Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: HU/19704/2018

THE IMMIGRATION ACTS

Heard at Field House	**Decision & Reasons Promulgated**
On 1st November 2019	**On 12 November 2019**

Before

UPPER TRIBUNAL JUDGE JACKSON

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

And

ELSONEDA [T]
(ANONYMITY DIRECTION NOT MADE)

Respondent

Representation:

For the Appellant: Mr L Tarlow, Senior Home Office Presenting Officer
For the Respondent: Ms M Chaggar of Counsel, instructed by Kilby Jones Solicitors LLP

DECISION AND REASONS

1. The Secretary of State appeals with permission against the decision of First-tier Tribunal Judge Shore promulgated on 2 April 2019, in which Ms [T]'s appeal against the decision to refuse her human rights claim dated 16 August 2018 was allowed.

For ease I continue to refer to the parties as they were before the First-tier Tribunal, with Ms [T] as the Appellant and the Secretary of State as the Respondent.

2. The Appellant is a national of Albania, born on 11 November 1989, who first entered the United Kingdom in 2011, using false documents for which she was prosecuted and sentenced to 12 months' imprisonment. Her claim for asylum was refused and she was notified of notice of intention to deport her on 31 March 2011. The Appellant's appeal against that decision was dismissed by the First-Tier Tribunal (Immigration Judge Bell and Ms Street JP) in a decision promulgated on 19 July 2011. A signed Deportation Order was made against the Appellant who was deported to Albania on 5 August 2011. The Appellant re-entered the United Kingdom illegally and in breach of the Deportation Order in 2011/12, following which she met her partner with whom she had a child in 2014 and an application for leave to remain was made on human rights grounds on 24 October 2017.

3. The Respondent refused the application the basis that the Appellant did not meet the suitability requirements for a grant of leave to remain, given that she had failed to disclose a previous criminal conviction and that there was an extant Deportation Order in force from 2011. Further, the application was refused on the basis that the Respondent did not accept that there was a genuine and subsisting relationship at the date of application because there was no evidence of cohabitation at that time and in any event the Appellant did not meet the immigration status requirements. The alternative requirements of paragraph EX.1 of Appendix FM to the Immigration Rules were not met on the basis that the relationship was not accepted and on the alternative basis, that the Appellant's child could remain in the United Kingdom with the father. The Appellant could not meet the requirements of paragraph 276ADE of the Immigration Rules because there were no very significant obstacles to her reintegration into Albania. Finally, there were no exceptional circumstances which warranted a grant of leave to remain in the United Kingdom.

4. Judge Shore allowed the appeal in a decision promulgated on 2 April 2019 on human rights grounds. Although it was accepted that the Appellant could not succeed under the requirements of the Immigration Rules, it was found that her removal would result in unjustifiably harsh consequences to her and her family if they were all required to relocate to Albania, such that her removal would be a disproportionate interference with her right to respect for private and family life under Article 8 of the European Convention on Human Rights. Specifically, the First-tier Tribunal found that it was in the best interests of the Appellant's two children (a second child having been born in 2019 prior to the hearing before the First-tier Tribunal and after the reasons for refusal letter) to remain in the United Kingdom with both parents. The Appellant's partner and children were British citizens, or in the case of the youngest child, entitled to British citizenship (which had by the time of the hearing before the Upper Tribunal been granted).

The appeal

5. The Respondent appeals on the basis that the First-tier Tribunal materially erred in law in considering the appeal on Article 8 grounds without reference to the provisions in paragraphs 390 to 392 of the Immigration Rules as to the requirements for revocation of a Deportation Order, nor that Article 8 had been considered within the relevant provisions relating to deportation in paragraphs 398 and following of the Immigration Rules and/or section 117C of the Nationality, Immigration and Asylum Act 2002.

6. Although the First-tier Tribunal was not assisted by the Respondent as to the correct provisions under which the appeal should be considered, the Respondent not relying on any of the relevant deportation provisions in the Immigration Rules either in the reasons for refusal letter or in oral submissions to the First-tier Tribunal; I find a material error of law in the First-tier Tribunal's decision in its failure to determine the appeal in accordance with the correct provisions. The First-tier Tribunal were clearly aware of the Deportation Order, there was no dispute about it and at one point the First-tier Tribunal referred to it expressly excluding consideration of section 117B(6) of the Nationality, Immigration and Asylum Act 2002. Despite this and for no apparent reason, the First-tier Tribunal however went on to apply the remainder of section 117B and the normal non-deportation provisions in relation to Article 8.

