Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: PA/05660/2017

THE IMMIGRATION ACTS

Heard at Field House	**Decision & Reasons Promulgated**
On 2 May 2019	**On 13 May 2019**

Before

UPPER TRIBUNAL JUDGE BLUM

Between

IN
(ANONYMITY DIRECTION MADE)

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellant: Mr H Southey QC, Counsel, instructed by Wilson Solicitors LLP
For the Respondent: Mr D Clarke, Senior Home Office Presenting Officer

DECISION AND REASONS

1. This is a remade decision of an appeal against the respondent's decision dated 31 May 2017 refusing the appellant's Article 8 human rights claim. In a decision promulgated on 23 May 2018 Judge of the First-tier Tribunal J Bartlett (the FtJ) dismissed the appellant's appeal. In an 'error of law' decision promulgated on 5 December 2018 I found that the FtJ's decision contained errors on points of law that required it to be set aside. A copy of the 'error of law' decision is included in an appendix to this decision.

2. The identified errors of law related to the application of the 'very compelling circumstances' threshold in s117C(6) of the Nationality, Immigration and Asylum Act 2002 (the 2002 Act). I briefly summarise the errors of law.

   (a) Although the FtJ was entitled to conclude that the individual periods of delay by the respondent in the deportation process did not reflect a lack of interest in deporting the appellant, and although the FtJ was entitled to conclude that the public interest was not thereby diminished, she failed to consider whether the cumulative effect of the delays was such as to contribute to the establishment of very compelling circumstances.

   (b) The FtJ misdirected herself in holding that the appellant was not financially independent because he was supported by LN (his wife) and actively holding this against him (**Rhuppiah** [2018] UKSC 58).

   (c) When determining whether there existed 'very compelling circumstances' it was not apparent that the FtJ took into account the circumstances in which the appellant came to the UK as a 13 year old, or her finding that the appellant experienced a "traumatic time at the hands of his supposed guardian" and that it was in this context that he committed crimes and got involved in a gang.

   (d) When determining whether there existed 'very compelling circumstances' the FtJ failed to take express account of the significant efforts undertaken by the appellant to turn his life around or his length of residence in the UK.

3. The factual findings of the FtJ were unaffected by the errors of law and were retained. As a consequence the central issue for resolution is whether there are 'very compelling circumstances' rendering the appellant's deportation disproportionate under Article 8, by reference to s.117C(6) of the Nationality, Immigration and Asylum Act 2002 (the 2002 Act).

Summary of chronological and procedural background and retained factual findings

4. The appellant, a national of Nigeria, was born in 1990. He lived with his family in Nigeria until he was 13 years old. For reasons unclear his parents arranged for the appellant to go to the UK with a relative stranger in 2003. Although he claims to have entered the UK pursuant to an entry clearance issued to him as the dependent of a "guardian" there is no official record of his entry to the UK. He has never had lawful leave to enter or remain.

5. The appellant maintained contact with his family in Nigeria to varying degree throughout the years. The FtJ found that the appellant had retained family and cultural connections to Nigeria and that his

Nigerian family could assist him and his family in the UK if they relocated to Nigeria.

6. The appellant was physically and verbally abused and neglected by his supposedly 'guardian' in the UK. In his statement he explained that he would avoid her as much as possible and that she made him feel as if there was something wrong with him. The appellant only began to attend school in 2005 and obtained some GCSEs. As a result of the neglect and abuse to which he was subjected, and his lack of family support, the appellant became embroiled with gangs and criminality. He described in detail in his statement how he became associated with individuals in a "smoking house" and how he began to consider these people as his "new family" and began living with them. He began to smoke a lot of cannabis and would steal to purchase the drug.

7. The appellant received a six-month Supervision Order for having a blade with a sharp point in a public place in February 2008. On 11 March 2011 he was convicted of 2 counts of possession of a controlled drug with intent to supply and received a 30-month sentence of imprisonment. He made an asylum claim in May 2011 but accepts that this claim was without foundation. The asylum claim was withdrawn in a letter written by the appellant's solicitors in February 2014. When lodging his asylum claim the appellant also claimed to be a victim of human trafficking. This claim was ultimately rejected by the Competent Authority in a decision dated 12 September 2012. There was no legal challenge to this decision. In my 'error of law' decision I rejected Mr Southey's submission that the FtJ erred in law by failing to consider whether the appellant was a victim of trafficking (see paragraph 36 of the 'error of law' decision).

8. The appellant met LN, a British citizen, in 2007 and they entered into a relationship in September 2009. They have a son, NN, born on 8 May 2013. The appellant and LN married on 12 October 2013. A further child, LON, was born on 13 October 2018. The appellant told LN about his immigration status about halfway through his 2011 prison sentence.

9. The appellant was released on licence on 25 June 2012. A deportation order was served on him on 11 September 2013 but was withdrawn on 14 October 2014 at an appeal hearing as it had not been signed. The case remitted to the respondent for further consideration. On 23 January 2016 the appellant was served with a lawful notice of decision to deport him and, on 22 February 2016, his representatives made further submissions in response to this decision. The respondent treated these further representations as a human rights claim and refused the human rights claim on 31 May 2017. The appeal of this decision was heard on 30 April 2018.

10. The FtJ found that the appellant did not represent a danger to the community and did not consequently uphold a certification issued under section 72 of the 2002 Act. In reaching this conclusion the FtJ noted that the appellant had not engaged in criminal conduct since his sentencing in 2011 and that he had changed his life such that he posed a low risk of reoffending. The FtJ found the appellant to be "a different person to the individual who committed the crimes in 2008 and 2011." The FtJ found the evidence about the appellant's personal growth due to the support provided by LN and her family to be "compelling". The FtJ accepted that the appellant spent his time in prison busy working and studying to obtain qualifications. The FtJ noted the appellant's evidence that, during his prison term, he carried out numerous courses which included drugs and alcohol awareness, obtained hygiene certificates, and undertook A-level maths. The FtJ noted that the appellant was studying for an accounting qualification (which he has now obtained), that if he had permission to work in the UK he would do so, that he was ambitious for a better life and wished to be a role model for his son, that he was the primary carer for his son and a committed father, and that he drank limited alcohol infrequently and did not have an alcohol problem. It was for these reasons that the appellant was found to be at low risk of offending.

11. The FtJ noted that NN was 4 years old at the date of the First-tier Tribunal hearing (at the date of the hearing to remake the decision NN was a few days shy of his 6th birthday) and had spent his entire life in the care of his mother and father. Although the FtJ accepted that LN was the breadwinner in the family she did not accept that LN worked for 12 hours a day, 6 days a week. The FtJ found that the appellant was genuinely a loving father and that his son would be distraught if separated from him. The FtJ concluded that it would be in NN's best interests to remain living with his mother and father as a family unit in the UK to enable him to benefit from his rights as a British citizen. In my 'error of law' decision I rejected Mr Southey's submission that the FtJ failed to undertake an adequate assessment of NN's best interests and found that she lawfully engaged with and took into account reports by an Independent Social Worker (ISW).

