Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: DA/01745/2014

THE IMMIGRATION ACTS

Heard at Manchester Civil Justice Centre	**Decision & Reasons Promulgated**
On 10 September 2019	**On 20 November 2019**

Before

UPPER TRIBUNAL JUDGE PLIMMER
DEPUTY UPPER TRIBUNAL JUDGE O'RYAN

Between

MMAR
(ANONYMITY DIRECTION MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Ms Benitez, Counsel, instructed by Fisher Day Solicitors
For the Respondent: Mr C Bates, Senior Home Office Presenting Officer

DECISION AND REASONS

Background

1 This is MMAR's appeal against the decision of 27 August 2014 to refuse to revoke a deportation order. Due to the date of the decision appealed against, this appeal is brought under the 'saved provisions' of Part 5, Nationality, Immigration and Asylum Act 2002 ('NIAA 2002'). The Tribunal may thus consider whether the decision is not in accordance with immigration rules (s84(1)(a)), otherwise not in

accordance with the law (s.84(1)(e)), or contrary to s.6 Human Rights Act 1998 (s.84(1)(g)).

2 This matter has been remitted from the Court of Appeal, and this decision is to be read alongside the decision of the Upper Tribunal dated 15 April 2019. For the avoidance of doubt, we shall refer to MMAR as the appellant, and the Secretary of State for the Home Department as the respondent. Some elements of the appellant's immigration history, as set out in the decision of 15 April 2019 are repeated below, for the sake of clarity.

3 The appellant is a national of Pakistan. He entered the United Kingdom on 25 October 2002 with entry clearance as a student valid until 31 October 2005. He gained further periods of leave to remain to 31 October 2008, and then to 31 January 2010. The appellant met his partner, AT, a British national of Pakistani heritage, in 2005 and they commenced a relationship in early 2006 (witness statement ('WS') AT, 5 October 2015).

4 The appellant applied for further leave to remain as a student on 10 February 2010, but was refused on 19 August 2011, with an in country right of appeal. He pursued that appeal, but later withdrew it. On 20 October 2011 the appellant was notified of his liability to removal as an overstayer.

5 The appellant's antecedent history is as follows, as provided in a PNC printout dated 9 July 2019. On 8 August 2005, the appellant was convicted at Manchester City Magistrates Court of using a false instrument, for which he received a fine of £650. He was also convicted of using a vehicle whilst uninsured, for which he was fined £250. On 12 October 2006 the appellant was convicted at Manchester City Magistrates Court of driving with no MOT and no insurance, and resisting or obstructing a constable, for which he was fined £100. On 22 April 2008, the appellant was convicted at Manchester City Magistrates Court of driving a motor vehicle with excess alcohol, and was fined £145 and disqualified from driving for 12 months. On 3 March 2009 the appellant was convicted at Trafford Magistrates Court of driving whilst disqualified and with no insurance on 29 December 2008 and 2 March 2009, and received a three-month suspended prison sentence. On 13 July 2010 the appellant was convicted at the Manchester City Magistrates Court of failing to comply with a community requirement of a suspended sentence, and was imprisoned for 10 weeks.

6 On 30 July 2012 the appellant was convicted at Manchester City Crown Court of fraud by abuse of position and was sentenced to 15 months imprisonment. He did not appeal against the sentence or conviction. The details of that offence were, according to the appellant, that whilst employed by the Royal Bank of Scotland, he unlawfully transferred monies from one bank account to others, for the benefit of others. He asserts that he was under duress to do so, as his landlord had threatened to report the appellant to the Home Office for working more hours than he was permitted under his leave to remain as a student.

7 It is also appropriate to note that the appellant was also convicted on 13 October 2015 in the Cardiff and the Vale of Glamorgan Magistrates Court, for being drunk and disorderly on 25 September 2015, and was fined £150.

8 On 3 September 2012 the appellant was notified of his liability for deportation. A deportation order was signed on 11 September 2012. That decision was later revoked due to a procedural error, but a fresh notice of intention to deport was issued on 23 October 2012. The appellant completed his custodial sentence on 18 September 2012 (he having been detained on remand since February 2012, prior to conviction on 30 July 2012 - see WS of 5 October 2015, para 31) and entered immigration detention. The appellant claimed asylum on 29 October 2012. He was released on bail on 17 December 2012. His period of detention had therefore been from February 2012 to 17 December 2012.

9 The asylum claim was refused on 16 January 2013, on which date a fresh deportation order was also signed. The appellant appealed against that decision, his appeal coming before Judge of the First tier Tribunal ('FtT') Nicholson and lay panel member Mr M James on 19 February 2013. The appeal was dismissed in a decision dated 4 March 2013 (dates taken from later FtT decision of 10 December 2014). He became appeal rights exhausted in relation to that appeal on 18 April 2013.

10 An application for revocation of the deportation order was received on 30 May 2013.

11. Letters were issued to his solicitors regarding the appellant's failure to report.

12 The appellant was detained on 11 November 2013. The appellant made further representations seeking to revoke the deportation order against him. The appellant informed the respondent that AT was pregnant.

13 Various other steps were taking in the decision-making process, including refusing certain representations under paragraph 353 of the immigration rules. The appellant was released on bail on 23 April 2014. The appellant had therefore been in immigration detention for approximately 5 ½ months. The appellant's daughter AR was born in May 2014.

The respondent's decision

14 The respondent ultimately made the decision of 27 August 2014, refusing to revoke the deportation order. This represented an immigration decision as then defined under s.82(k) of NIAA 2002. The respondent directed herself in accordance with paragraphs 398 and 399 of the immigration rules. The respondent accepted at [37] that the appellant had a genuine and subsisting parental relationship with AR, and accepted at [40] that it would be unduly harsh for AR to live in Pakistan, as she was

a British national. However, at [41], it was not accepted that it would be unduly harsh for AR to remain in the United Kingdom without the appellant, who was to be deported.

15 In relation to the appellant's relationship with AT, the respondent appears to have accepted at [45] that the appellant was in a genuine and subsisting relationship with her, and it was accepted at [47] that it would be unduly harsh for her to live in Pakistan. However, it was not accepted that it would be unduly harsh for AT to remain in the United Kingdom upon the appellant's deportation. The respondent's decision letter does not come to any conclusion on the issue of whether the appellant met the requirement of paragraph 399(b)(i), i.e. whether his relationship with AT was formed at a time when the appellant was in the UK lawfully and his immigration status was not precarious.

The appellant's appeal

16 The appellant appealed against the decision of 29 August 2014. That appeal was initially heard by FtT Judge Lloyd Smith on 4 December 2014, resulting in a decision of 10 December 2014 dismissing his appeal. The appellant appealed against that decision to the Upper Tribunal, Upper Tribunal Judge C Lane finding, in a decision dated 18 August 2015, that Judge Lloyd Smith had erred in law in appearing to resile from certain concessions made within the respondent's decision, and failing to direct herself in law correctly in determining the appeal. The matter was remitted to the FtT.

17 The matter therefore came before FtT Judge Chambers on 17 February 2016. By that time, appellant and AT had had a second daughter, HR, born in December 2015.

18 The FtT made certain findings as follows in relation to the family circumstances, including the medical and emotional difficulties experienced by AT during the appellant's absence in prison/detention:

(i) AT suffered from stress and worry as a result of the appellant's behaviour, and has suffered heart palpitations as a result of stress [24];

(ii) she was taking antidepressants [24];

(iii) there was medical evidence that when the appellant was in detention, AT could not then manage [24];

(iv) if the appellant was removed, AT would have the same difficulty coping without him [24];

(v) 'very serious fears' arose as to whether or not AT could reasonably cope without him; the medical evidence, historically seemed to confirm that [36];

(vi) AT has a long-standing problem of heart palpitations brought on by anxiety; that situation has and might again reflect adversely on the interests of the children [36];

(vii) the interests of this largely British family had been better served when the appellant had been present than when he had not been present [37];

(viii) it had not been suggested from any of the material before the Judge that the appellant was anything other than a good father [38];

(ix) because of the particular problems of AT, this was a family who required full-time support of two parents rather than just one; a one parent regime for the children had not been successful in the past and such an arrangement did not bode well for the future [38].

19 In the decision of this Tribunal dated 15 April 2019, the Tribunal (of which Deputy Upper Tribunal Judge O'Ryan was a member) also referred to the following matter, set out in the decision of the FtT:

> "The case put on behalf of the Appellant is that other members of the wife's family would not or could not give enough support when the Appellant was on remand or serving the balance of his sentence after he pleaded guilty at the Crown Court" [36].

20 The Tribunal expressed doubt that that passage of Judge Chambers' decision actually represented a clear finding of fact. It does not, as is clear by the first eight words of the sentence. We also find that Judge Chambers' observation that 'a one parent regime for the children had not been successful in the past' does not stand scrutiny; our consideration of the chronology (see [9] and [13] above) discloses that the appellant was not detained at any time after the birth of the first of his child.

21 The FtT allowed the appellant's appeal. The respondent appealed against that decision to the Upper Tribunal. In a decision dated 5 July 2016, Upper Tribunal Judge Bruce dismissed the respondent's appeal.

