstances demonstrably *worse* than undue suffering for his son; a higher threshold yet. In NA Lord Justice Jackson put it like this:

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

34. A Presidential panel of this Tribunal (Lane J, Upper Tribunal Judges Coker and Gill) has recently offered further guidance on how the test should be applied. In MS (s.117C(6): "very compelling circumstances") Philippines [2019] UKUT 00122 (IAC) the Tribunal held that unlike the test of 'undue harshness' which has - eventually – been settled to be determined with reference to only to the child, this freestanding test is not effected by the *ratio* in KO:

> *(1) In determining pursuant to section 117C(6) of the Nationality, Immigration and Asylum Act 2002 whether there are very compelling circumstances, over and above those described*

in Exceptions 1 and 2 in subsections (4) and (5), such as to outweigh the public interest in the deportation of a foreign criminal, ***a court or tribunal must take into account, together with any other relevant public interest considerations, the seriousness of the particular offence of which the foreign criminal was convicted****; not merely whether the foreign criminal was or was not sentenced to imprisonment of more than 4 years. Nothing in KO (Nigeria) v Secretary of State for the Home Department [2018] UKSC 53 demands a contrary conclusion.*

Discussion and Findings

35. The difficulty with applying the 'undue harshness' test in practice is that most children who face losing a parent to deportation are going to suffer adverse consequences; they will be upset; they will miss that parent; they may grow up in a one-parent family; they will miss the opportunities afforded to them by interaction with the deportee. These affects are real and can be devastating for the children concerned. That this is so is undoubtedly harsh, but the courts have held that it was not parliament's intention that such factors would make it 'unduly' so. As Lord Justice Carnwath put it in KO: "One is looking for a degree of harshness going beyond what would necessarily be involved for any child faced with the deportation of a parent".

36. I accept OO's evidence that her son would be "devastated" by losing his father. I accept that the Appellant has been, and continues to be, a devoted and enthusiastic parent, and that he is keenly aware of what it is for a little boy to grow up without his dad. I accept – although there is no independent evidence to this effect – that S is likely to have been extremely anxious about his father after the assault and in particular during those weeks when it was not clear what the extent of his injuries might be. I accept that it is overwhelmingly likely that the removal of the Appellant to Sierra Leone will mean that S will not see him again in the foreseeable future, if at all. This is not a family with a lot of money. OO has two other children to care for now and it seems fanciful to imagine that she would have the means or will to be able to take S to a country to which she has never been and has no connection. I note that this appeared to have been accepted by Lord Justice Holdroyde when he granted permission: he thought Judge McClure had "failed to grasp the nettle of permanent separation of father and son". I am unable to find, in any of that, any matter capable of elevating this case above that of the average child in the position of S. The consequences for S are harsh – very harsh – but applying the dicta of the Court of Appeal they are not unduly so.

37. I do nevertheless accept without hesitation that it would be wholly contrary to S's best interests if the Appellant were to be deported, and that he would likely suffer considerably if his father were to be removed. This is a matter that Mr McVeety accepted I would have to weigh in the balance when considering whether the higher test of 'very compelling circumstances' was met.

38. Turning to that test I remind myself that in this stage of the deliberations I am bound to weigh against the Appellant the nature of his offence, and the length of his sentence. The Appellant got 2 years in prison for the premeditated robbery of a 77 year-old man. That he was sent to prison for as long as he was, on what was his first appearance before the Crown Court, marks the seriousness of this attack. I also note that the sentencing judge imposed that length of sentence only after having had regard to the mitigation pleaded on the Appellant's behalf, principally the fact that he had become homeless and was going through a difficult time with his family. Had that mitigation not been accepted, and credit not given for his guilty plea, the sentence would have been markedly longer. The offence, and the nature of it, weigh heavily against the Appellant. The presumption lies in favour of deporting him. It matters little that it was six years ago and that he has not committed a crime since. As the President underlined in MS (Philippines), deterrence remains a strong factor in the imposition of deportation orders. My acceptance that he poses virtually no risk of reoffending must be set in that context.