12. The FtJ did not find that the effect of deportation on NN would be unduly harsh and, at the 'error of law' hearing, Mr Southey abandoned a ground that argued that the FtJ erred in her approach to the harshness of the situation faced by NN. In finding that it would not be unduly harsh for NN to live in Nigeria the FtJ took into account LN's evidence that she did not want NN to live there, and her concerns regarding safety and sanitation, and took into account the ISW's reports. The FtJ summarised the ISW's description of the appellant's relationships with his wife and son and noted that the ISW's identified concerns "… would be applicable to all healthy for-year-olds." The FtJ commented that the ISW's reports contained very few specific findings relating to NN's relocation to Nigeria and that it made general observations about how children seen as different would have

difficulties. The FtJ found that, at least initially, NN would be able to live with his grandparents and extended family, that he had some familiarity with his grandmother and aunt, and that there was an education system and a health system in Nigeria. The FtJ additionally noted NN's age and the stage of his education, and that his focus was on his immediate family rather than the wider community. The FtJ accepted that Nigeria was not a developed country, that not all of Nigeria had a reliable electricity supply or running water, and that the lifestyle in Nigeria would be of a lower standard than that available in the UK. The FtJ also accepted that NN would suffer a culture shock if he were to move to Nigeria but that he was still relatively young and would have the assistance of his father and extended family. Whilst accepting that any notional move to Nigeria would be "… undesirable, uncomfortable, difficult, challenging and unwanted", the FtJ did not find this would amount to undue harshness.

13. In finding that it would not be unduly harsh for NN to remain in the UK without the appellant the FtJ referred to the evidence of the distress this would cause NN and LN and, with reference to the ISW's report, that this would have a damaging effect on both. The FtJ accepted that if the appellant were deported and NN remained in the UK in the care of his mother it would have a damaging effect on both NN and LN and that they would suffer emotionally. The FtJ also accepted that LN was suffering from stress and anxiety and that she had some mental ill-health concerns arising from the threat of the appellant's deportation. There was however limited evidence to suggest that this was so serious as to require specialist treatment and/or counselling. The FtJ found that, if the appellant was deported, NN would be in the care of his mother who was a committed and loving parent and would also receive assistance from her family. The FtJ additionally noted that communication with the appellant would not be severed.

14. The FtJ found that the appellant could not satisfy the requirements of paragraph 399A of the immigration rules, and the requirements of paragraph 399(b) of the immigration rules could not be satisfied as the appellant was unlawfully present in the UK when he formed his relationship with LN. The FtJ found that the appellant could not satisfy Exception 1 in s.117C(4) of the 2002 Act because he had not been lawfully resident in the UK for most of his life. The FtJ found, with reference to s.117C(5), that the appellant's deportation would not have an unduly harsh impact on LN and supported this conclusion with reasons that included the support that LN would receive from the appellant and his family if she went to Nigeria and her own resourcefulness, and the support she would receive in the UK from her own family if she decided to remain in this country.

Documents that have been considered

15. The appellant continues to rely on the 3 core bundles (Bundles A to C) that were filed with the First-tier Tribunal, and the further documents

served on the day of the First-tier Tribunal hearing. I have considered these documents in reaching my decision. The documents included, *inter alia*, a 68-page statement from the appellant running to 147 paragraphs and dated 12 September 2014, a further statement dated 14 April 2018, a 29-page statement from LN dated 15 August 2014, and a further statement from her dated 18 April 2018. The bundles additionally included statements from members of LN's family, an ISW report authored by Peter Horrocks dated 15 September 2014 and an updating report dated 28 December 2017, a Pre-Sentence Report dated 8 March 2011, an OASys Assessment dated 12 August 2014, copies of various certificates and qualifications obtained by the appellant, and various evidence of the nature and quality of the appellant's relationship with his son and partner. The bundles also contained background information on Nigeria, documents relating to a cleaning company established by LN, and a letter from NN's primary school. I have additionally considered further evidence adduced by the appellant including records relating to LN's treatment with Talking Therapies, confirmation of the birth and nationality of the appellant's 2nd child, an ATT Foundation Certificate in Accounting – Level 2 awarded to the appellant on 17 October 2018, a letter from Juan Pimienta, Chair of the Metropolitan Police Ibero-American Association dated 29 April 2019, and photographs of the appellant attending a book launch discussion in April 2019, and of his attendance at a Community Council Question Time in the same month to discuss knife crime. There was no new documentary evidence relating to NN.

16. At the hearing to remake the decision Mr Southey indicated that he would not be calling the appellant or any witnesses to give oral evidence. I maintained a record of the submissions made by both representatives and have carefully considered those submissions. The proceedings in the Upper Tribunal and the submissions made are, in any event, a matter of record. Mr Southey's essential submission was that a holistic assessment of all relevant factors, which included the impact of the deportation on the family unit, the circumstances by which the appellant came to be in the UK as a 13-year-old, the abuse to which he was subjected and which led to his criminality, the powerful steps he took to rehabilitate himself and his 'pro-social' conduct, and the consequences of the respondent's delays, reached the 'very compelling circumstances' threshold such that the refusal of his human rights claim would be disproportionate under Article 8.

Legal Framework

17. Section 117A of the 2002 Act requires a Tribunal, when considering the public interest question, to have regard, in particular, to the factors listed in section 117B, and, in cases concerning the deportation of foreign criminals, to the considerations listed in section 117C.

18. Section 117B reads,

117B Article 8: public interest considerations applicable in all cases

(1) The maintenance of effective immigration controls is in the public interest.

(2) It is in the public interest, and in particular in the interests of the economic well-being of the United Kingdom, that persons who seek to enter or remain in the United Kingdom are able to speak English, because persons who can speak English—

(a) are less of a burden on taxpayers, and

(b) are better able to integrate into society.

(3) It is in the public interest, and in particular in the interests of the economic well-being of the United Kingdom, that persons who seek to enter or remain in the United Kingdom are financially independent, because such persons—

(a) are not a burden on taxpayers, and

(b) are better able to integrate into society.

(4) Little weight should be given to—

(a) a private life, or

(b) a relationship formed with a qualifying partner,

that is established by a person at a time when the person is in the United Kingdom unlawfully.

(5) Little weight should be given to a private life established by a person at a time when the person's immigration status is precarious.

(6) In the case of a person who is not liable to deportation, the public interest does not require the person's removal where—

(a) the person has a genuine and subsisting parental relationship with a qualifying child, and

(b) it would not be reasonable to expect the child to leave the United Kingdom.

19. Section 117C lists additional public interest 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.

20. Although s.117C(3) does not make any provision for medium offenders who fall outside Exceptions 1 and 2 the Court of Appeal in **NA (Pakistan) v Secretary of State for the Home Department** [2016] EWCA Civ 662 confirmed that Parliament intended medium offenders to have the same fall back protection as serious offenders.

21. In **Rhuppiah v Secretary of State for the Home Department** [2016] EWCA Civ 803, Sales LJ stated, at [45], (a point undisturbed on appeal to the Supreme Court)

> "It is common ground that the starting point for consideration of the proper construction of Part 5A of the 2002 Act is that sections 117A-117D, taken together, are intended to provide for a structured approach to the application of Article 8 which produces in all cases a final result which is compatible with, and not in violation of, Article 8. In that regard, both sides affirmed the approach to interpretation of Part 5A to ensure compliance with Article 8 as explained by this court in *NA (Pakistan) v Secretary of State for the Home Department* [2016] EWCA Civ 662, in particular at [26] and [31]."