22 The respondent appealed to the Court of Appeal. In the judgment Secretary of State for the Home Department v MR (Pakistan) [2018] EWCA Civ 1598, given on 12 July 2018, the Court of Appeal allowed the respondent's appeal, and remitted the appeal to the Upper Tribunal. The Court of Appeal held that the FtT had erred in law, in summary, in:

(i) conducting a free ranging enquiry as to proportionality for the purposes of Article 8 without any real consideration of whether the decision and the challenge was in accordance with the immigration rules at all [26];

(ii) failing to ensure that proper weight was given to the public interest in deportation [27];

(iii) failing to analyse for itself whether the appellant's removal would be unduly harsh for AT and the children, noting 'at best' that there were very serious fears as to whether AT would cope without the appellant, that the interests of the family had been better served when the appellant was present, and that on the basis of the needs of AT and the best interests of the children, the revocation of a deportation order was appropriate; the court ruled that that alone could not be construed as sufficient consideration of the factors set out at paragraphs 399(a)(i)(a) and (b) and (b)(ii) of the immigration rules, and s 117C(4) of the 2002 Act [28];

(iv) failing to identify any very compelling features of the case sufficient to outweigh the public interest in deportation in the event the deportation was not considered to be unduly harsh [29];

(v) failing to apply s.117A-D of NIAA 2002 and failing to take into account the consideration that the tribunal was required to give little weight to a private life or a relationship with a qualifying partner if established at a time when the person was in the United Kingdom unlawfully, or to a private life established in the person's immigration status was precarious given that the appellant's immigration status was precarious from the date of his entry in the United Kingdom in 2002, and became unlawful in October 2011; although he became engaged to AR in 2010, his marriage and the birth of the children postdated his status having become unlawful [30];

(vi) failing to apply the correct test or to ask the appropriate questions [31].

23 The Upper Tribunal listed the appeal for hearing on 15 March 2019 (Upper Tribunal Judge O'Connor, Deputy Upper Tribunal Judge O'Ryan) resulting in the decision of 15 April 2019, in which the question of whether or not the decision of Judge Chambers should be set aside was resolved. His decision was indeed set aside. The Tribunal stated as follows at [34]:

> "34. We concur with Mr Bates' submissions that the First-tier Tribunal's findings do not set out clearly what the nature of the impact on the children, or its extent, would be if the appellant were to be deported and we further find that on the findings of fact left untouched by the Court of Appeal's decision it cannot be said that the First-tier Tribunal would have allowed the appeal. In particular, we are not satisfied that the First-tier Tribunal's findings of fact, such as they are, inevitably demonstrate that it would be unduly harsh for the children to remain in the United Kingdom without the

Respondent and we find that, absent the making of the errors of law, the FtT might have reached a different conclusion as to the outcome of the appeal."

24 The matter now comes before this Tribunal, for rehearing. A further change of circumstances to note by the time the present hearing is that the appellant and AT have had a third child, a son, MR, born in December 2018.

Findings of Judge Nicholson

25 Although the decision of Judge Lloyd Smith was set aside in the decision of Upper Tribunal Judge Lane, no suggestion was ever made that Judge Lloyd Smith had been incorrect in law in directing herself at [13] that the findings of fact of Judge Nicholson in his decision of 4 March 2013 should, applying the principles in Devaseelan v SSHD [2003] Imm AR 1, be the starting point for the Tribunal's consideration of the appellant's appeal against the decision of 27 August 2014.

26 It is therefore appropriate to summarise the findings from Judge Nicholson's decision, as set out by Judge Lloyd Smith;

(i) although at that time (February 2013) the appellant and AT were not married and did not cohabit, the Tribunal proceeded on the basis that they had an Article 8 family life [94];

(ii) the couple met in 2005 and began a relationship in 2006; they had at that time never lived together; the couple were engaged in mid 2010, and at the time of the hearing they had been engaged for over two and half years [105];

(iii) although when they met and began a relationship as girlfriend and boyfriend, the appellant had been in the United Kingdom legally, by the time they decided to get engaged, he was an overstayer; to that extent they had developed their family life to the next level at a time when his right to remain in the United Kingdom was clearly precarious [106]:

(iv) there were powerful reasons weighing in favour of deportation [132];

(v) bearing in mind the factors weighing in favour of deportation and the actual nature of the family life, the decision to deport was proportionate [148].

Evidence

27 In rehearing the appeal, the Tribunal has had regard to the following:

(i) the respondent's bundle;

(ii) the appellant's consolidated bundle pages 1-417;

(ii) the appellant's supplementary bundle, pages 418-432; and

(iii) the appellant's second supplementary bundle, pages 433-440.

We shall simply refer to the appellant's material as 'the appellant's bundle' ('AB'), pages 1-440.

28 We also received in evidence from Mr Bates a print out from the NHS website regarding Sertraline, its uses and side effects. Although Ms Benitez objected to the admission of this document, it is a document that is in the public domain, its content should be treated as no surprise to the appellant and AT, who appears to be prescribed that particular medication, and we admitted the document into evidence as being of likely assistance to the Tribunal in the determination of the issues in the appeal.

29 Following the conclusion of the hearing on 10 September 2019, the Tribunal received an email from the appellant's solicitors at 16.34 hrs on the same day, purporting to put the Tribunal on notice that the appellant had requested further medical evidence from AT's GP in the form of a further report to confirm her current diagnosis, and to obtain her medical records from 2012 to date. We refer in more detail below to this issue, under the heading of 'Post hearing evidence'.

Matters in dispute

30 At the outset of the hearing, Mr. Bates confirmed that the respondent's position in relation to the appellant's British child AR, ie that it would be unduly harsh for her to be expected to live in Pakistan, was also the position adopted in respect of the appellant's children HR and MR. However, Mr. Bates maintained the position that it would not be unduly harsh for any of the children to remain in the United Kingdom with AT, but without the appellant, who was to be deported.

31 Ms Benitez had provided a skeleton argument dated 8 September 2019, and confirmed that the issues to be determined were whether, under paragraph 399(a)(b) of the rules, it would be unduly harsh for the children to remain in the United Kingdom without the appellant, and under 399(b), whether it would be unduly harsh for AT to remain in the UK without the appellant. In the alternative, if the requirements of 399(a)(b) or 399(b) were not satisfied, Ms Benitez confirmed that she intended to argue that the last provision within paragraph 398 was satisfied, i.e. that where paragraphs 399 or 399A did not apply, the public interest in deportation was outweighed by other factors, as there were very compelling circumstances in the present case, over and above those described in paragraph 399 and 399A.

Oral evidence

32 In examination in chief, the appellant adopted his witness statements within the appellant's bundle: 5 October 2015 at [5-13]; 11 April 2016 at [16f-16h]; 6 March 2019 at [16l-16o]; 7 July 2019 at [16m-16w]; and 3 September 2019 at [418-419].

33 The appellant stated that AT did not sleep well. In the mornings if she had taken a tablet, she did not wake up on time. She had difficulty in both waking and going to sleep. The appellant did not know the names of medications taken by AT. One was for depression. He had read and agreed with the content of the social work report contained in the appellant's bundle.

34 The appellant was cross examined by Mr. Bates. Mr. Bates asked if AT's sleeping problems may be a side effect of medication. The appellant did know. When asked if AT had asked for different medication, the appellant stated that he was sure that she had discussed this with her GP. He assumed so.

35 Mr. Bates asked if AT had lived alone when the appellant had previously been detained. The appellant stated AT had lived with her mother and father. Later she moved to the flat. The appellant confirmed that he had been detained twice, once when his criminal sentence had finished, in 2012, and the second time was when AT was pregnant (i.e. in 2014). He confirmed that he had not been detained since his wife had had children.

36 Mr. Bates asked if AT could live with her parents. The appellant stated that her father was disabled. Her sister was married and lived with her husband. Her father was in a wheelchair. He thought that AT had discussed with her parents the possibility of living with them. AT's brother lived with his wife in AT's parents' home. AT's sister lived with her husband in Cheadle/Hale. AT's parents' home was 3 miles from the home he shared with AT.

37 When asked if AT suffered from postnatal depression, the appellant stated that she suffered from depression, but he did not know if it was postnatal. He said that they are dealing with this as her doctor advised them. Mr. Bates put to the appellant that the social worker report suggested that AT had postnatal depression. The appellant repeated that although he was aware had depression, he did not know if it was postnatal. Mr. Bates asked if AT still had an employer, and if not when had her last employment finished. The appellant stated that AT had stopped working when she had been pregnant with their first child AR. When asked what AT's income was, the appellant stated that he received some money from his father. AT received some income from universal credit. His father had moved to America.

38 Mr. Bates referred to the appellant's latest witness statement dated 3 September 2019, in which he accepted that he had committed a further criminal offence, in 2015. The appellant confirmed that that was the case. Mr. Bates asked why that conviction had not been mentioned by the appellant in the previous witness

statements. The appellant stated that he had mentioned it to his solicitor at the time, but it had not been put into the statements by the solicitor. It was a mistake by the solicitor. Mr. Bates asked why no correction regarding that conviction had been included in any statement. The appellant stated that there were many statements, he had just slipped.

39 When asked how long AT had been on medication for, the appellant stated it had been quite a while. When asked if AT had been on medication when she was working, the appellant stated that yes, she had, for palpitations, but not for depression. Although it had been a while since then, and he was not sure if she was then also taking medication for depression.

40 There were no further questions in cross-examination, and there was no re-examination.

41 The Tribunal asked the appellant that given that AT's brother and wife, and AT's sister and family lived reasonably close by, why could AT not live with them, if necessary? The appellant stated that AT's brother had his own life. He had no children, but he worked, and his wife worked. AT's sister also worked and lived with her in-laws.

42 AT gave evidence. In examination in chief she adopted her witness statements as follows: 5 October 2015 at [14-16e]; 11 April 2016 at [16i-16k]; 6 March 2019 at [16q-16t]; 5 July 2019 at [16x-16z]; and 3 September 2019 at [420-421].

43 AT stated that she had read the social work report and agreed with its contents. When asked whether the reference in the social worker report to her having postnatal depression was accurate, she stated that it was. She stated that she had been diagnosed with it after her last child, MR, was born in December 2018. Ms Benitez suggested to AT that a letter Dr Rehman of Corkland Road Medical Practice dated 3 September 2019 at [422] only referred to AT having 'depression', and did not mentioned 'post-natal depression', and did AT know why the letter did not mention postnatal depression? (In fact, we note that the letter does not refer to 'depression' at all.) AT stated that she had had depression for some years, going back to 2012 when the appellant had been in prison. When she had her child MR in 2018 she had had postnatal depression.

44 Asked if her depression had got worse in 2018, AT said it had, and that her dose had recently been increased, in August 2019 from 50 to 100 mg per day. She had not been told that her treatment would be of specific duration, just until she was well in herself.