7. These findings were given orally in summary to the parties at the oral hearing, with subsequent agreement between the parties that the findings of fact made by the First-tier Tribunal should be preserved and the decision on appeal could be remade by the Upper Tribunal on the basis of further oral submissions only.

8. On behalf of the Respondent, Mr Tarlow submitted that the test to be applied in this appeal is that in paragraph 399D of the Immigration Rules, as to whether there are any very exceptional circumstances to outweigh the public interest in enforcement of the Deportation Order made against the Appellant in 2011. At the time of the Deportation Order and the Appellant's deportation to Albania, she had not established any family life, which commenced only after her re-entry to the United Kingdom in 2011/2. In essence, it was submitted that the fact that the Appellant has a partner and two British children, does not amount to very exceptional circumstances such that paragraph 391 of the Immigration Rules applies and the continuation of the Deportation Order is the proper course.

9. On behalf of the Appellant, it was accepted that this appeal raises a narrow point as to whether there are very exceptional circumstances and that the test is not materially different to that applied by the First-tier Tribunal in finding unjustifiably harsh consequences on the family if the Appellant is removed.

10. Ms Chaggar submitted that there has been a significant change of circumstances for the Appellant since the Deportation Order was made, with a relationship commenced after entering in breach of the order, following which two children have been born, the youngest is eight months old and the eldest is five years old. It is accepted that there is a genuine parental relationship with both children and if the

Appellant is deported again, it would leave two young children without their mother.

11. The Appellant's partner is a British citizen who is well established in the United Kingdom, has lived here for a long time and has made it clear in his evidence that he would not to return to Albania with the Appellant. It would not be in the children's best interests to be separated from their mother and it was submitted that the same cannot be in the public interest.

12. Although accepted that the passage of time since the Deportation Order was made in 2011 is not of itself good reason to revoke the Deportation Order, it is relevant that it was made some eight years ago. The complete change of circumstances in that time is relevant to the assessment required under paragraph 399D of the Immigration Rules.

13. The additional factors which need to be taken into account are that the Appellant speaks English and is financially independent, being supported by her partner. Ms Chaggar further suggested that it was necessary to take into account the fact that the Appellant was prosecuted and sentenced for the use of a false passport to enter the United Kingdom prior to determination of her claim for asylum, raising the question of whether the appellant was being penalised for using a false document with the intention of claiming asylum. However, it is apparent from the First-tier Tribunal decision in 2011 that the Appellant did not claim asylum until after being notified of the intention to deport her and in any event her asylum claim was unsuccessful. In these circumstances, this is not a relevant factor to be taken into account.

14. Overall it was submitted on behalf of the Appellant that this is a fact sensitive assessment in which there has been a significant change of circumstances, establishing very exceptional circumstances to allow the revocation of the Deportation Order on human rights grounds and in accordance with the Supreme Court's decision in KO (Nigeria) v Secretary of State for the Home Department [2019] UKSC 53.

Findings and reasons

15. As above and as agreed between the parties, the findings of fact made by the First-tier Tribunal in relation to the Appellant's circumstances and those of her family members are preserved (subject to the development as noted above that the Appellant's youngest child has now been granted British citizenship) and no further evidence was required nor any significant additional factual findings needed. Those findings are as follows:

> *"45. I find the Appellant and her partner were credible witnesses, although I find that they both exaggerated the difficulties they would face on return to Albania. They clearly would enjoy a much-reduced standard of living in Albania and it is not surprising that they do not wish to return, but both have worked in the country of origin and the sponsor has built up a business in the United Kingdom. No location evidence was produced to corroborate the claim that they would be unable to find work.*

…

48. … I make the following findings of fact:

48.1 The Appellant is in a genuine and subsisting relationship with the sponsor, who is a British citizen. The evidence of the Appellant and sponsor on this issue was unchallenged and, even if it had been, I would still have found for the Appellant on the point on the balance of probabilities;

48.2 The Appellant is subject to a deportation order, so cannot rely on section 117B(6);

48.3 The Appellant was convicted and imprisoned for using a false document to gain entry to the United Kingdom;

48.4 She was deported on release, but quickly re-entered the United Kingdom illegally, where she has remained;

48.5 The Appellant has a genuine and subsisting parental relationship with her elder daughter, who is a British citizen, and her younger daughter, who is entitled to British citizenship. These facts were not in dispute;