22. Then at [49] and [50] Sales LJ held,

> "… Section 117A(2) does not have the effect that, for example, a court or tribunal has a discretion to say that the maintenance of effective immigration control is *not* in the public interest, in direct contradiction of the statement of public policy by Parliament in

> section 117B(1). Where Parliament has itself declared that something is in the public interest – see sections 117B(1), (2), (3) and section 117C(1) – that is definitive as to that aspect of the public interest. But it should be noted that having regard to such considerations does not mandate any particular outcome in an article 8 balancing exercise: a court or tribunal has to take these considerations into account and give them considerable weight, as is appropriate for a definitive statement by Parliament about a particular aspect of the public interest, but they are in principle capable of being outweighed by other relevant considerations which may make it disproportionate under article 8 for an individual to be removed from the UK.
>
> Another type of consideration identified in Part 5A to which regard must be had under section 117A(2) is the statement in section 117C(6) that 'the public interest *requires* deportation unless there are very compelling circumstances, over and above those described in Exceptions 1 and 2' (my emphasis). There is a similar requirement in section 117C(3), on its proper construction: see *NA (Pakistan) v Secretary of State for the Home Department* at [23]-[27]. In these provisions, Parliament has actually specified what the outcome should be of a structured consideration of Article 8 in relation to foreign criminals as set out in section 117C, namely that under the conditions identified there the public interest requires deportation. The 'very compelling circumstances' test in section 117C(3) and (6) provides a safety valve, with an appropriately high threshold of application, for those exceptional cases involving foreign criminals in which the private and family life considerations are so strong that it would be disproportionate and in violation of Article 8 to remove them. If, after working through the decision-making framework in section 117C, a court or tribunal concludes that it is a case in which section 117C(3) or (6) says that the public interest 'requires' deportation, it is not open to the court or tribunal to deny this and to hold that the public interest does *not* require deportation."

23. In **NE-A (Nigeria) v Secretary of State for the Home Department** [2017] EWCA Civ 239, considered after **Hesham Ali** [2016] UKSC 60, Sir Stephen Richards, stated, at [14] and [15]

> "… I see no reason to doubt what was common ground in *Rhuppiah* and was drawn from *NA (Pakistan)*, that sections 117A-117D, taken together, are intended to provide for a structured approach to the application of Article 8 which produces in all cases a final result which is compatible with Article 8. In particular, if in working through the structured approach one gets to section 117C(6), the proper application of that provision produces a final result compatible with Article 8 in all cases to which it applies. The provision contains more than a statement of policy to which regard must be had as a relevant consideration. Parliament's assessment that "the public interest requires deportation unless there are very compelling circumstances, over and above those described in Exceptions 1 and 2" is one to which the tribunal is bound by law to give effect.

> None of this is problematic for the proper application of Article 8. That a requirement of "very compelling circumstances" in order to outweigh the public interest in the deportation of foreign criminals sentenced to at least four years' imprisonment is compatible with Article 8 was accepted in *MF (Nigeria)* and in *Hesham Ali* itself. Of course, the provision to that effect in section 117C(6) must not be applied as if it contained some abstract statutory formula. The context is that of the balancing exercise under Article 8, and the "very compelling circumstances" required are circumstances sufficient to outweigh the strong public interest in the deportation of the foreign criminals concerned. Provided that a tribunal has that context in mind, however, a finding that "very compelling circumstances" do not exist in a case to which section 117C(6) applies will produce a final result, compatible with Article 8, that the public interest requires deportation. There is no room for any additional element in the proportionality balancing exercise under Article 8."

24. When determining the existence of 'very compelling circumstances' the appellant is entitled to rely on matters identified in Exception 1 and 2 in s.117C, but he needs to point to features of his case of a kind mentioned in Exceptions 1 and 2, or features falling outside the circumstances described in those Exceptions which makes his claim based on Article 8 especially strong (**NA (Pakistan)**, at [25] to [29]; **RA (s.117C: "unduly harsh"; offence: seriousness) Iraq** [2019] UKUT 00123 (IAC), at [20]).

25. In the Court of Appeal decision in **Rhuppiah** [2018] UKSC 58 (as quoted above at paragraph 21 of this decision) Sales LJ referred to the "appropriately high threshold of application" for the 'very compelling circumstances' test. This chimes with what was said in **Hesham Ali** [2016] UKSC 60 (at [38]) that 'very compelling circumstances' means "a very strong claim indeed." In **NA (Pakistan)** Jackson LJ held, at [33] and [34]

> "Although there is no 'exceptionality' requirement, it inexorably follows from the statutory scheme that the cases in which circumstances are sufficiently compelling to outweigh the high public interest in deportation will be rare. The commonplace incidents of family life, such as ageing parents in poor health or the natural love between parents and children, will not be sufficient.
>
> The best interests of children certainly carry great weight, as identified by Lord Kerr in *HH v Deputy Prosecutor of the Italian Republic* [2013] 1 AC 338 at [145]. Nevertheless, it is a consequence of criminal conduct that offenders may be separated from their children for many years, contrary to the best interests of those children. The desirability of children being with both parents is a commonplace of family life. That is not usually a sufficiently compelling circumstance to outweigh the high public interest in deporting foreign criminals."

26. In **RA (Iraq)**, a decision of the President of the Upper Tribunal (IAC), the test in s.117C(6) was described as "very demanding."

> "… The fact that, at this point, a tribunal is required to engage in a wide-ranging proportionality exercise, balancing the weight that appropriately falls to be given to factors on the proposed deportee's side of the balance against the weight of the public interest, does not in any sense permit the tribunal to engage in the sort of exercise that would be appropriate in the case of someone who is not within the ambit of section 117C. Not only must regard be had to the factors set out in section 117B, such as giving little weight to a relationship formed with a qualifying partner that is established when the proposed deportee was in the United Kingdom unlawfully, the public interest in the deportation of a foreign criminal is high; and even higher for a person sentenced to imprisonment of at least four years."

27. In **RA (Iraq)** and **MS (s.117C(6): "very compelling circumstances") Philippines** [2019] UKUT 00122 (IAC), both of which analysed **KO (Nigeria)** [2018] UKSC 53, it was held that, in determining whether there are very compelling circumstances over and above those described in Exceptions 1 and 2, a Tribunal will need to have regard to the seriousness of the offence and will need to engage in a wide-ranging evaluative exercise.

28. In assessing the existence of very compelling circumstances I have applied the legal principles outlined above. I will now consider whether, holistically assessed, there exist 'very compelling circumstances'.

Assessment

29. The index offence leading to the making of the deportation order involved 2 counts of possession with intent to supply heroin and crack cocaine. According to the Sentencing Remarks the appellant was arrested with a significant amount of money on his person and in possession of mobile phones. The Sentencing Judge found that the appellant was fully involved in the supply of drugs to others and was "an important link in the chain, whatever the position." The Sentencing Judge made brief reference to the appellant's offence relating to possession of a bladed article in 2008 as this showed a willingness for the appellant to arm himself with a weapon with a for his defence not. The Sentencing Judge found that the index offences represented a significant escalation in the appellant's offending. The Sentencing judge accepted that the appellant had pleaded guilty and this reduced the sentence he would otherwise have received by a third. By way of mitigation the Sentencing Judge referred to the appellant's personal circumstances, noting that he had "…not had the best of starts in life" and that it was "a tragedy" in the appellant's case particularly because he had the intelligence to do well. Having taken account of the appellant's age and what he had accomplished on remand, the Sentencing Judge considered it appropriate to

sentence the appellant to 2 years and 6 months detention in a young offender institution.