45 AT was asked if it was correct, as noted in the social work report at [435] that a side effect of her medication was that it made her sleep very deeply. AT confirmed that that was right and that she was prescribed Sertraline. She stated that she had discussed this issue with the GP and she would be assessed again after a month.

AT was aware that the medication made you sleepy. She stated that before being prescribed antidepressants the doctor had to make sure that she had someone else take care of the children.

46 When asked for information about what period(s) AT had been prescribed antidepressants, she stated that this had been on and off, because of her pregnancies. She had been prescribed another antidepressant in 2014, and then came off it. She was prescribed again in 2015, then stopped again when becoming pregnant again in 2015. She was then re-prescribed in 2015 until pregnant again in 2018, and then prescribed them again after having her third child. She had been prescribed Sertraline only since 2018.

47 The GP had told her that the maximum dose for her would 150 mg per day because she had young children, and because of her conditions (anxiety, sleeplessness, and panic attacks). The doctor did not advise her to be on a high dose. She would be reviewed again at the end of September.

48 The Tribunal put to AT that the letter of 3 September 2019 did not in fact give any diagnosis of depression. AT stated that she had been told that she had postnatal depression.

49 Ms Benitez asked AT about the document at [433-434] which was a referral for cognitive behavioural therapy dated 4 September 2019. She was asked why the referral had been made. AT stated that the doctor had referred her – the GP thought that she needed further assistance with her mental health, and that she needed therapy. The GP had said she did not want to put her on higher and higher doses. AT had attended a session on 3 September 2019. AT was asked if she knew why she was being prescribed Sertraline specifically. She thought that this was because the GP thought it was best one for her.

50 AT was asked if the GP had mentioned any interaction between the beta-blocker that AT was being prescribed, and Sertraline. AT stated that both interfered with each other. She had told her GP she felt dizzy when she started on 100 mg. She would be reviewed in a month. She was still taking propranolol at the moment.

51 In cross-examination, Mr Bates stated that he understood that AT had been prescribed Sertraline since having her third child. When asked if she had ever been prescribed it in the past, AT said no. Mr Bates referred AT to page [271] which was an extract from electronic GP records which contained an entry for October 2014 that she was then being prescribed Sertraline. AT stated that she did not recall what she had been prescribed at that time, given that it was five years ago. Mr Bates asked when AT had commenced taking Sertraline again. AT stated that this had been after December 2018. When asked when after December 2018 this been, AT stated that this had been after a postnatal checkup at the end of January or early February at the six-week checkup. When asked if this had not been before that, AT stated that she had not been on antidepressants during her pregnancy in 2018 or

during the other two pregnancies. Mr Bates asked if AT had been prescribed any different antidepressant in 2019, prior to been prescribed Sertraline in January of February 2019. AT said that she did not think so. Mr Bates referred AT to page [370] of the appellant's bundle which was a photocopy of a prescription for Citalopram dated 18 January 2019 in AT's name. AT confirmed that this was an antidepressant, but that it did not work. She did not take it for long - about a month. She recalled they were not working well so Sertraline had been given to her instead.

52 Mr Bates asked AT if she had asked the GP if she could take anything for her symptoms of tiredness or any other side effects of her medication. AT said that she could not - that those were just the effects/side effects of her medication. When asked if any treatment might be available if she got nausea, AT said that she would ask to be assessed. She stated that she had discussed the side-effects of her medication in August this year. The GP had said that AT would get used to the symptoms. The GP had increased the dosage.

53 Mr Bates put the content of paragraph 6 of AT's witness statement dated 11 April 2016 to her, in which she stated that she had been prescribed Sertraline. AT confirmed that yes, she had been prescribed Sertraline at that time. This was now a few years ago, and she could not remember this was after her second child.

54 Mr Bates asked if her recent attendance for counselling had been the first time that she had received counselling. AT confirmed that this was correct as the symptoms had worsened. Mr Bates put the content of paragraph 6 of AT's witness statement dated 11 April 2016 to her, where AT had stated that she had been given some details to contact the counselling service at that time. AT stated that because the symptoms had recently worsened the GP said she needed more help. AT accepted that she had been given details of counselling in 2016.

55 Mr Bates asked where AT's brother lived. AT stated that he lived with her parents. He was married. Her sister was in Manchester as well. She was married. Mr Bates asked if AT's parents could help her if the appellant were deported. AT stated that her parents would not be able to help to support her, and she could not ask them. Her mother was a full-time carer for her father who was disabled. AT did not need to ask. Mr Bates asked if AT's brother could provide her with any assistance. AT stated no he could not as he had a full-time job.

56 AT stated that although she was a graduate and previously worked in a fraud department for a bank, she has not been employed since the birth of her first child.

57 Her current income was universal credit. AT was asked if she knew what the basis of her universal credit claim was; whether she was claiming any element related to incapacity, or being a lone parent. AT stated that the appellant was not liable for anything. The benefit was for her and the children, and housing benefit. Asked if

she was required to look for work in order to obtain universal credit, AT stated that no she was not.

58 She would like to work again but did not currently think she had it in her. She gets sick notes from her GP.

59 The Tribunal referred AT to the content of the social work report which recorded that AT had stated that it was difficult for her to manage the children's night-time routine due to the side-effects of medication that she had been prescribed for postnatal depression. She was asked to clarify what medication that was. AT stated that this was Sertraline. Asked if AT had only had problems managing the night-time routine since being on Sertraline, AT said no, she had had problems like that before, but it was worse now. Her husband the appellant was needed to look after the children, as sometimes she only woke up at 11 or 12 in the morning.

60 There were no further questions.

Submissions

61 Mr Bates argued that the key issues in the appeal were whether it would be unduly harsh on either the children or AT for the appellant to be removed, and if not, whether there were very compelling circumstances over and above those described in paragraph 399 or 399A.

62 There were no issues with the health of the children or the appellant himself. Mr Bates argued that the medical evidence in relation to AT was only partial. The detailed GP records ended in November 2014 and there had only been snapshots since. The assertion in the social work report at [427] that AT had been prescribed medication for postnatal depression was not supported by medical evidence. If postnatal depression had been diagnosed, Mr Bates said that the GP would have specifically stated so. Although the social work report asserted that AT suffered from certain side effects of medication, the appellant had not met the burden of proof on him of demonstrating by evidence that AT was suffering from any particular side-effects and also that there was no way of mitigating the side-effects of any medication. It was possible that the GP could have prescribed an alternate medication to AT, which perhaps may not have been as effective in treating symptoms, but might have left her with fewer side-effects, enabling her to care better for her children. There was no evidence on that issue. Mr Bates also argued that the NHS print out regarding the possible side effects of Sertraline did not support AT's evidence about the side-effects said to have been caused to her.

63 Mr Bates stated that in the absence of medical evidence as to what AT's medication, and its side-effects were, we should not necessarily believe what AT says herself about those matters. AT was inconsistent about what medication she had taken and when. She had also been recommended to counselling previously, but only recently taken it up during the course of these proceedings. Although Mr Bates

accepted that he had not actually put to AT the proposition that she was exaggerating her symptoms, he stated that she would simply have denied it in any event.

64 Mr Bates suggested that there was no up-to-date evidence from AT's family supporting any proposition that they were unable to assist her. There had previously been letters from the brother, sister and parents, but it was said that there were no updating statements from them. (This is incorrect, as we demonstrate below).

65 Although the medical evidence established that AT had suffered from long-term anxiety, there was no reference in the documentation to her having postnatal depression. There was some suggestion that she was affected by the uncertainty of the appellant's status. If the appellant's status was resolved by his removal, AT would be obliged to confront her new reality and some of her anxiety might be mitigated.

66 The authors of the social work report appeared to accept what AT had stated about her circumstances at face value, in particular regarding the side-effects of medication and her suffering from postnatal depression. The social work report did not take matters any further.

67 The difficulties which AT might experience upon the appellant's removal would represent the levels of harshness that one would expect as a consequence of such decision, as per KO (Nigeria) v Secretary of State for the Home Department [2018] UKSC 53 and Secretary of State for the Home Department v PG (Jamaica) [2019] EWCA Civ 1213; certain consequences are to be expected from removal, and there will be an emotional and behavioural fallout, but this would not represent undue harshness.

68 There were no very compelling circumstances over and above those matters set out in paragraph 399 or 399A. There was nothing additional present in the present case.

69 After the luncheon adjournment, Ms Benitez made submissions on behalf of the appellant. She relied on her skeleton argument, which refers at paragraph 17(i)-(x) to certain 'preserved' findings within the decision of Judge Chambers, and makes reference at paragraph 20(xi)-(xxxii) to certain items of evidence within the appellant's bundle to which we make more detailed reference below.

70 Ms Benitez referred us in particular to the following items of evidence as to the history of AT's health problems generally:

(i) a letter from Dr Amy Foulds of the Corkland Road Medical Practice (CRMP) regarding AT dated 18 November 2014 at [262-263];

(ii) a prescription for AT for Sertraline (28 tablets at 50mg per day), dated 4 April 2016 at [360];

(iii) a form Med 3 stating that AT was unfit for work due to 'anxiety with depression' for one month, dated 4 April 2016 at [359];

(iv) a letter from Dr Z Rehman of CRMP regarding AT dated 24 June 2019 at [390];

(v) a letter from Dr Z Rehman of CRMP regarding AT dated 3 September 2019 at [422-423].

71 It was suggested that it was not put to AT that she had been prescribed Sertraline for any reason other than for depression.