48.6 The Appellant's partner has established himself in business in the United Kingdom;

48.7 The Appellant's elder daughter is attending school;

48.8 The Appellant gave unchallenged evidence that she is breastfeeding her new-born daughter, and;

48.9 Both the Appellant and sponsor have family in Albania.

…

50. In considering section 117B of the 2002 Act, I make the following findings of fact;

50.1 The Appellant did not demonstrate to the required standard of proof that she is able to speak English;

50.2 The Appellant's is married to a British citizen;

50.3 No evidence was produced as to the Appellant's own income or finances, but evidence of the sponsor's finances and available accommodation was provided. I find that the Appellant has shown to the required standard of proof that she would be financially independent and would not be a burden on the taxpayer;

50.4 She is subject to a deportation order, and;

50.5 The Appellant is in a genuine and subsisting relationship with two qualifying children.

…

> *53.5 … Family life could continue outside the United Kingdom, but I find that the best interests of the children, which are a primary consideration, are to remain with both parents in the United Kingdom where they have lived all their lives and either are or will be confirmed as British citizens."*

16. In addition, there was evidence before the First-tier Tribunal that the Appellant's eldest daughter speaks a little Albanian (but not fluently). There was no evidence before the First-tier Tribunal to suggest any current medical problems for any members of the family and no educational problems or concerns in relation to the eldest child.

Legal framework

17. Paragraph 390 and following of the Immigration Rules sets out provisions relating to the revocation of a deportation order, which so far as relevant to the present appeal provide as follows:

> *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.*
>
> *391. In the case of a person who has been deported following conviction for criminal offence, the continuation of a deportation order against a person will be the proper course:*
>
> *(a) in the case of a conviction for an offence for which the person was sentenced to a period of imprisonment of less than four years, unless 10 years have elapsed since the making of the deportation order when, if an application for revocation is received, consideration will be given on a case-by-case basis with the deportation order should be maintained, or …*
>
> *Unless, in either case, the continuation would be contrary to the Human Rights Convention or the Convention and Protocol Relating to the Status of Refugees, or there are other exceptional circumstances that mean the continuation is outweighed by compelling factors.*

391A. In other cases, revocation of the order will not normally be authorised unless the situation has been materially altered, either by change of circumstances since the order was made, or by fresh information coming to light which was not before the appellate authorities or the Secretary of State. The passage of time since the person was deported may also in itself amount to such a change of circumstances as one for revocation of the order."

…

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

(a) …

(b) the deportation of the person from the U.K.'s conducive to the public good and in the public interest because they have been convicted of an offence for which they have been sentenced to a period of imprisonment of less than four years but at least 12 months; or

(c) … 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 paragraph 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) …;

(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.*
>
> …
>
> *399D. Where a foreign criminal has been deported and enters the United Kingdom in breach of a deportation order enforcement of the deportation orders in the public interest and will be implemented unless there are very exceptional circumstances.*

18. In the present appeal, pursuant to paragraph 399D of the Immigration Rules, the test is therefore whether there are very exceptional circumstances to outweigh the public interest in enforcement of a Deportation Order, a test which is more onerous on the Appellant than the unduly harsh criteria in the exceptions to deportation; the test of very compelling circumstances in paragraphs 398 to 399A of the Immigration Rules; and the unjustifiably harsh consequences in paragraph GEN.3.2 of Appendix FM. As the Court of Appeal found in Secretary of State for the Home Department v SU (Pakistan) [2017] EWCA Civ 1069 at paragraph 45;

> *The difference in the language of paragraphs 398 and 399D, suggesting a more stringent requirement under paragraph 399D, reflect the real difference in the circumstances covered by each paragraph. Paragraph 398 addresses the question whether a deportation order should be made, or an existing order maintained, against a person who has yet to be deported, whereas paragraph 399D addresses the very different case of a person who has been deported and then re-entered illegally and in breach of that order. In the latter case, any Article 8 claim that was raised by the deportee before his original deportation will, it is hypothesised, have been decided against him. It is readily understandable that in the cases covered by paragraph 399D of the Secretary of State should have formed the view that there is a particularly strong public interest in maintaining the integrity of the deportation system as it applies to foreign criminals.*