30. While the sentence of 30 months detention is approximately mid-way in the intermediate level (between 12 months and 4 years), a conviction for the supply of class A drugs is a serious matter, capable of affecting many individuals and society in general.

31. In assessing the weight of the public interest I take addition account of the principle of general deterrence (see **MS (s.117C(6): "very compelling circumstances") Philippines** [2019] UKUT 00122 (IAC), at [49] to [52]). I do not hold against the appellant the public interest factors in s.117B(2) & (3). In the appellant's case these are neutral factors. I also attach weight to the public interest in the maintenance of immigration control, noting however that, while the appellant has never had any leave to enter or remain, he entered as a minor and cannot be blamed for his lack of lawful leave. The appellant's relationship with LS commenced when he was 20 years old and, applying s.117B(4), I must accordingly attach little weight to their relationship.

32. The appellant is at low risk of reoffending. I remind myself that the FtJ found the appellant to be "a different person to the individual who committed the crimes in 2008 and 2011", that he was ambitious for a better life and wished to be a role model for his son.

33. I have specifically considered the documentary evidence relating to the appellant's rehabilitation including, but not limited to, the Offender Manager letters from September and November 2013, the various certificates and qualifications obtained by the appellant both in prison and outside prison, and the appellant's involvement with Kids Company which provided him with outreach support, guidance and therapy.

34. I take into account the letter written by the Chair of the Metropolitan Police Ibero-American Association dated 29 April 2019 and the May 2019 newsletter issued by the same organisation. I note the support provided by the appellant to the organisation and the Chair's view that the appellant "... has proven himself to be one of the most talented and innovative young adults working to educate young people I have ever supervised. He has been an indispensable part of our team throughout the planning and preparation for our on-time release of the project." I additionally note the Chair's opinion that the appellant would be an invaluable contributor to the fight against knife crime in London. I additionally take into account the letter from the Refugee Therapy Centre dated 28 February 2018 confirming the frequency of the appellant's psychotherapy sessions and that he was making gradual progress. I accept that the appellant has undertaken genuine efforts to rehabilitate himself, and that he is a reformed

person, and that his present conduct suggests he is, in Mr Southey's words, 'pro-social'.

35. In **RA (Iraq)** the President of the Upper Tribunal (IAC) considered arguments relating to the issue of rehabilitation. At [32] and [33] he had this to say.

> "As the Court of Appeal pointed out in Danso v Secretary of State for the Home Department [2015] EWCA Civ 596, courses aimed at rehabilitation, undertaken whilst in prison, are often unlikely to bear material weight, for the simple reason that they are a commonplace; particularly in the case of sexual offenders.
>
> As a more general point, the fact that an individual has not committed further offences, since release from prison, is highly unlikely to have a material bearing, given that everyone is expected not to commit crime. Rehabilitation will therefore normally do no more than show that the individual has returned to the place where society expects him (and everyone else) to be. There is, in other words, no material weight which ordinarily falls to be given to rehabilitation in the proportionality balance (see SE (Zimbabwe) v Secretary of State for the Home Department [2014] EWCA Civ 256, paragraphs 48 to 56). Nevertheless, as so often in the field of human rights, one cannot categorically say that rehabilitation will *never* be capable of playing a significant role (see LG (Colombia) v Secretary of State for the Home Department [2018] EWCA Civ 1225). Any judicial departure from the norm would, however, need to be fully reasoned."

36. Mr Southey submitted that **SE (Zimbabwe)** was concerned with a situation where someone was still undergoing rehabilitation and whether the prospect of rehabilitation was relevant in the proportionality assessment. I accept that **SE (Zimbabwe)** was primarily concerned with someone who was undergoing continuing rehabilitation (see, in particular, [44] to [50]). Mr Southey also submitted that the Upper Tribunal's approach to rehabilitation focused on the absence of any further offences by an individual after their release from prison and did not specifically address other indicators of rehabilitation. I do not however consider that the Upper Tribunal focused only on the commission of further offences when considering rehabilitation. In observing that rehabilitation will "… normally do no more than show that the individual has returned to the place where society expects him (and everyone else) to be" the Tribunal can only realistically have had in mind a situation where a person's attitude and behaviour has changed such that there was no or little risk of any further offending. Although **Danso** was specifically concerned with a sex offender who had undertaken courses while in prison and who posed only a low risk of further violent re-offending, the Court of Appeal, in concluding that the Upper Tribunal did not err in attaching limited weight to the issue of rehabilitation, noted that there was nothing unusual in undergoing rehabilitative courses in prison that did significantly reduce the risk of re-offending.

37. On balance I do accept that the appellant has shown that he is a genuinely rehabilitated person, that he has demonstrated positive engagement in turning his life around (such as obtaining an accountancy qualification) and in making positive contributions to society (such as his role in the Metropolitan Police Ibero-American Association), and that he has rebuilt his life. I consider his rehabilitation against the circumstances in which he was brought to the UK and the traumatic experiences he underwent that led to his criminality in the first place. I note that he was released from immigration detention in July 2012 and that in a period approaching 7 years he has lived a law-abiding life. I find in these circumstances that rehabilitation does reduce the strength of the public interest and I attach appropriate weight to it.

38. Mr Southey accepted that he might be in difficulty in seeking to persuade me that that 'very compelling circumstances' exist in reliance only on the impact of the deportation on the appellant's family life, but he submitted that such impact was a relevant factor when considered together with the other factors in issue. The appellant has established a strong family life with his wife and two children, and it is in the best interest of his children that he remains in the UK. the FtJ did not however find that his deportation would have an unduly harsh impact on his family in the UK. I have taken account of the evidence unavailable to the FtJ relating to LN's treatment with Talking Therapies. She attended what was generally a group guided self-help programme based on cognitive behavioural therapy techniques that was to run for 6 weeks from March 2018. The records suggest LN was being treated for depression. There did not appear to be any risk of self-harm or harm to others, a protective factor included her son and her support system included her mother and the appellant. The records included a reference to LN's scores having improved, but her file was closed because she had missed or cancelled appointments. I do not find the new evidence materially alters the factual conclusions of the FtJ relating to the impact of the appellant's deportation on LN. I attach appropriate weight to the impact on the Article 8 rights of the appellant and his family in holistically assessing whether there are 'very compelling circumstances'.