72 In support of the proposition that AT had 'not coped' when the appellant had previously been in detention (which, we note, was between February 2012 to 17 December 2012, and 11 November 2013 to 23 April 2014), Ms Benitez referred us to the following:

(i) a reference at [294], within a list of dates contained in AT's electronic GP records, to her being seen in hospital casualty/emergency department on 6 February 2012; this was said to be approximately 4 days after the appellant had been arrested and detained on remand for the principal offence;

(ii) page [295], being part of a referral form from Manchester Mental Health Gateway Service, seemingly completed in August 2012, on which is written in 'Reason for referral': 'Anxiety + stress. Physical symptoms - palpitations, micturition frequency. Breakdown of engagement Feb 2012 + stress at work exacerbated';

(iii) page [297], being a letter from a Gateway Service Manager, Manchester Mental Health Gateway Service, to AT's GP, dated 20 August 2012 stating that the outcome of the GP's referral to the Service had been to refer AT to The Psychological Wellbeing Practitioners Resource at the Self-Help Service for Step 2 Primary Care input;

(iv) page [303-304], being a letter dated 16 October 2012 from sister Sarah Collitt, an Arrhythmia Nurse, at the Manchester Heart Centre , Manchester Royal Infirmary, to AT's GP stating that AT had been referred to the rapid access arrhythmia clinic on 21 September 2012; it was stated that AT had started to get palpitations in February (2012) which settled, then returned '2 months ago' (i.e. around August 2012);

(v) page [307], being a further Gateway referral form from Manchester Mental Health and Social Care Trust stating in 'Reason for referral': 'H/O (history

of) stress+ anxiety. Fiancé up for deportation. Having palpitations, poor sleep et cetera. Does not want medication".

73 Ms Benitez argued that AT had been feeling sedated by her medication even before the recent increase in the Sertraline dosage. The reference to postnatal depression in the social work report corresponded with AT having given birth, even if postnatal depression was not mentioned in AT's GP records.

74 AT's description of the side effects of Sertraline corresponded with the side-effects set out in the NHS document. Ms Benitez refuted any suggestion that AT's anxiety had been caused by the actions of the appellant; rather that anxiety had been contributed to by the family circumstances. (We note however that that submission is contrary to a finding of Judge Chambers, as we set out at [18(i)] above; a finding which Ms Benitez sought to preserve.) It was not the appellant's case that the appellant's actions had caused AT's depression. Ms Benitez accepted that the information set out in the social work report was mostly self-reported by AT, but the information there set out corresponded with the medical evidence. There had been no challenge to the expertise of the social workers co-authoring the report.

75 Ms Benitez agreed that the Tribunal's observation that the appellant's bundle contained medical evidence relating to 2012, 2014, and 2016, and then 2019, and that the evidence from 2019 did not state what AT's position had been in 2017 and 2018.

76 Ms Benitez argued that there were very compelling circumstances in the appeal, not simply due to the effects of the appellant's deportation on the children. The Appellant had not been to Pakistan for 11 years and had no family remaining there. He would have difficulty in integration. His offending took place in 2009, some 10 years ago. He was convicted of a minor offence in 2015. Ms Benitez accepted that the appellant had failed to report in 2013 and was an over stayer.

77 Upon the conclusion of the hearing, we reserved our decision. It is to be noted that at no point at the outset of her submissions (which had been made after an hour's luncheon adjournment) or at the end of her submissions did Ms Benitez raise any procedural issue or any request for permission to rely further evidence.

Summary of medical and other evidence regarding AT

78 The appellant relies on a variety of medical evidence that relates to AT's mental health problems. We summarise if here, in chronological order. We have considered all of the material presented to us in the hearing. The fact that we do not mention in this decision any particular item of evidence does not mean that it has is not been taken into account by the Tribunal.

14 March 2001 Letter from locum Consultant Paediatric Cardiologist, to AT's GP. AT had been seen in clinic on 9 March 2001. She was still having episodes when she felt extremely anxious out shopping.

	She got sweaty, panicked, her heart raced fast and she felt faint. AT was reassured her heart structure and function were normal. Her fast heart rate was related to anxiety [264].
7 December 2001	Letter from Consultant Cardiologist to AT's GP. Recorded that AT had been troubled by palpitations for some years, typically occurring when she was nervous or anxious. Problems such as shopping, exams and heights would bring on the tachycardia. She was generally quite an anxious person. Beta-blockers had helped her a little [266].
17 August 2012	Entry in computerised GP records: Problem: tachycardia, unspecified. "Echo – structurally normal heart. Wrist monitor – all 4 recording show sinus tachycardia. Had 24-hour ECG on 31/7/12 via MRI. No letter/follow-up made – will chase. Engagement broken off Feb 2012 .... mutual decision but thinks stress from it has amounted up. Pressure from work as having time off. Has been taking calcium and magnesium supplements and palpitations stopped. Check levels before continuing daily supplements." [278]
20 August 2012	Letter from Manchester Mental Health Gateway service to AT's GP following receipt of the referral of AT to the Gateway Service on 17 August 2012. Outcome of referral was that it had been sent to the Psychological Well-being Practitioners at the Self-Help Services for Step 2 Primary Care Input [295, 297]
4 February 2013	AT is assessed by Manchester Mental Health Gateway Services again. History of stress and anxiety. 'Fiancé up for deportation. Having palpitations, poor sleep etc Does not want medication' [307-309].
20 November 2013	GP letter addressed 'To whom it may concern' setting out that AT had come to see the GP complaining of symptoms of anxiety and stress. She was 11 weeks pregnant. She had been experiencing tension-like headaches, occasional palpitations and difficulties sleeping at night. 'All the above symptoms are due to her husband being away from her in detention and about to be deported.' [126] Also: computerised GP records at [274] for 20 November 2013: "Problem: Stress at home. Husband in detention as has immigration problems, says very stressed, 11/42, no suicidal thoughts/no self-harm, all okay with pregnancy, lives with pregnancy , no abdo pain no PV bleeds, has antenatal care at St

Mary's, no appt for first scan yet, family good support, has tension headaches over the forehead, feel tense, takes paracetamol which helps. USS- 6/42 all okay."

And also: "Wants letter for Home Office to let them know how stressed she is the husband about to be deported"

16 October 2014 Computerised GP record.
"Problem: stress at home. Ongoing stresses. Hearing date in December-playing on her mind. 5 month old baby. Tired all the time. Mood ok. Finds amitriptyline nocte helps but doesn't like being sedated with baby at home." Medication prescribed was sertraline 50 mg daily [271]

18 November 2014 Letter from GP Dr Amy Foulds of CRMP addressed to the appellant's former solicitors stating, in summary, that AT was prescribed Sertraline 50 mg to be taken once daily for her depression on 15 October 2014. She had also been prescribed an acute prescription of Amitriptyline 10 mg once at night for stress in August 2014. AT had most recently been seen on 15 October 2014 with regards to her depression it was at that point that it was felt that AT required a prescription of antidepressants. AT had been referred to mental health services in August 2012 and February 2013. There were no current plans to refer her to see mental health specialist at the time of writing of the letter. Reference was made to the earlier letter of 20 November 2013. Further:

'(AT's) history of depression and anxiety which are both well documented in her medical records would suggest that should her husband be deported she would suffer a deterioration in the mental health with her mood becoming lower and her anxiety increasing. I do believe that her husband and his support plays a part in her managing her depression."

24 June 2019 Letter from GP Dr Z Rehman of CRMP stating that AT had struggled with anxiety since around the age of 16. Historically she had tried beta-blockers and SSRI medications (*of which we note sertraline is one)* to try to manage her symptoms. Symptoms presented times of stress and include palpitations, panic attacks, poor sleep as well as some mood disturbance including general low mood, fatigue and lack of motivation. AT was aware that her anxiety symptoms, at times of stress. An example would be around the time of her husband's twice yearly immigration hearings. In 2002 she was seen by the arrhythmia team at the Manchester heart centre and she had

several investigations performed including echo, 24-hour ECG and an exercise test. No arrhythmia was seen so she was discharged from clinic. It was felt her episodes of regular rapid heart rate were down to anxiety. AT was taking sertraline and beta-blocker medication to help manage her symptoms. The doctor had discussed lifestyle measures that would help her and she was also awaiting talking therapy from Manchester Self-Help services [390]

3 September 2019 Letter from GP Dr Z Rehman of CRMP which is the same in content as the letter of 24 June 2019 but adds that AT's sertraline dose was increased in early August 2019 to help manage worsening mood and anxiety symptoms. It was stated that AT had a busy household with three children, and that if her husband were deported this would be detrimental to AT's mental health at a time when she is already struggling despite maximal support from her healthcare team as she would lose her spouse who was a source of great support.

4 September 2019 Letter from Lindsay Sheehan, Cognitive Behavioural Therapist, Manchester psychological therapy service providing that AT had attended an initial assessment on 19 August 2019 and had attended her first treatment for cognitive behavioural therapy on 3 September 2019. AT had scored highly for symptoms of low mood and anxiety. AT believed this had been triggered by ongoing proceedings regarding the appellant's status in the UK. AT had described how the stress of dealing with the uncertainty of the situation over the course of the last five years had had a profound impact on day-to-day family life, and that due to her difficulties with low mood and anxiety, the appellant had taken on the majority of parenting and household tasks. It was reported that AT also experienced daily panic attacks, which AT felt were induced by the stress of the current situation, which had restricted her ability to be out in public alone and she felt unable to work. There were no indicators of risk to self or others or from others.

79 The appellant also relied on the report of 'Social Workers Without Borders' (SWWB'); written by Katy Tolman and Lauren Wroe, Registered Social Workers, and Aimee Georgeson, Reviewing Social Worker, dated 27 June 2019. The contents may be summarised as follows.

80 The report followed an assessment visit in the family home on 15 June 2019 lasting 1.5 hours, and it is clear that the content of the report is derived principally from the information given to the Social Workers by the appellant and AT. There is no

indication that the Social Workers had information from any other source (e.g. AT's GP) in writing the report.

81 The report states that the couple spoke about their night-time routine. The appellant was responsible for putting children to bed as well as waking in the night to comfort the children if needed. The couple stated that AT was unable to undertake this parenting task; the medication she was currently taking for mental health meant that when she does get to sleep, she sleeps very deeply [399].