39. Against that I weigh the findings I have already reached about the serious impact upon S, and the following matters.

40. It would be strongly contrary to the best interest of B1 if the Appellant were to be deported. B1 was only a toddler when the Appellant appeared in his life and I accept that the two of them became immediately close. Unlike Mrs H the Appellant was a young man with the energy required to take a boisterous little boy to the park every day and I accept Mrs H's evidence that this was a welcome – and no doubt necessary – respite for her in dealing with B1s increasing demands. The independent evidence about B1s very significant needs is striking. It paints a picture of a child who was at times impossible to control and comfort. The stress of this must have been very hard for Mrs H to bear, and I entirely accept her evidence that the Appellant played a large part in ensuring that they could 'get through' this challenge as a family. Her evidence – and indeed the evidence of B1s teachers to the social worker – is that the Appellant is able to connect with B1, and that his behaviour improves when the Appellant is around him. Unlike S, B1 will have little or no means of understanding why the Appellant has disappeared from his life. It is likely to be deeply upsetting for him.

41. I find that it would also be contrary to B2's best interests if the Appellant were to be deported. Although B2 is not the Appellant's son, it is clear from the evidence that he has a very strong bond with his uncle and that during his life it has been the norm rather than the exception for him to go along with his 'nephew' S and the Appellant on their trips out, or just hanging round the house. Because of his close proximity in age to S the two of them are more like brothers and so it is easy to see how B2 also regards the Appellant as a parental

figure. I accept Mrs H's evidence that this bond has been further strengthened by the departure of her ex-husband, the biological father of B1 and B2.

42. Whilst I am mindful of what is said in NA (Pakistan), that the "commonplace" demands of domestic life will not in itself be sufficient to tip the balance I do attach some weight to the strength of the relationship that Mrs H has with her son. Even after sustaining his injuries Mrs H relies upon him as she tries to maintain a full time job, be a single mother (three nights a week to a child with significant special needs) and look after her own ailing mother who lives on the other side of Manchester. I have no difficulty in accepting Mrs H's evidence that having the Appellant under her roof has been a great comfort and support to her as she tries to juggle all of these competing demands.

43. As to the Appellant's prospective circumstances in Sierra Leone I am quite satisfied that these would be grim. He is not going to starve – I have no doubt that Mrs H would not let that happen – but I do not believe that he will be able to carve out for himself a life of any degree of normality there. First, he has very little understanding of how life works in that country. Although he speaks Krio and was 15 when he left I accept that he had led a relatively sheltered life. He has never had a job there. He knows no-one in that country, 'Nana' having died some years ago. The Appellant has a visible disability. His movements are restricted, with his gait obviously affected by the neurological damage sustained in the attack. I am unsure about the extent to which the Appellant's stammer was worsened by the stress of appearing in court but in his oral evidence he was unable to give a single answer without it affecting his speech. In a strange and challenging environment it would certainly draw attention to him, and gives the strong impression that he is vulnerable. Given that the unemployment rate is at 70% it seems unlikely that a young man with no connections would be able to find work; the chances for a disabled young man with a speech impediment would be even worse. I am concerned that the Appellant's visible disabilities would render him particularly vulnerable to crime and exploitation.

44. Mr Karnik submitted that the Appellant would be likely to face considerable difficulties in obtaining the treatment that he needs in Sierra Leone. At present that consists of various therapies and a drug regime. Nothing in the evidence before me indicated that any of the interventions that the Appellant currently enjoys – speech therapy, psychotherapy, CBT and physiotherapy – would be available to him in Sierra Leone. Although there was no specific evidence on the availability of the various medications that he is prescribed, I accept Mr Karnik's submission that the real issue would be whether the drugs he manages to obtain are efficacious – if they are expired or fake this would place the Appellant at risk of significant increases in pain and the attendant lack of mobility.