39. I note that the appellant has acted as the primary carer for NN, that the appellant is seen as a 'secure attachment figure' by NN, and that the appellant is supported by his wife. I take into account that LN relies on the appellant for childcare, and the FtJ's findings that NN would be distraught if the appellant were not part of the family unit. I accept that the appellant's immediate family is a close-knit one. I note that LN has indicated that she would not relocate to Nigeria. Given the background materials drawn to my attention at the remaking hearing (which included extracts from the 2016 US State Department Report relating to the difficulties faced by women and children in Nigeria and the substandard of education and health

services) I accept Mr Southey's submission that LN's decision is a reasonable one. In assessing whether there are 'very compelling circumstances' I take full account of the serious impact the appellant's deportation would have on the family members, including LN's employment and health, the practical childcare difficulties that would arise, and the emotional impact on both LN, NN and LON. I additionally accept that a dismissal of the appellant's human rights claim may result in separation between a husband and his wife and children. There has not however been any suggestion that contact would be severed, either through remote forms of communication or through periodic visits. I take into account however that such forms of communication can never substitute for close personal interaction.

40. Mr Southey submits that the circumstances in which the appellant came to be in the UK, his age at the time, and the abuse he suffered, are all relevant factors to be considered 'in the round' when determining the existence of 'very compelling circumstances'. I agree with this submission, and his submission that these events act as mitigation in respect of the appellant's offending. Mr Clarke invited me to find that the Sentencing Judge had already considered the appellant's background and that this had been factored into the sentence. I accept that the Sentencing Judge did have regard to the appellant's background when deciding the appropriate sentence (see paragraph 29 above), but I have available to me more information's relating to the appellant's background than was available to the Probation Service and Sentencing Judge. Moreover, in **SSHD v Barry** [2018] EWCA Civ 790, a submission that a judge impermissibly took account of mitigation was rejected. At [57] Singh LJ stated,

> "I do not regard the approach of the FTT in this regard to have been impermissible as a matter of law. I do not agree that questions of mitigation are totally irrelevant to the balancing exercise which the FTT had to perform. Ms Patry is right to say that questions of mitigation will already have played their part in arriving at the appropriate sentence for the underlying offence. However, it must be borne in mind that the three categories which are set out in the Immigration Rules are broad categories. In particular, the most serious category applies to any offender who has been sentenced to a sentence of imprisonment of at least 4 years. However, that can cover a wide range of cases. Although they are all serious, they can vary in degrees of seriousness. The criminal courts in this country come across some examples of the most heinous kind, which would be towards the top end of the range envisaged by Category 1. However, in an appropriate case, I can see no reason in principle why either aggravating factors or mitigating factors might not be taken into account by the FTT in assessing the seriousness of the offence in question and, accordingly, the strength of the public interest in deportation. Similarly, in a case such as the present, which falls into the intermediate category of seriousness, because the sentence passed was between 12 months and 4 years

> imprisonment, I can see no reason in principle why aggravating or mitigating factors may not be taken into account by the FTT."

41. The appellant was a child when he entered the UK and would not have had any control over his circumstances. It has not been suggested by the respondent that the appellant entered the United Kingdom with the intention of breaching the immigration rules. I take this into account in my overall assessment. The FtJ accepted that the appellant experienced a traumatic time at the hands of his supposed guardian and that he found himself in a situation in which he did not have the skills to deal. I accept that the appellant found himself in a difficult situation where he had no control and that it was in this context that his criminality developed. I find that this does mitigate to some extent against his criminality and, as a consequence, against the public interest considerations in this particular case. It also explains his strong motivation for transforming his life through the stability provided by his immediate family. The appellant was nevertheless an adult when he committed his index offence and would have appreciated the seriousness of drug offending and the damage that it can cause. Nor does it follow that, because an individual has suffered trauma and abuse in childhood, they will commit criminal offences. Whilst I take full account of the circumstances that contributed to the appellant's criminality it was still something he chose to do, even if he felt he had limited options in life.

42. Mr Southey submits that the cumulative effect of delays by the respondent are relevant in respect of 2 of the 3 ways identified in EB (Kosovo) [2008] UKHL 41. These were set out by Lord Bingham at [14] and [15].

> "14. It does not, however, follow that delay in the decision-making process is necessarily irrelevant to the decision. It may, depending on the facts, be relevant in any one of three ways. First, the applicant may during the period of any delay develop closer personal and social ties and establish deeper roots in the community than he could have shown earlier. The longer the period of the delay, the likelier this is to be true. To the extent that it is true, the applicant's claim under article 8 will necessarily be strengthened. It is unnecessary to elaborate this point since the respondent accepts it.
>
> 15. Delay may be relevant in a second, less obvious, way. An immigrant without leave to enter or remain is in a very precarious situation, liable to be removed at any time. Any relationship into which such an applicant enters is likely to be, initially, tentative, being entered into under the shadow of severance by administrative order. This is the more true where the other party to the relationship is aware of the applicant's precarious position. This has been treated as relevant to the quality of the relationship. Thus in *R (Ajoh) v Secretary of State for the Home Department [2007] Immigration AR 817*, para 11, it was noted that "It was reasonable to expect that both [the applicant] and

> her husband would be aware of her precarious immigration status". This reflects the Strasbourg court's listing of factors relevant to the proportionality of removing an immigrant convicted of crime: "whether the spouse knew about the offence at the time when he or she entered into a family relationship" *see Boultif v Switzerland (2001) 33 EHRR 1179, para 48; Mokrani v France (2003) 40 EHRR 123, para 30*. A relationship so entered into may well be imbued with a sense of impermanence. But if months pass without a decision to remove being made, and months become years, and year succeeds year, it is to be expected that this sense of impermanence will fade and the expectation will grow that if the authorities had intended to remove the applicant they would have taken steps to do so. This result depends on no legal doctrine but on an understanding of how, in some cases, minds may work and it may affect the proportionality of removal."

43. The appellant was informed on 14 April 2011 of his liability to deportation and he was released on licence on 25 June 2012 (although he remained in immigration detention until July 2012). The initial decision to deport him and the decision to refuse his asylum claim (made in May 2011) were not served on him until 11 September 2013, a delay of one year and 3 months since his release on licence and 2 years and 5 months since he was initially informed of his liability to deportation. Following the decision of the First-tier Tribunal on 14 October 2014 allowing his appeal on the basis that it was not in accordance with the law there was a further delay of one year and approximately 2 months before the respondent unlawfully attempted to remove the appellant on 21 December 2015 and then issued the new decision to deport him on 23 January 2016. The appellant made further representations on 22 February 2016, and the respondent responded to the submissions by refusing his human rights claim on 22 May 2017, a delay of one year and 3 months.

44. In my 'error of law' decision I found no error in the FtJ's conclusion that the delays did not reflect a lack of interest by the respondent deporting the appellant, but that the delays were, when cumulatively considered, relatively significant in the context of a married man with a young child. Mr Southey submits that, as a result of the delays, the appellant is now in a stronger position to demonstrate that he is a changed man, and that he has fortified the strength of his article 8 relationships with his wife and through the birth of his 2 children. The sense of impermanence following the withdrawal of the first defective deportation decision lifted somewhat during the unaccountable delay in making a fresh deportation decision. Mr Southey drew my attention to paragraphs 57 and 58 of **Uner v Netherlands** (2007) 45 E.H.R.R. 14, which built upon the earlier decision in **Boultif** (2001) 33 E.H.R.R. 50, setting out relevant criteria when assessing whether an expulsion measure was necessary and proportionate under Article 8. These included the nature and seriousness of the offence committed, and

the time elapsed since the offence was committed and the applicant's conduct during that period.