82 Observations of the children raised no concerns for their emotional well-being. Evidence collected for the assessment suggested that the children were not struggling with their emotional well-being at the time [400].

83 AT reported to the social workers that she currently had a diagnosis of postnatal depression for which she took medication. AT stated that the medication can make her feel drowsy and when she was able to sleep she entered a deep sleep and was not easily aroused making it very difficult for her to care for the children's need during the night time without the appellant's support. AT also reported that he had difficulties in the morning and would often get up late, after 11 am making the appellant responsible for getting the children up, preparing breakfast and taking AR to school. She reported to 'sometimes' experiencing panic attacks at night time, with heart palpitations. She also took beta-blockers in order to help with this difficulty [400].

84 AT was described to be of flat effect during the assessment. The daily routine was described by the appellant that he would wake AR, prepare breakfast and drop her at school. Later in the morning HR would wake and he would make her breakfast. He would take HR to nursery at 12.30, and collect AR school at 3 pm and then HR from nursery. The children were reported to say that they enjoyed going to the park with the appellant whilst the mother stayed at home. The appellant was observed to be actively attending to his three children, feeding and holding MR, engaging and chatting with AR and HR, showing physical affection, giving instructions and being aware of dangers, and it was apparent that the appellant had a role in parenting his three children on a day-to-day basis. HR and AR were observed to verbally interact with the appellant, jumping on him and hugging him [402].

85 AT described to the social workers that her own parents live nearby in Manchester, and that the children saw them two or three times a month, occasionally staying for a sleepover. AT stated that although they maintain contact and have a good relationship with the children, her own mother's caring responsibilities for her father took precedence and therefore their support was limited with respect to offering childcare for the children [403].

86 The social workers stated under the heading 'What are we worried about?' that were the appellant to be deported from the UK, it was likely to have a significant effect on the lives of three children and their experience of care giving. AT had

stated that she would find it very difficult to cope without the appellant parenting support. AT reported that she felt her current mental health concerns were in part a result of the prolonged stresses resulting from the appellant's precarious immigration status. Social workers stated that where the appellant to be deported, it was possible that AT's mental health would suffer further and this would likely have a negative impact on the care afforded to the children [404].

87 At [407] the social workers summarise their findings which included that if the appellant were to be deported, AT would be likely to struggle to meet all her children's needs as they were currently being met with significant input from the appellant. In addition to the appellant's responsibility for day-to-day activities with children including meals, school run and play time, the assessment was said to have demonstrated the appellant's role in the children's night-time routine in which he wakes to comfort MR in the night when AT does not hear him cry. The appellant was therefore a protective factor in considering the impact of AT's mental health on her current parenting capacity extended family did not play a significant role in a parenting and the appellant's absence would indicate a significant loss of parenting support for AT.

88 There were no current concerns with respect to the emotional or behavioural development of the children; there was however a high likelihood that the children would experience adverse effects on their emotional well-being and on the sense of their identity following the deportation of their father [408].

89 There is an addendum report from SWWB dated 2 September 2019 at [427-432]. The authors appear to have been asked to expand on certain elements of the original report. They stated that there was no doubt that the children's experience of care giving will be significantly affected if the appellant were to be deported from the UK [428]. The report referred to academic research which suggested that the prevalence of post-traumatic stress disorder was significantly higher for children of deported parents. The authors then suggested that in the 'highly likely scenario' that the children displayed behaviours associated with post-traumatic stress disorder and early childhood loss if the appellant were to be removed from their lives, AT would be required not only to attend daily routines of parenting alone, but to the demands of emotionally harmed children. It was said that this was likely to be extremely difficult given AT's own mental health difficulties [429].

90 It was observed that postnatal depression did not necessarily predict inability to parent, but it was said to be crucial that support was provided at this stage to scaffold a mother's recovery. Further, empirical data was said to evidence that children of women with persistent postnatal depression were at increased risk of developing behavioural problems in early childhood and depression during adolescence. It was highly likely that the appellant's absence would compound AT's experience of depression. It was said to be vital that AT receive adequate support in resolving or at least ameliorating the postnatal depression and building warm relationships with her children to improve their emotional well-being [430].

Post hearing evidence

91 It was a surprise to the Tribunal to be notified on 11 September 2019 of the receipt, at 16.34 hours on 10 September 2019, of an email from Mr Tahir Mohammed, Consultant Solicitor, of the appellant's solicitors, asking for permission to obtain and file further a medical report on AT.

92 The full text of his email is contained within the body of the directions we subsequently issued on 12 September 2019:

> "The Tribunal has received, at 4.34 pm after the hearing on 10.9.19, an email from the (MMAR's) solicitors in the following terms:
>
> > "We write further to today's hearing before Deputy UT Judge Ryan and UT Judge Plimmer regarding the above matter and wish to place the Upper Tribunal on notice that we have requested for further medical evidence from (AT's) GP surgery in the form of a further report to confirm her current diagnosis and her medical records from 2012 to date. We anticipate receiving the documents within the next 5-10 working days. Upon receipt of the said documents, we will be seeking directions for both parties to make further submissions in writing should they deem it necessary.
> >
> > We believe that the Upper Tribunal will be assisted with the above documents in view of today's hearing and therefore we would be grateful if permission is granted for the above stated documents to be filed."
>
> The Tribunal notes that no application for an adjournment of the appeal was made by (MMAR's) Counsel at the hearing for further evidence to be adduced, and no indication was given before the hearing concluded of any wish to file and serve further evidence.
>
> The Tribunal hereby directs that:
>
> > (i) (MMAR's) Solicitors shall, by 4.00pm 12.9.19, file and serve a properly prepared application to file and serve post-hearing evidence, addressing SD (treatment of post-hearing evidence) Russia [2008] UKAIT 00037, and any other relevant authority.
> >
> > (ii) The Secretary of State shall by 4.00 pm 13.9.19 file and serve any representations by way of response to (MMAR's) application.

The Tribunal shall thereafter rule, prior to receiving any further evidence, as to whether any further time shall be permitted prior to promulgation of the decision, for further evidence to be filed and served."

93 Even before receipt of that direction, Mr Bates for the respondent had on 11 September 2019, in response to receipt of the appellant's request by email of 10 September 2018, written to the Tribunal expressing his surprise that the appellant proposed to adduce further medical evidence. Mr Bates requested that in the event that post-hearing material was admitted into evidence, he be permitted to make further submissions in relation to the same.

94 In response to the Tribunal's directions, the appellant filed an application on 12 September 2019 on form T484 for 'An order to file and serve a detailed medical report from Corkland Road Medical Practice, and (AT's) medical notes by 3 October 2019'. The application made passing reference to SD Russia and also to Kabir v The Secretary of State for the Home Department [2019] EWCA Civ 1162. The submissions made in the application are, in summary, as follows:

(i) fresh evidence would impact on the outcome of the appeal, and failure to admit the evidence would risk serious injustice;

(ii) there had been an unexpected challenge to the medical diagnosis previously accepted;

(iii) the proposed evidence would come from a credible source and would further confirm the diagnosis and the treatment that AT been receiving;

(iv) notwithstanding a 'preserved finding' at paragraph 32 of the Upper Tribunal's decision 15 April 2019 that AT had been taking antidepressants, there was a suggestion at the hearing that AT's medication may have been prescribed for panic attack as opposed to depression;

(v) the appellant had overlooked the fact that the GP report dated 3 September 2019 did not specifically confirm AT's diagnosis, but the appellant could not have foreseen that the Tribunal and the respondent would challenge the evidence, in so far as the Upper Tribunal had preserved findings in respect of AT's health, in particular her diagnosis of depression;

(vi) the appellant had followed due diligence in the preparation of the appeal, but due to the course that the proceedings took, the appellant wished to obtain written evidence confirming AT's diagnosis of postnatal depression and/or depression.

95 By way of formal response to the appellant's application, the respondent provided submissions dated 13 September 2019 opposing the admittance into evidence of any new material post hearing, for the following reasons, in summary:

(i) the respondent at no point accepted any diagnosis of postnatal depression, which appeared to have been raised only in the independent social work report and was not corroborated by medical evidence or by the appellant or AT in their witness statements;

(ii) the respondent did not *per se* challenge the general assertion of depression; the respondent's case was that the medical evidence did not support a conclusion of undue harshness; the respondent had, by reliance upon the NHS background evidence on Sertraline, made clear that AT's assertions as to the maximum permitted dosage of Sertraline and as to its side effects were being challenged;

(iii) the respondent observed that it had been the Tribunal itself which had made the observation in the hearing that Sertraline was also prescribed for panic attacks; a condition that AT was also experiencing; the appellant's Counsel had the opportunity to deal with this by way of submissions after lunch;

(iv) the respondent had challenged in oral evidence and submissions the quality and extent of the medical evidence and noted that in essence, better evidence could and should have been adduced for the hearing; the post hearing application was no more than a veiled acknowledgement that the evidence relied upon was deficient by way of lack of due diligence;

(v) the factual matrix of the case and its procedural history bore little relation to that in Kabir v SSHD;

(vi) the test in SD Russia was not met.

96 The Tribunal did not make a positive decision to await any further evidence from the appellant; rather, further time passed before the Tribunal was able to complete its decision in the matter.

97 On 10 October 2019, the Tribunal received a copy of a letter from Dr Z Rehman of CRMP dated 2 October 2019 relating to AT, plus copies of electronic records relating to AT from CRMP, which we note were printed on 24 September 2019. The letter confirms that AT was prescribed Sertraline from October 2014 for the management of stress-related symptoms. There were no symptoms of low mood at that time. In April 2016 AT was diagnosed with anxiety and depression, and she had been reviewed on a regular basis since that time. It was the opinion of the GP

that AT had been struggling with anxiety and depression uninterrupted since April 2016.