19. That is in effect to say that the hurdle faced by the Appellant is even higher than being able to show that the situation is unduly harsh on family members and even higher than the need to show very exceptional circumstances for those situations in which a person who has been sentenced to a term of imprisonment of over four years or who does not otherwise individually meet either of the exceptions. Whilst bearing in mind that higher hurdle, it is useful to start with a reminder of the application of the normal rules to be considered before a Deportation Order is made. These were set out by the Supreme Court in the case of Hesham Ali v Secretary of State for the Home Department [2016] UKSC 60, by reference to the then new Immigration Rules in paragraph 399 and 399A, confirming the approach to be considered to these provisions and the task of the tribunal as follows:

> *38. The implication of the new rules is that rules 399 and 399A identify particular categories of case in which the Secretary of State accepts that the public interest in the deportation of the offender is outweighed under article 8 by countervailing factors. Cases not covered by those rules (that is to say, foreign offenders who have received sentences of at least four years, or who have received sentences of between 12 months and four years but whose private or family life does not meet the requirements of rules*

399 and 399A) will be dealt with on the basis that great weight should generally be given to the public interest in the deportation of such offenders, but that it can be outweighed, applying a proportionality test, by very compelling circumstances: in other words, by a very strong claim indeed, as Laws LJ put it in SS (Nigeria). The countervailing considerations must be very compelling in order to outweigh the general public interest in the deportation of such offenders, as assessed by Parliament and the Secretary of State. The Strasbourg jurisprudence indicates relevant factors to consider, and rules 399 and 399A provide an indication of the sorts of matters which the Secretary of State regards as very compelling. As explained at para 26 above, they can include factors bearing on the weight of the public interest in the deportation of the particular offender, such as his conduct since the offence was committed, as well as factors relating to his private or family life. Cases falling within the scope of section 32 of the 2007 Act in which the public interest in deportation is outweighed, other than those specified in the new rules themselves, are likely to be a very small minority (particularly in non-settled cases). They need not necessarily involve any circumstance which is exceptional in the sense of being extraordinary (as counsel for the Secretary of State accepted, consistently with Huang [2007] 2 AC 167, para 20), but they can be said to involve "exceptional circumstances" in the sense that they involve a departure from the general rule.

50. In summary, therefore, the tribunal carries out its task on the basis of the facts as it finds them to be on the evidence before it, and the law as established by statute and case law. Ultimately, it has to decide whether deportation is proportionate in the particular case before it, balancing the strength of the public interest in the deportation of the offender against the impact on private and family life. In doing so, it should give appropriate weight to Parliament's and the Secretary of State's assessments of the strength of the general public interest in the deportation of foreign offenders, as explained in paras 14, 37-38 and 46 above, and also consider all factors relevant to the specific case in question. The critical issue for the tribunal will generally be whether, giving due weight to the strength of the public interest in the deportation of the offender in the case before it, the article 8 claim is sufficiently strong to outweigh it. In general, only a claim which is very strong indeed - very compelling, as it was put in MF (Nigeria) - will succeed.

20. The Supreme Court also recommended to the Tribunal a balance-sheet approach when undertaking the proportionality assessment, considering the factors in favour and against an appellant.

21. In addition, by virtue of section 117A of the Nationality, Immigration and Asylum Act 2002 (the "2002 Act"), a court or tribunal required to determine whether a decision made under the Immigration Acts reaches a person's right to respect for private and family life under Article 8 and as result would be unlawful under section 6 of the Human Rights Act 1998 must in all cases have regard to the considerations listed in section 117B of the 2002 Act and in cases concerning the deportation of foreign criminals, to the considerations listed in section 117C of the same. So far as relevant to the present appeal, section 117B provides as follows:

(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.

22. So far as relevant to the present appeal, section 117C provides as follows:

(1) The deportation of foreign criminals is in the public interest.

(2) The more serious the offence committed by 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 one or Exception to applies.

(4) Exception 1 …

(5) Exception 2 applies where C is 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 has been sentenced to a period of imprisonment at least four years, the public interest required deportation unless there are very compelling circumstances, over and above those described in Exceptions one and two.