45. I accept that, through the 3 periods of delay identified above, the appellant has strengthened his Article 8 rights by marrying LN and having 2 children with her. The appellant however has never had lawful leave to remain in the UK and LN became aware of his lawful status before she married him. Whilst I do accept that it is necessary to consider the overall period of delay, each constituent period of delay was of a length not uncommon in this jurisdiction. The appellant knew he was liable to be deported from April 2011 and, but for the delay of approximately one year and 2 months before the 2nd signed deportation decision was issued, he and LN have always been aware of the respondent's intention to deport him. I nevertheless attach some weight to the respondent's overall delay which has placed the appellant in a stronger position than he otherwise would have occupied, and which has given him the opportunity to demonstrate that he is a changed man.

Conclusion

46. I have not found this an easy decision to make, and this reflects the strong public interest considerations established by Parliament. In reaching my decision I have taken into account the caselaw of the ECrtHR including **Uner** and **Boultif**, and the relevant criteria identified in those cases. I have balanced the weight I can positively attribute to the Article 8 rights of the appellant and his family against the weight that must be accorded to the public interest. I remind myself that the test in s.117C(6) is extremely demanding. Despite the deleterious impact on the family life enjoyed by the appellant and his wife and children, considered together with his impressive actions in rehabilitating himself having suffered neglect and abuse since entering the UK, and considered together with the respondent's delays, I find there are no 'very compelling circumstances' over and above Exceptions 1 and 2 in s.117C such as to render the appellant's deportation disproportionate under Article 8. The appellant's index offence remains serious, as reflected in the length of his sentence, and the public interest in deterrence remains strong. I am not satisfied that the positive weight I have attached to the various factors weighing in the appellant's favour outweigh the strong public interest in his deportation. Given the factual findings by the FtJ LN and her two children will continue to have available to them support from their extended family in the UK, and the limited medical evidence provided suggests that suitable mechanisms are in place to support LN. for the reasons given above in my assessment from paragraphs 29 to 45, I am not satisfied that the high threshold for 'very compelling circumstances' has been met.

Notice of Decision

The appellant's human rights appeal is dismissed

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

Unless and until a Tribunal or court directs otherwise, the appellant in this appeal 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.

10 May 2019
Signed Date
Upper Tribunal Judge Blum

APPENDIX: Upper Tribunal's 'error of law' decision promulgated on 5 December 2018

Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: PA/05660/2017

THE IMMIGRATION ACTS

Heard at Field House
on 20 November 2018

Decision & Reasons Promulgated

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Before

UPPER TRIBUNAL JUDGE BLUM

Between

IN
(ANONYMITY DIRECTION MADE)

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellant: Mr H Southey QC, Counsel, instructed by Wilson Solicitors LLP
For the Respondent: Mr S Whitwell, Senior Home Office Presenting Officer

DECISION AND REASONS

1. Although no Anonymity Order was made by the First-tier Tribunal, and no application was made by the appellant's representative for an anonymity order, given that this appeal involves the appellant's

relationship with a minor, I consider it appropriate to make an Anonymity Order.

2. This is an appeal against the decision of Judge of the First-tier Tribunal J Bartlett (the judge), promulgated on 23 May 2018, dismissing the appellant's appeal against the respondent's decision dated 31 May 2017 refusing his Article 8 human rights claim.

Background

3. The appellant, a national of Nigeria, was born in 1990. He claims to have entered the UK in 2003 pursuant to an entry clearance issued to him as the dependent of a "Guardian". I have not however seen any confirmation of this grant of entry clearance. The appellant first came to the attention of the respondent in August 2004 when JT, a Portuguese national, applied for an EEA residence card with his spouse, FG, and her three children as his dependents. The appellant was identified as one of the children and there was a birth certificate purporting to confirm the relationship. The application was refused in 2005 as it was not accepted that JT was exercising Treaty rights. The SSHD noted the absence of an entry stamp in FG's passport and her marriage to JT was considered bogus.

4. The appellant met LN, a British citizen, in 2007 and they entered into a relationship in September 2009. They have a son, NN, born on 8 May 2013. The appellant and LN married on 12 October 2013.

5. The appellant received a six-month Supervision Order for having a blade with a sharp point in the public place in February 2008. On 11 March 2011 he was convicted of 2 counts of possession of a controlled drug with intent to supply and received a 30-month sentence of imprisonment. He made an asylum claim in May 2011 but accepts that this claim was fraudulent. The asylum claim was withdrawn in a letter written by the appellant's solicitors in February 2014. When lodging his protection claim the appellant also claimed to be a victim of human trafficking. This claim was ultimately rejected by the Competent Authority in a decision dated 12 September 2012. There was no legal challenge to this decision.

6. A deportation order was served on the appellant on 11 September 2013 but was withdrawn on 14 October 2014 at an appeal hearing as it had not been signed. The appellant's appeal was allowed on the basis that the decision was not in accordance with the law and the case remitted to the respondent for further consideration. On 23 January 2016 the appellant was served with a lawful notice of decision to deport him and, on 22 February 2016, his representatives made further submissions in response to this decision. The respondent treated these further representations as a human rights claim and refused the human rights claim on 31 May 2017. The appellant

appealed this decision to the First-tier Tribunal pursuant to s.82 of the Nationality, Immigration and Asylum Act 2002 (the 2002 Act).

The decision of the First-tier Tribunal

7. The judge had before her a significant number of documents contained in 3 bundles (Bundles A to C). There were further documents served on the day of the hearing. The documents included, *inter alia*, a 68-page statement from the appellant running to 147 paragraphs and dated 12 September 2014, a further statement dated 14 April 2018, a 29-page statement from LN dated 15 August 2014, and a further statement from her dated 18 April 2018. There were also statements from members of LN's family, an Independent Social Worker (ISW) report authored by Peter Horrocks dated 15 September 2014 and an updating report dated 28 December 2017, a Pre-Sentence Report dated 8 March 2011, an OASys Assessment dated 12 August 2014, copies of various certificates and qualifications obtained by the appellant, and various evidence of the nature and quality of the appellant's relationship with his son and partner. The bundles also contained background information on Nigeria, documents relating to a cleaning company established by LN, and a letter from NN's primary school.

8. The judge indicated that the witness statements provided were some of the most detailed she had seen in this jurisdiction and that she gave them "full consideration and read them carefully." The judge set out the appellant's oral evidence which included further details of the circumstances of his offending, further details of his relationship with his partner, and details of his contact with his family in Nigeria. The judge also set out the oral evidence from LN (who was pregnant with their 2nd child), LN's sister AB, and LN's mother NM. The judge set out extracts from the ISW's reports and an extract from the Sentencing Judges remarks, and summarised the Reasons for Refusal Letter and the submissions made by both representatives.

9. The judge accurately referred to the burden and standard of proof and set out the relevant provisions of the immigration rules relating to deportations, and sections 117A to D of the 2002 Act, relating to public interest considerations.

10. In the section headed 'Decision' the judge indicated that she had considered all of the evidence "in the round" in coming to her decision even if it was not expressly referred to in her judgement. The judge found that the appellant did not represent a danger to the community and did not consequently uphold a certification issued under section 72 of the 2002 Act. In reaching this conclusion the judge noted that the appellant had not engaged in criminal conduct

since his sentencing in 2011 and that he had changed his life such that he posed a low risk of reoffending.