98 Further, it was stated that AT had a postnatal review on 18.1.19 and reported worsening anxiety, mood and palpitations towards the end of the pregnancy. Citalopram had been commenced for one month. Follow-up in May 2019 had revealed that AT's symptoms were worsening. Lifestyle advice, beta-blockers, sertraline and a referral to CBT were all discussed. Dr Rehman stated that as the symptoms of depression worsened in late pregnancy and after delivery of the child, she would diagnose this as a postnatal depression. Sertraline was increased to 100 mg in August 2019 due to a flat effect and little improvement in symptoms. The maximum dose of sertraline was said to be 200 mg. AT was said to be struggling from deep sleep and fatigue symptoms as a side-effect of her medication. It was stated that in some patients side-effects do subside however if they still persist at 6 to 8 weeks than they are likely to remain persistent. Side-effects of antidepressants can limit the maximum dose that can be used. It was stated that there were no medications to counter these effects. When there are limitations in the ability to increase medication doses, the practice focuses more holistically and tries to make lifestyle changes to reduce life stressors, and talking therapies are also recommended.

99 The letter concluded:

> "I have no concerns about (AT's) current ability to parent. However, I am aware that her husband takes a big share of the day-to-day childcare duties. If (MMAR) were deported, clearly this would cause great upheaval for the family. (AT) would effectively become a single parent and would need to take on all childcare duties of her three young children herself. They themselves will be greatly affected by the change in family dynamics and will likely require more support and attention. She would also lose the emotional support from her husband and become relatively isolated. I understand that she has some family nearby but they are involved in their own lives and have limited capacity to help. Even just talking about (MMAR's) potential deportation causes such anguish for (AT), it is almost certain (AT's) mental health will deteriorate if this were to happen."

100 The Tribunal noted that in the first line of the last paragraph of the letter, Dr Rehman provides that: "I have no concerns about (TA's) current ability to parent."

101 An email from Mr Tahir Mohammed of the appellant's solicitors dated 10 October 2019 states as follows:

> "Dear Sirs
> We write in order to update the Upper Tribunal in relation to our email and application lodged on 12 September 2019 as below. We confirm that (AT's) medical records and medical report were provided to us on 8 October 2019.

> Unfortunately, there is an administrative error made by (AT's) GP in the medical report and we have therefore requested for Dr Rehman to correct the error. Dr Rehman does not work full-time at (CRMP) therefore we are unable to provide a specific timescale of when the revised report will be ready, however we have requested for the report to be provided urgently and will attempt to obtain information about an estimated timescale from the GP surgery. We will update all parties accordingly. In the interim, we have attached the medical records and medical report provided to our client."

102 On 17 October 2019, a further email was received by the appellant's solicitors with an amended report from Dr Rehman, now dated 15 October 2019. The appellant's solicitors email stated as follows:

> "We write further to our email below and our letter dated 11 October 2019 enclosing hard copies of documents emailed on 10 October 2019. We have today received the corrected medical report and attach the same. We request that the additional evidence is considered as outlined in our uncontested application of 12 September 2019."

103 Upon considering Dr Rehman's amended letter dated 15 October 2019, the Tribunal notes that the only material change to Dr Rehman's letter was to omit the sentence 'I have no concerns about (TA's) ability to parent'. The Tribunal issued directions as follows on or around 23 October 2019:

> "UPON considering the Appellant's application of 12 September 2019 to file and serve a further medical report from Corkland Road Medical Practice ('CRMP'), plus medical notes
>
> AND UPON receipt from the Appellant on 10 October 2019 a letter from Dr Z Rehman of CRMP dated 2 October 2019, plus medical notes, and noting that the email to the Tribunal from the Appellant's solicitor of 10 October 2019 stated that "Unfortunately, there is an administrative error made by (AT's) GP in the medical report and we have therefore requested for Dr Rehman to correct the error."
>
> AND UPON receipt from the Appellant on 17 October 2019 a 'corrected medical report' from Dr Rehman dated 15 October 2019
>
> AND UPON the Tribunal noting that the 'correction' in the report is to delete the words 'I have no concerns about (AT's) current ability to parent. However ..." in the last paragraph
>
> AND UPON the Tribunal noting, aside from the suggestion in correspondence of 10 October 2019 that Dr Rehman's first letter contained an 'administrative error', that there is no explanation whatever from either the

Appellant's solicitor or from Dr Rehman as to why the Doctor's report needed to be, and has been amended

AND UPON the Tribunal not yet having adjudicated upon the Appellant's application of 12 September 2019

IT IS HEREBY DIRECTED THAT:

1 The Appellant shall, by 4.00 pm 29 October 2019 file and serve:

(i) a witness statement from a partner of the Appellant's solicitors firm setting out the circumstances in which Dr Rehman's letters of 2 October 2019 and 15 October 2019 were procured, exhibiting all letters of instruction to Dr Rehman, including any letter sent to Dr Rehman to facilitate compliance of paragraph 1(ii) of this direction, below;

(ii) a written explanation from Dr Rehman as to the reasons for the amendment of his letter;

(iii) any further submissions upon which the Appellant seeks to rely, in support of its application of 12 September 2019, and, in the event that the Tribunal decides to admit any further evidence submitted after the hearing of 10 September 2019, making any further substantive submissions he wishes to make, limited to such additional evidence.

2 The Respondent shall by 4.00 pm 4 November 2019 file and serve any further submissions upon which she seeks to rely, on the admissibility of any of the material produced since the hearing, and in the event that the Tribunal decides to admit any further evidence submitted after the hearing of 10 September 2019, making any further substantive submissions he wishes to make, limited to such additional evidence.

3 The Appellant shall provide a copy of this direction to Dr Rehman."

104 The appellant requested further time to comply with that direction, resulting in a further direction being issued to the appellant. Ultimately, on 1.11.19 the appellant provided a witness statement from Mr Muhammod Nurol Islam, director and solicitor on behalf the appellant's solicitors setting out the sequence of events whereby Tahir Mohammed had further corresponded with CRMP in relation to Dr Rehman's letter of 2.10.19. It was apparent that on 10.10.19 Tahir Mohammed had written to CRMP suggesting that the letter of 2.10.19 contained 'administrative errors' and stated 'we would request for corrections to be made in the first sentence of the last paragraph, and there are minor spelling errors.' Mr Islam stated in his witness statement that this action had been brought about because the appellant himself had attended the solicitor's office on 8.10.19 and had asserted that the

doctor's report contained an administrative error as it was alleged that the GP had made it clear to AT that the GP 'had concerns'. This resulted in the amended letter of 15.10.19 from Dr Rehman.

105 The appellant's correspondence of 1.11.19 also included a final letter from Dr Rehman dated 24 October 2019 which stated:

> "A report was written to Fisher Day Solicitors on 2nd Oct 2019 to give some background into (AT's) mental health. I was alerted to a repeated spelling error regarding (MMAR's) name so this report was amended on 15 October 2019 to correct this error. While amending this report I choose to remove a short sentence from the final paragraph which commented on AT's ability to parent. I choose to do this as on reflection I do not feel in a position to comment on this as her GP."

106 Mr Bates has, on 5.11.19, made final submissions opposing admission of the post hearing evidence, and in the alternative, setting out the respondent's position with regard to that evidence, asserting, in summary, that the relevant test of undue hardship is still not met.

Relevant law

107 Immigration rules

> "Revocation of deportation order
>
> 390. An application for revocation of a deportation order will be considered in the light of all the circumstances including the following:
>
> > (i) the grounds on which the order was made;
> > (ii) any representations made in support of revocation;
> > (iii) the interests of the community, including the maintenance of an effective immigration control;
> > (iv) the interests of the applicant, including any compassionate circumstances.
>
> 390A. Where paragraph 398 applies the Secretary of State will consider whether paragraph 399 or 399A applies and, if it does not, it will only be in exceptional circumstances that the public interest in maintaining the deportation order will be outweighed by other factors.
>
> ...
> 398. Where a person claims that their deportation would be contrary to the UK's obligations under Article 8 of the Human Rights Convention, and

(a) the deportation of the person from the UK is conducive to the public good 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

(a) it would be unduly harsh for the child to live in the country to which the person is to be deported; and
(b) it would be unduly harsh for the child to remain in the UK without the person who is to be deported; or

(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.

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."

108 **NIAA 2002:**

"Article 8 of the ECHR: public interest considerations
117AApplication 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).

117BArticle 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.

117CArticle 8: additional considerations in cases involving foreign criminals
(1) The deportation of foreign criminals is in the public interest.
(2) The more serious the offence committed by a foreign criminal, the greater is the public interest in deportation of the criminal.
(3) In the case of a foreign criminal ("C") who has not been sentenced to a period of imprisonment of four years or more, the public interest requires C's deportation unless Exception 1 or Exception 2 applies.
(4) Exception 1 applies where—
(a) C has been lawfully resident in the United Kingdom for most of C's life,
(b) C is socially and culturally integrated in the United Kingdom, and
(c) there would be very significant obstacles to C's integration into the country to which C is proposed to be deported.
(5) Exception 2 applies where C has a genuine and subsisting relationship with a qualifying partner, or a genuine and subsisting parental relationship with a qualifying child, and the effect of C's deportation on the partner or child would be unduly harsh.
(6) In the case of a foreign criminal who has been sentenced to a period of imprisonment of at least four years, the public interest requires deportation unless there are very compelling circumstances, over and above those described in Exceptions 1 and 2.
(7) The considerations in subsections (1) to (6) are to be taken into account where a court or tribunal is considering a decision to deport a foreign criminal only to the extent that the reason for the decision was the offence or offences for which the criminal has been convicted."

Relevant authority

109 KO (Nigeria) & Ors v Secretary of State for the Home Department (Respondent) [2018] UKSC 53:

"22. Given that exception 1 is self-contained, it would be surprising to find exception 2 structured in a different way. On its face it raises a factual issue

seen from the point of view of the partner or child: would the effect of C's deportation be "unduly harsh"? Although the language is perhaps less precise than that of exception 1, there is nothing to suggest that the word "unduly" is intended as a reference back to the issue of relative seriousness introduced by subsection (2). Like exception 1, and like the test of "reasonableness" under section 117B, exception 2 appears self-contained.