23. These statutory provisions, which were not in force at the relevant date of the facts which arose in the case of Hesham Ali, have recently been considered by the Supreme Court in KO (Nigeria) v Secretary of State for the Home Department [2018] UKSC 53, with the focus on the assessment within the exception to as to whether deportation would be unduly harsh on a family member, which remains relevant when looking at whether a person can show "very compelling reasons" over and above the exceptions, or in this case, the even more stringent requirement to show very exceptional circumstances. The Supreme court summarised the applicable test for the second exception as follows:

> *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.*

24. I turn now to the Appellant's circumstances and those of her family to conduct the proportionality exercise to determine whether there are very exceptional circumstances to outweigh the very significant public interest in his deportation from the United Kingdom in accordance with the provisions set out above, starting in this case with paragraph 399D of the Immigration Rules and using the proposed balance-sheet approach.

25. The factors in favour of maintaining the Deportation Order are as follows. First, as is clear from section 117C(1) of the Nationality, Immigration and Asylum Act 2002, the deportation of foreign criminals is in the public interest (as is maintenance of effective immigration control pursuant to section 117B(1)). Secondly, there is a very significant public interest not only the deportation of foreign criminals but in

maintaining a Deportation Order against such persons who have re-entered the United Kingdom in breach of a Deportation Order. Thirdly, the Appellant has been convicted of an offence of using a false document to enter the United Kingdom and failed to disclose that conviction when making her application for leave to remain. Fourth, the Appellant has never had lawful leave to remain in the United Kingdom and commenced her relationship at a time when she had re-entered in breach of a Deportation Order. Finally, the First-tier Tribunal did not find that the Appellant speak English, which strengthens the public interest in removal pursuant to section 117B(2) of the Nationality, Immigration and Asylum Act 2002.

26. As to the factors in favour of the Appellant, she relies primarily on family life with her partner and two children. As above, the preserved findings of fact from the First-tier Tribunal are that the Appellant is in a genuine and subsisting relationship with her partner and with her two children, all of whom are now British citizens. The Appellant's case is that her partner would not relocate to Albania with her, it would be undesirable and not in the best interests of the children to do so either and it would be unduly harsh and not in the public interest for the children to be separated from their mother. The First-tier Tribunal found that it would be in the best interests of the children to remain in the United Kingdom with both parents.

27. Secondly, the Appellant's circumstances have changed significantly since the Deportation Order was made, some eight years ago. The Appellant has not been convicted of any further offences in that time.

28. Thirdly, the Appellant is financially independent and supported by her partner, albeit that is at best a neutral factor in section 117B(3) of the Nationality, Immigration and Asylum Act 2002.

29. I have weighed up all of the facts and circumstances in this case, balancing the very significant public interest factors in favour of deportation against all of those factors outlined above in favour of the Appellant and find that in this case the Appellant has not established very exceptional circumstances to outweigh the very significant public interest in her deportation. Further, even if this were an initial deportation decision (without consideration of revocation or re-entry in breach of a Deportation Order), I would not have found that the Appellant could meet either of the exceptions to deportation in paragraph 399 of the Immigration Rules and/or in section 117C of the Nationality, Immigration and Asylum Act 2002.

30. Whilst I take into account the best interests of the children and that they, together with the Applicant's partner are all British Citizens, the evidence before the First-tier Tribunal and findings of fact made by it falls far short of establishing any unduly harsh effects of deportation on the eldest child or the Appellant's partner; who could either remain in the United Kingdom without the Appellant or return to Albania with her (as found by the First-tier Tribunal that family life could continue in Albania where the parents would be able to work and where there is extended family on both sides). In respect of the youngest child, I find that there would be an unduly harsh impact on her if she remained in the United Kingdom and was therefore separated

from her mother given her very young age and the fact that she was being breastfed; however, no unduly harsh impact has been identified for the youngest child if she returned to Albania with her mother.

31. Overall, the family circumstances relied upon by the Appellant do not establish any adverse impact of deportation upon the family beyond what would normally be expected in any situation involving deportation, save for the adverse impact upon the youngest child if she was to be separated from her mother. That is not sufficient to establish that any of the exceptions to deportation would apply. In any event, taken cumulatively and at its highest, the evidence relied upon by the Appellant falls even further short of amounting to very exceptional circumstances required to outweigh the public interest in this case. For these reasons, the appeal is dismissed on human rights grounds.

Notice of Decision

The making of the decision of the First-tier Tribunal did involve the making of a material error of law. As such it is necessary to set aside the decision.

I set aside the decision of the First-tier Tribunal and remake it as follows:

The appeal is dismissed on human rights grounds.

No anonymity direction is made.

Signed  Date 8th November 2019

Upper Tribunal Judge Jackson