11. The judge appreciated that the question whether there was a breach of Article 8 involved a consideration of paragraphs 398, 399 and 399A of the immigration rules and section 117A-D of the 2002 Act. The judge referred to a number of relevant authorities including **Hesham Ali** [2016] UKSC 60 and **NE-A (Nigeria)** [2017] EWCA Civ 239.

12. The judge proceeded to determine whether the effect of the appellant's deportation would have an unduly harsh impact on his wife and child by reference to both paragraph 399 of the immigration rules and s.117C(5) of the 2002 Act.

13. The judge found that the appellant had family and cultural connections to Nigeria as he was in regular contact with his mother, father and adult siblings, and that his family would offer accommodation and assistance to the appellant and his wife and child if they returned to Nigeria. The judge accepted that the appellant lived with his family until he was 13 years old when his parents, "for reasons best known to them" arranged for him to go to the UK with a relative stranger. The judge found that the appellant was abused and neglected by his supposed Guardian in the UK and that his parents told the appellant he had to endure it. The judge stated, at [33],

> "The appellant's evidence is that due to this neglect, abuse and lack of family he became embroiled with gangs and criminality with the end result being his convictions in 2008 and 2011."

14. At [34] the judge accepted that the appellant spent his time in prison busy working and studying to obtain qualifications, that he was currently studying for an accounting qualification, that if he had permission to work in the UK he would do so, that he was ambitious for a better life and wished to be a role model for his son, that he was the primary carer for his son and a committed father, and that he drank limited alcohol infrequently and did not have an alcohol problem. It was for these reasons that the appellant was found to be at low risk of offending. The judge noted however, by reference to **PF (Nigeria)** [2015] EWCA Civ 251, that rehabilitation in a non-EEA case was of limited significance as it was just one factor relevant to the public interest.

15. At [36] the judge referred to her duty under s.55 of the Borders, Citizenship and Immigration Act 2009 and the best interests of NN. The judge noted that NN was 4 years old and had spent his entire life in the care of his mother and father. Although the judge accepted that LN was the breadwinner in the family she did not accept that LN worked for 12 hours a day, 6 days a week, and gave reasons in support of this conclusion. The judge found that the appellant was genuinely a loving father and that his son would be distraught if separated from him. The judge concluded that it would be in NN's

best interests to remain living with his mother and father as a family unit in the UK to enable him to benefit from his rights as a British citizen. The judge then reminded herself that the best interests of children are not a paramount consideration and referred to the relevant authority of **ZH (Tanzania)** [2011] UKSC 4.

16. At [38] the judge considered whether it would be unduly harsh for NN to live in Nigeria. The judge repeated LN's evidence that she did not want her son to live in Nigeria and indicated that she had due regard to the ISW's reports. The judge summarised the ISW's description of the appellant's relationships with his wife and son and noted that the ISW's identified concerns "… would be applicable to all healthy for-year-olds." The judge commented that the ISW reports contained very few specific findings about NN and made general observations about how many children seen as different would have difficulties. At [39] the judge explained why it would not be unduly harsh for NN to live in Nigeria. She noted that he would, at least initially, be able to live with his grandparents and extended family, that he had some familiarity with his grandmother and aunt, and that there was an education system and a health system in Nigeria. The judge additionally noted NN's age and the stage of his education, and that his focus was on his immediate family rather than the wider community. The judge accepted that Nigeria was not a developed country, that not all of Nigeria had a reliable electricity supply or running water, and that the lifestyle in Nigeria would be of a lower standard than that available in the UK. The judge accepted that NN would suffer a culture shock if he were to move to Nigeria but he was still relatively young and would have the assistance of his father and extended family. Whilst accepting that any notional move to Nigeria would be "… undesirable, uncomfortable, difficult, challenging and unwanted", the judge did not find this would amount to undue harshness.

17. At [40] to [43] the judge considered whether it would be unduly harsh for NN to remain in the UK without the appellant. In concluding that it would not be unduly harsh the judge referred to the distress that this would cause NN and LN and, with reference to the ISW's report, that this would have a damaging effect on them. The judge accepted that it was understandable that LN would be suffering from stress and anxiety and that she had some mental ill-health arising from the threat of the appellant's deportation. There was however no evidence to suggest that this was so serious that it required specialist treatment and/or counselling. The judge accepted that the appellant "… experienced a traumatic time at the hands of his supposed Guardian in the United Kingdom", and that in this context he committed crimes leading to his two convictions. Taking all relevant considerations in the round the judge concluded that it would not be unduly harsh for NN to remain in the UK without the appellant as he would be in the care of his mother who was a committed and loving parent and would have the assistance from her family. The judge

additionally noted that communication with the appellant would not be severed.

18. At [44] the judge found that the requirements of paragraph 399(b) of the immigration rules could not be satisfied as the appellant was unlawfully present in the UK when he formed his relationship with LN. The judge then concluded, with reference to s.117C(5), that the appellant's deportation would not have an unduly harsh impact on LN and supported this conclusion with reasons that included the support that LN would receive from the appellant and his family if she went to Nigeria and her own resourcefulness, and the support she would receive in the UK from her own family if she decided to remain in this country.

19. Having found that the appellant could not satisfy the requirements of paragraph 399A of the immigration rules or Exception 1 in s.117C(4) of the 2002 Act, the judge then found, with respect to s.117B, that the appellant was not financially independent as he had never worked in the UK and was supported by LN (at [50](i)).

20. At [51] the judge stated,

> "I must consider whether there are very compelling circumstances over and above those I must give consideration to under paragraph 399 and 399A. I find that there are not such very compelling circumstances. What has been identified to me it [sic] is the tragic breakup of the family. This is very sad but it is a consequence of deportation."

21. At [52] the judge considered the submissions made in respect of respondent's alleged delay. The judge indicated that she had considered **EB (Kosovo)** [2008] UKHL 41 and found that the respondent's actions were not infected with undue delay. She noted that a deportation order was issued in 2014 but was unsigned. This was clearly an administrative error and "extremely regrettable" but the judge did not consider that this was evidence that the respondent "… had little interest in deportation the appellant or that the public interest in the appellant's deportation is diminished." Having briefly summarised the various stages leading to this appeal the judge did not think that they could be characterised as amounting to undue delay.

22. Finally, at [53], the judge said it was made clear by the Supreme Court that the immigration rules do not represent a complete code as regards Article 8, but found, "when all factors are considered", that the appellant's deportation was proportionate. The appeal was dismissed.

The challenge to the First-tier Tribunal's decision

23. The challenge to the judge's decision has evolved since first lodged. Following the decision in **KO (Nigeria)** [2018] UKSC 53 Mr Southey disavows reliance on the ground that argued that the judge erred in her approach to the harshness of the situation faced by the appellant's son, and in particular, that there had been a failure to take account of relevant matters. In light of the decision in **Rhuppiah** [2018] UKSC 58 Mr Southey sought to amend his grounds to argue that the judge erred in her approach to the appellant's means. I considered there to be arguable merit in this challenge, it could not have been raised at an earlier time, and there was no objection from Mr Whitwell. I therefore allowed the amendment.