23. On the other hand the expression "unduly harsh" seems clearly intended to introduce a higher hurdle than that of "reasonableness" under section 117B(6), taking account of the public interest in the deportation of foreign criminals. Further 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."

Procedural matters:

110 SD (treatment of post-hearing evidence) Russia [2008] UKAIT 00037: headnote:

"In the rare case where an immigration judge, prior to the promulgation of a determination, receives a submission of late evidence, then consideration must first be given to the principles in Ladd v Marshall [1954] 1 WLR 1489. Under those, a tribunal should not normally admit fresh evidence unless it could not have been previously obtained with due diligence for use at the trial, would probably have had an important influence on the result and was apparently credible. If, applying that test, the judge was satisfied there was a risk of serious injustice because of something which had gone wrong at the hearing or this was evidence that had been overlooked, then it was likely to be material. In those circumstances, it will be necessary either to reconvene the hearing or to obtain the written submissions of the other side in relation to the matters included in the late submission."

Directions in law

111 We direct ourselves that it is for the appellant to establish on a balance of probabilities that he meets the immigration rules relevant to the revocation of a deportation order. Outside of the immigration rules, as it is accepted that the appellant has established that he has engaged the provision of Article 8(1) ECHR, by establishing that he has a family life in United Kingdom, it is for the respondent to justify any interference with such right. When assessing the proportionality of any such interference, we must apply the considerations set out in Part 5A of NIAA 2002. In particular we must determine whether the high thresholds required in ss. 117C(5) and (6) of the 2002 Act are met in this case.

Discussion

Ruling on the appellant's application of 12 September 2019

112 We refuse to admit the post hearing evidence including the further letters from Dr Rehman dated 2.10.19, 15.10.19 and 24.10.19. The relevant test in SD (supra) is not met.

113 The implied suggestion by the appellant in the application to admit further evidence that the parameters of the appeal was somehow changed by questions asked either by the respondent or by the Tribunal itself in the course of the hearing on 10.9.19 is simply not made out. Judge Chambers had observed in his decision that AT was then taking antidepressants. He also noted that AT suffered from stress and worry and had suffered heart palpitations. Judge Chambers did not make any finding of fact that AT had been diagnosed with depression, and there was no suggestion at the relevant time that AT suffered from postnatal depression.

114 Where the respondent and the Tribunal have asked AT and the appellant in the course of the hearing for further information about her medical problems, no procedural fairness issue arose. It was readily apparent, and indeed it was accepted by Ms Benitez in the course of the hearing on 10.9.19, that there were significant temporal gaps in the medical evidence relating to AT, and the letter of Dr Rehman dated 3.9.19 gave no diagnosis of either depression or postnatal depression.

115 We find that the appellant's attempts to add, after the hearing, to the evidence relating to AT's mental health, represents an ex post facto realisation that certain assertions made by the appellant and AT were not supported by medical evidence, in circumstances where the appellant could have been under no allusion that the issue of AT's mental health was likely to be a relevant factor in the appeal. We see no reason at all as to why any of the post-hearing evidence could not have been adduced before the hearing on 10.9.19.

116 Given in particular the protracted history of the appeal, we find that there is no adequate reason for the Tribunal to exercise its discretion to admit this evidence. It

cannot properly be said that the material could not have been previously obtained with due diligence for use at the hearing. Medical evidence relating to AT could, in general terms, be said to be capable of having an influence on the result of the hearing, but the nature of the further evidence from Dr Rehman, and the way in which it has been amended results in us having doubt as to the weight that could be attached to the evidence in any event. We seriously question whether it was at all appropriate for the appellant's solicitor to suggest to Dr Rehman that a 'correction' be made to the first sentence of the last paragraph of the version of the letter dated 2.10.19 on the implied basis that it contained an 'administrative error'. We are of the view that no injustice to the appellant arises as a consequence of our decision to exclude the post hearing evidence. The appellant has been represented at all material times in the preparation for the hearing of 10.9.19 and the choice of evidence on which he relied at that hearing was his. The appellant's attempt to shore up elements of the evidence he relies upon, after the hearing has concluded, is to be deprecated, and has added significantly to the burden on the Tribunal in producing this decision, requiring no less than three sets of directions being issued as a consequence.

117 We have decided, nonetheless, for the sake of completeness to consider whether admitting the post hearing evidence and taking it into account would make any difference to the outcome of the appeal. We therefore consider it in more detail below.

Unduly harsh consequences for the children

118 It is accepted by the respondent in this appeal that the requirements of 399(a)(i) and 399(a)(i)(a) are met, i.e. that the appellant's children are British, and it will be unduly harsh for them to live in Pakistan. The only remaining issue under 399(a) is that under 399(a)(b); whether it will be unduly harsh for the children to remain in the UK without the appellant. The same legal question arises under 'Exception 2' within s.117C(5) of NIAA 2002.

119 The consideration of that issue relates principally to the evidence addressing the question of AT's mental health. We have set out above a summary of the relevant evidence.

120 The children presently have no physical or mental health problems other than MR having a recurring cold. We take issue with the implied suggestion with the addendum SWWB report at [429] that it is a highly likely scenario the children will display behaviours associated with post-traumatic stress disorder if the appellant were to be deported. Even if, as the research quoted immediately before that assertion is correct, that the prevalence of post-traumatic stress disorder is significantly higher for children of deported parents than amongst children generally, we do not find without more that this supports the proposition that it is 'highly likely' that the children will display behaviours associated with post-

traumatic stress disorder. The actual frequency of the incidence of such behaviours in the children of persons deported is not given.

121 We note that the medical evidence before the Tribunal as at the date of hearing did not provide a current diagnosis that AT was suffering from depression or specifically, postnatal depression, and the historical evidence of depression did not indicate whether it was mild, moderate or severe. Further, there was no cogent evidence supporting AT's assertion as to the sedative effects of any medication she was receiving, or whether the side-effects of any medication could be addressed by the GP.

122 The report from the Cognitive Behavioural Therapist recorded that AT scored highly for symptoms of low mood and anxiety, but does not offer a specific diagnosis of depression or postnatal depression.

123 AT was inconsistent in her oral evidence as to the periods when she had been prescribed antidepressants. However, we do not treat that as significant, noting that her own medical records establish that she has been described antidepressants at different times in the past and that it may be difficult for her to remember accurately what she was prescribed at any particular time.

124 We observe that AT was recommended for psychological therapies at least twice in the past before her recent decision to pursue a referral to psychological therapies, resulting in her consultation with the Cognitive Behaviour Therapist. We do not find that AT has given any cogent reason for not having taken up psychological therapies in the past.

125 The evidence on the frequency of AT's panic attacks is inconsistent. AT is reported in the SWWB report to have stated that these 'sometimes' occurred at night; the GP states that they occur at times of stress, an example being around the times of the appellant's immigration hearings; and the CBT report suggested the these were daily. Due to these inconsistencies, we find that AT's panic attacks are not as frequent as AT had reported to the CBT therapist.

126 Notwithstanding that the medical evidence available to the Tribunal as at the date of hearing did not support AT's assertion that her sleep was disturbed as a result either of her depression or of her medication, we are prepared to proceed on the basis that AT does have a form of depression, and does experience some sleep disturbance. However, AT herself stated in oral evidence that she was advised by her GP in August 2019 that she would get used to her the symptoms/side effects of her medication (see [52] above).

127 We are also prepared to proceed on the basis that the appellant's removal from the United Kingdom will have a 'significant effect' on the lives of the children, representing a negative impact on the care afforded to the children, and that AT will be likely to struggle to meet *all* of the children's needs. We are also prepared to

accept the opinion expressed by Dr Rehman in her letter of 3 September 2019 that the appellant's removal would be detrimental to AT's mental health.

128 We consider the best interests of the appellant's three British children as being a primary consideration in our decision making: ZH (Tanzania) v Secretary of State for the Home Department [2011] UKSC 4. In the present appeal, there is no suggestion that the appellant's children could or should relocate to Pakistan; to do so would be unduly harsh and would clearly not be in their best interests.

129 We also find that it would not be in the best interests of the children for them to remain in the UK without the appellant. The appellant plays a positive and important role in their lives, although we do not find that the appellant's continued presence in UK would be exclusively positive for the children, as we agree with Judge Chambers' finding as set out at [18(i)] above, that AT has suffered from stress and worry *'as a result of the appellant's behaviour'*. However, as the SWWB report suggests, there is significant potential that the appellant's removal from the UK would have a negative effect upon the children. It would not be in their best interests for that to happen.

130 When considering the potential effect of the appellant's removal on AT's ability to care for her children, we note that AT has always had mental health problems to one degree or another, having suffered from anxiety and palpitations since childhood. Although we are prepared to accept that AT's mental health may have suffered at times of crisis in her relationship with the appellant, and as a result of her preoccupation with the outcome of these proceedings, we are not satisfied that AT's mental health problems can be solely attributed to her concerns about the outcome of these proceedings and the appellant's potential removal from the United Kingdom.

131 We find that there is some assistance available to AT from her wider family. Although current assistance is said to be limited, we note that the children are said to see the grandparents 2-3 times a month, occasionally for a sleep-over. However, AT stated that she had not asked her mother for any further help (para [55] above). Further, in his updating statement dated 21 June 2019, AT's brother ST states that although he works full-time, he does from time to time drop the children off at school. ST lives with AT's parents. We do not accept any proposition made to the effect that no further assistance at all would be available from the wider family. In our view AT has not been entirely candid about the support both she and the children get from her own family members living relatively nearby or could potentially rely upon if the appellant is deported.

132 Further, in BL (Jamaica) v The Secretary of State for the Home Department [2016] EWCA Civ 357, the Court of Appeal held at [53] that the Upper Tribunal had erred in law in failing to consider whether, if a parent was struggling to care their children, adequate support services would be available for the children. 'The UT were entitled to work on the basis that the social services would perform their

duties under the law and, ...the UT was not bound in these circumstances to regard the role of the social services as irrelevant.' There has been no involvement by social services to assist in the care of the appellant's children. It has not been demonstrated that it would not be available if necessary.