45. As to the issue of the Appellant's anxiety and depression I do not think I need medical opinion to conclude that such conditions would likely be exacerbated if he were to be removed to Sierra Leone far away from his son, brothers, mother and grandmother. Having had regard to the country background evidence I have real concerns that his supply of medication could be interrupted and that this too would make his conditions significantly worse. The evidence on provision of mental health care in Sierra Leone is stark, and distressing. In the absence of actual treatment the prevailing solution is 'chaining' whereby the individual concerned is chained in the home, a church or even a hospital. Whilst the evidence in this case falls far short of the high threshold necessary to make out a case under Article 3, I nevertheless attach some weight to the fact that the Appellant is very, very unlikely to get an appointment with a psychologist, and there is a real risk that his supply of medication will be interrupted. He is therefore likely, at the very least, to suffer psychological distress, which will further diminish his ability to integrate into Sierra Leonean society.

46. Drawing all of this together the case I have before me is this. A troubled young man with valid leave to remain committed a horrible crime. He was sent to prison for 2 years. Since that time we have been seemingly incapable of deporting him. It took the Respondent 19 months to serve a valid deportation order, and in the five years that have followed his case has boomeranged around the appeal system whilst the debate about the legal effect of s117C raged on. Thus whilst not on all fours with the delay in EB (Kosovo) [2018] UKHL 41 – which was entirely attributable to the dysfunction at the Home Office – it remains the case there has been a substantial delay in giving effect to a decision deemed necessary in the public interest.

47. The usual *EB Kosovo* effect can be seen here. It is certainly the case that the relationships upon which the Appellant relied in 2012 – in particular those with his son and little brothers - have been immeasurably strengthened in the intervening years. Those boys are no longer the toddlers that they were – in the case of B2 and S in particular they are on the cusp of their teenage years when disruption and family breakdown can be particularly harrowing. His mother's marriage has ended and she too looks to him with increasing need for emotional – if no longer so much practical – support.

48. It is however the Appellant's individual circumstances which have changed the most. In 2012 he had only been in this country for 3 years. His carer in Sierra Leone was still alive. His son and brothers were infants, when dislocation is sad, but in time can be forgotten. He was a fit and well young man. Today he has been in the United Kingdom for 10 years. He is, on the evidence before me, entirely integrated into British society. He is no longer fit and well. The incident that took place in Liverpool in March 2018 has left the Appellant with significant neurological damage, such that he is unable to walk a moderate distance, bend down and grasp things. This has played a significant part in my

deliberations because I am satisfied not just that he is disabled by that attack, but because he appears so to the outside observer. His vulnerability to crime and/or destitution upon return to Sierra Leone is markedly increased. Even if Mrs H was able to send him some financial support his situation in society would undoubtedly be precarious.

49. It is no part of my decision making process to mark my own personal revulsion at the Appellant's criminal offence. As Lord Wilson noted in Hesham Ali [2016] UKSC 60 it is perhaps too emotive a concept to properly figure in this analysis, where the public interest speaks for itself. It is however worth underlining that I do consider it to be a disgusting and reprehensible attack, and that in reaching my decision the victim and his family were consistently in my mind. I have nevertheless reached the conclusion that on the particular facts of this case, and having weighed all of the relevant features of the evidence, I conclude that the very high threshold imposed by s117C(6) has been surmounted: there are very compelling circumstances such that the Appellant should not be deported because to do so would be a disproportionate interference with his private and family life in this country.

Anonymity

50. The Appellant is a criminal and his identity would not therefore ordinarily attract protection. His case involves however the presence in the United Kingdom of three British children.

51. I am concerned that identification of the Appellant could lead to identification of those children.

52. As such I am satisfied, having had regard to the guidance in the *Presidential Guidance Note No 1 of 2013: Anonymity Orders*, that it would be appropriate to make an order in accordance with Rule 14 of the *Tribunal Procedure (Upper Tribunal) Rules 2008* in the following terms:

> "Unless and until a tribunal or court directs otherwise, the Appellant is granted anonymity. No report of these proceedings shall directly or indirectly identify him or any member of his family. This direction applies to, amongst others, both the Appellant and the Respondent. Failure to comply with this direction could lead to contempt of court proceedings"

Decisions

53. The decision of the First-tier Tribunal contains material errors of law and it is set aside.

54. The appeal is allowed on human rights grounds.

55. There is an order for anonymity.

Upper Tribunal Judge Bruce
4th July 2019