133 We find that the consequences to the appellant's children of his being deported from United Kingdom will be harsh. However, as is apparent from much of the academic research quoted within the SWWB report, deportation has negative, and indeed harsh consequences on children. That is likely to be a given. The deportation is proposed as a consequence of the appellant having committed a number of criminal offences in the United Kingdom, the last of which resulted in his imprisonment for 15 months. Immigration control, as represented in immigration rules, approved by Parliament, requires his deportation, unless the consequences to his children are not only harsh, but unduly harsh: 'a degree of harshness going beyond what would necessarily be involve any child faced the deportation of a parent' (KO Nigeria). A significant part of the SWWB report considers academic studies of the consequences on children generally as a result of the deportation of a parent.

134 We find, on the basis of evidence before the Tribunal as at the date of hearing, and taking the best interests of the children as a primary consideration, that the appellant has not met the burden on him to establish on a balance of probabilities that the consequences to his children as a result of his removal would be unduly harsh. We acknowledge that AT will find it difficult to be a single parent. However, she has the appropriate infrastructure around her to assist her to cope: she has a good relationship with her GP and her mental health is regularly reviewed; she has started seeing a Cognitive Behaviour Therapist; she has the nearby support of her own family members. The children are all healthy and do not have any particularly demanding characteristics. With time and by accessing the correct support, we consider that AT and the children will learn to adapt to the changed circumstances.

135 If we had had regard to the post hearing evidence, we would note that it cast some light on certain matters that were not, with respect, clearly established by the evidence before the Tribunal as at the date of hearing, i.e. that AT should be treated as having struggled with anxiety and depression *uninterrupted* since April 2016, and that her presentation after the birth of MR has been such that the doctor would diagnose AT as having postnatal depression. The recent increase in the sertraline dose was confirmed. AT was said to be struggling from deep sleep and fatigue symptoms as a side-effect her medication. It was said that there were no medications to counter those effects. The appellant's removal would cause a great upheaval for the family and the children will be greatly affected by the change in family dynamics and would likely require more support and attention.

136 However, the admission into evidence of Dr Rehman's letters of 2 October 2019, 15 October 2019, and 24 October 2019 would present the appellant with a significant

difficulty; that within her letter of 2 October 2019, Dr Rehman stated that she was not concerned with AT's current ability to parent the children. That assertion significantly undermines the assertions of AT, the appellant, and the SWWB report that AT presently has difficulty adequately caring for her children.

137 We have already had reason to criticise the appellant's solicitors for seeking to elicit an amendment to Dr Rehman's letter of 2 October 2019 on the spurious basis that it was said to contain one or more administrative errors. We note that Dr Rehman seeks in her letter of 24 October 2019 to explain the amendment to her original letter on the basis that she chose to make the amendment because on reflection she did not feel in a position to comment on the issue of AT's ability to parent. This is, with respect, a curious position for Dr Rehman to take. It is not entirely clear why Dr Rehman ultimately found herself unable to comment on the issue. Further, it is unexplained why, if Dr Rehman finds herself unable to comment on AT's ability to parent her children at the present time, she is able in her letter of 2 October 2019 to opine at length on AT's ability to parent her children in the future.

138 Therefore, proper scrutiny of Dr Rehman's letters of 2 October 2019, 15 October 2019, and 24 October 2019, in particular the amendment to her letter, as contained within the letter of 15 October 2019, and the apparent reasons for that amendment, set out in the letter of 24 October 2019, would result in this Tribunal placing little weight on these three letters, if they were to be admitted into evidence.

139 We therefore find that the appellant does not meet the requirements of paragraph 339(b) of the immigration rules. For the same reasons, we find that Exception 2, within s.117C(5) NIAA 2002 does not apply, in relation to the effect of the appellant's deportation on the children.

Unduly harsh consequences for AT

140 The appellant argued that it would be unduly harsh not only for his children to remain in the UK without him, but also for AT. This issue arises when considering the application of paragraph 399(b)(i)-(iii) of the immigration rules (set out above), and under 'Exception 2' within s.117C(5) NIAA 2002.

141 We note that whereas paragraph 399(b)(i) of the immigration rules specifically requires consideration of whether a relationship with a partner in the UK was formed at a time when the deportee was in the UK lawfully and their immigration status was not precarious, the immigration status of the deportee is not specifically set out under s.117C(5) as a consideration to which Tribunal must have regard. As per paragraph 22 of KO (Nigeria) (supra), Exception 2 appears to be self-contained. We therefore focus on the common issue within paragraph 399(b), and s.117C(5); whether the effect of the appellant's deportation would be unduly harsh on AT.

142 We adopt herein the reasons set out at [118]-[139] above as to why it would not be unduly harsh for the children to remain in the UK without the appellant, which we

consider to be equally applicable to the question of whether it would be unduly harsh on AT for her to remain in the UK without him. We have in particular taken into account her mental health problems. For all the reasons we set out above, in particular those at [134], we find the appellant's removal will be harsh on AT, but not unduly harsh. The appellant is therefore unable to satisfy the conjunctive requirements of paragraph 399(b)(i)-(iii) of the rules, and does not meet the self-contained requirements of Exception 2 within s.117C(5) as it relates to his relationship within AT.

Very compelling circumstances; para 398

143 Ms Benitez sought to argue that the appellant had been absent from Pakistan for many years and now had few ties to the country. However, the appellant spent his formative years in Pakistan and will be familiar with the culture and languages in the country. The appellant has gained academic qualifications in United Kingdom during his stay here.

144 Although the nature of the appellant's offending was not a material consideration in our consideration as to whether the consequences of his removal would be unduly harsh on the appellant's children, it is a material consideration when considering under paragraph 398 of the rules, whether there are very compelling circumstances over and above the factors set out in paragraph 399 of the immigration rules.

145 In his witness evidence, the appellant omits to discuss his earlier offences as set out at [5] above. These include an earlier offence of dishonesty; using a false instrument, in 2005, and at least six driving offences, including driving no insurance, no MOT, and driving with excess alcohol, in the years 2005 - 2009. The three-month suspended prison sentence imposed on 3 March 2009 for driving whilst disqualified and with no insurance was activated on 13 July 2010 due to his failure to comply with community requirement of a suspended sentence, and the appellant was imprisoned for 10 weeks. The Appellant and AT assert that they met in 2005, and have been in a relationship since early 2006. It is to be assumed that AT has been aware the appellant's offending behaviour throughout.

146 We also find that the appellant has intentionally sought to conceal his further conviction of 2015. Even if, as he asserts, he informed his solicitors that he had been convicted of a further offence after 2012, and that conviction was not specifically set out within the witness statements which postdate the 2015 conviction, the appellant also positively asserted in various witness statements post-dating that conviction that he had not been convicted of any further criminal offences since his conviction of 2012. This was patently not true, and the appellant is responsible for the content of his witness statements.

147 We find that the totality of the appellant's offending behaviour is very significant. The driving offences are in themselves to be treated as being of grave concern,

given that he has repeatedly driven without insurance, and has driven with excess alcohol. We treat the offence of which he was convicted in 2012 as being serious.

148 Having considered all relevant matters cumulatively, we find that there are no very compelling circumstances over and above matters set out in paragraph 399 meeting the requirements of the immigration rules.

149 We consider the appellant's appeal outside the rules, and take into account the considerations set out in Part 5A NIAA 2002. We have already found that the self-contained provision of Exception 2 within of s.117C(5) does not apply). We find that the maintenance of effective immigration control is in the public interest (s.117B(1)). The appellant speaks English (s.117B(2)). We are also prepared to accept, on balance, that the appellant may be capable of being financially independent in the United Kingdom, if the appellant were to remain in the UK and were permitted to work, as the appellant has in the past been employed full-time (s.117B(3)). However, his employment prospects are no doubt diminished as a result of his offending behaviour. However, those two matters do not provide the appellant with a positive right to reside in the UK.

150 No submission has been advanced to us that the appellant has a private life in the United Kingdom other than that associated with his family life. In any event, the appellant has been unlawfully present since 2011 at the latest, and any private life developed since then is to be given little weight (s.117B(4)(a)).

151 We note the finding of Judge Nicholson at [109] in his decision, as summarised at [26(iii)] above, that although when the appellant and AT met and began a relationship as girlfriend and boyfriend, the appellant had been in the United Kingdom lawfully, by the time they decided to get engaged, he was an overstayer; to that extent they had developed their family life to the next level at a time when his right to remain in the United Kingdom was clearly precarious. We agree with that analysis, and we find that the appellant's family life is to be given little weight.

152 S.117B(6) does not apply, as the appellant is liable for deportation.

153 We note that the deportation of foreign criminals is in the public interest (s.177C(1)), and that the more serious the offence, the greater is the public interest in deportation (s.117C(2)). We are of the view that the appellant's offending history is serious. No argument that Exception 1 within s.117C(4) applies has been made.

154 We find that there are no very compelling circumstances in the appeal.

155 We find that the appellant's removal from the United Kingdom does not represent a disproportionate interference with his right private or family life.

Decision

The appellant's appeal under the immigration rules, brought under s.84(1)(a) NIAA 2002, is dismissed.

The appellant's appeal under s.84(1)(g) NIAA 2002 is also dismissed.

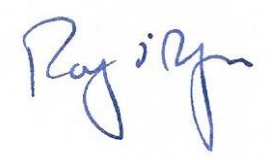
Signed Date: 19.11.19

Deputy Upper Tribunal Judge O'Ryan

Direction Regarding Anonymity – Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008

The appeal concerns the interests of minor children. 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 both to the Appellant and to the Respondent. Failure to comply with this direction could lead to contempt of court proceedings.

Signed Date: 19.11.19



Deputy Upper Tribunal Judge O'Ryan