24. I summarise the grounds of challenge.

25. Mr Southey contends that the judge needed to consider whether the appellant's deportation constituted a violation of Article 8 separately from any consideration under the immigration rules. This is because the immigration rules were not a complete code. In concluding, at [53], that the respondent's decision was proportionate "… for all the reasons set out in this decision", the judge failed to give adequate reasons because the earlier reasoning contained in the decision only addressed matters such as the immigration rules. There had been no consideration of the balance that needed to be struck outside of the immigration rules as required by **Hesham Ali**.

26. An associated ground contends that the judge failed to take account of relevant considerations in her assessment outside of the immigration rules, such as the traumatic circumstances of the appellant having been trafficked into the UK as a child, his active rehabilitation and the low risk he posed to the public, the respondent's delay, the clear best interests of NN and the support network available to the appellant in the UK. The judge's assessment at [53] disclosed little reasoning in respect of these issues outside the immigration rules and only focused on the breakup of the family. It was further submitted that the judge erred in her approach to the issue of 'very compelling circumstances' because there was no reason why the breakup of a family could not reach this test, particularly when account was taken of the circumstances in which the appellant arrived in the UK.

27. In reliance on Regina (R) v Chief Constable of Greater Manchester Police and Another [2018] UKSC 47 Mr Southey contends that, because the proportionality of the respondent's decision was in issue, one had to ultimately focus on the cogency of the judge's conclusion and that, considering the appellant's circumstances in the round, it was apparent that there were very compelling circumstances and that relevant factors were not considered as a package, which undermined the cogency of the judge's conclusions.

28. Mr Southey submits that the judge erred in her approach to the best interests of the child. The judge did not adopt a legitimate approach at [37] when she attached limited weight to family life because it was established at a time when the appellant's status was precarious. NN should not be blamed for the appellant's lack of status and precarious status is not relevant to a child (**SSHD v SC (Jamaica)** [2017] EWCA Civ 2112). It was further submitted that no express consideration was given to NN's best interests when deciding whether it would be unduly harsh for him to live either in the UK without the appellant or in Nigeria, and that no account was taken of the submissions that the education and health systems in Nigeria were significantly inferior to that in the UK. In his oral submissions Mr Southey submitted that the SWR's report disclosed the extensive role played by the appellant in caring for his son and that the judge failed to undertake a sufficient assessment of what constituted NN's best interests, including the inferior nature of the health and educational system in Nigeria.

29. It is additionally argued that the judge unlawfully failed to assess whether the appellant was a victim of trafficking in circumstances where there was good reason to believe that he was. Mr Southey submitted, in reliance on **ES (s82 NIA 2002; negative NRM) Albania** [2018] UKUT 00335 (IAC), that the judge was entitled to make findings regarding trafficking and that the circumstances in which the appellant arrived in the UK and offended were obviously relevant to the issues arising under Article 8. There were said to be flaws in the Competent Authority's decision as FG was subsequently convicted of fraud. It appeared that the judge accepted the factual basis upon which the trafficking claim was made, and that there were important rights accruing to victims of trafficking including the right to be provided with assistance, and that the appellant was unlikely to receive appropriate treatment in Nigeria. It was also significant that the appellant required and continues to require significant therapy, implying that he is still undergoing psychological recovery. The support provided by his family constituted an essential part of his rehabilitation. It was further submitted that there was some flexibility in deciding whether limited weight should be given to a family life which had been established when one of the parties' immigration status was precarious if, as a victim of trafficking, the appellant entered the UK as a child and built up a family life with those providing him with support following his trafficking experience. It was further argued that the question whether the appellant was a victim of trafficking was potentially a compelling circumstance, one that had not been considered by the judge. This should have formed part of the judge's assessment of the existence of very compelling circumstances or of her assessment of proportionality outside the immigration rules.

30. The judges approach to the delay argument was flawed because she failed to take account of the full period of delay (the deportation order was served on 11 September 2013, and, more importantly, the

appellant was released from prison on 22 June 2012). The delay between the appellant's release from prison and the appeal hearing was a particularly significant factor in assessing proportionality because it implied that the respondent did not regard the appellant to be sufficiently high-risk that the public interest required his deportation and detracted from the public interest, and because it allowed the appellant's community ties to strengthen and provided an opportunity to test his rehabilitation. Nor was there any mention by the judge that LN was pregnant with their 2nd child, which occurred during the respondent's delay.

31. The judge erred in her approach to the issue of means as she found that he was no financially independent because he was supported by his wife. In **Rhuppiah** [2018] UKSC 58 the Supreme Court held that a person could be financially independent well dependent upon a 3rd party (at [57]). This error was material as it appeared to be accepted that the appellant was supported by his wife.

Discussion

32. I do not accept Mr Southey's submission that the judge erred in law by failing to consider Article 8 outside the immigration rules. I fully accept that the immigration rules are not a complete code, as established in **Hesham Ali** [2016] UKSC 60. This case however was only concerned with the immigration rules and not the amendments that introduced s.117A to D of the 2002 Act. In **Rhuppiah v Secretary of State for the Home Department** [2016] EWCA Civ 803, Sales LJ stated, at [45], (a point undisturbed on appeal to the Supreme Court)

> "It is common ground that the starting point for consideration of the proper construction of Part 5A of the 2002 Act is that sections 117A-117D, taken together, are intended to provide for a structured approach to the application of Article 8 which produces in all cases a final result which is compatible with, and not in violation of, Article 8. In that regard, both sides affirmed the approach to interpretation of Part 5A to ensure compliance with Article 8 as explained by this court in *NA (Pakistan) v Secretary of State for the Home Department* [2016] EWCA Civ 662, in particular at [26] and [31]."

33. Then at [49] and [50] Sales LJ held,

> "… Section 117A(2) does not have the effect that, for example, a court or tribunal has a discretion to say that the maintenance of effective immigration control is *not* in the public interest, in direct contradiction of the statement of public policy by Parliament in section 117B(1). Where Parliament has itself declared that something is in the public interest – see sections 117B(1), (2), (3) and section 117C(1) – that is definitive as to that aspect of the public interest. But it should be noted that having regard to such considerations does not mandate any particular outcome in an article 8 balancing exercise: a court or tribunal has to take these

considerations into account and give them considerable weight, as is appropriate for a definitive statement by Parliament about a particular aspect of the public interest, but they are in principle capable of being outweighed by other relevant considerations which may make it disproportionate under article 8 for an individual to be removed from the UK.

Another type of consideration identified in Part 5A to which regard must be had under section 117A(2) is the statement in section 117C(6) that 'the public interest *requires* deportation unless there are very compelling circumstances, over and above those described in Exceptions 1 and 2' (my emphasis). There is a similar requirement in section 117C(3), on its proper construction: see *NA (Pakistan) v Secretary of State for the Home Department* at [23]-[27]. In these provisions, Parliament has actually specified what the outcome should be of a structured consideration of Article 8 in relation to foreign criminals as set out in section 117C, namely that under the conditions identified there the public interest requires deportation. The 'very compelling circumstances' test in section 117C(3) and (6) provides a safety valve, with an appropriately high threshold of application, for those exceptional cases involving foreign criminals in which the private and family life considerations are so strong that it would be disproportionate and in violation of Article 8 to remove them. If, after working through the decision-making framework in section 117C, a court or tribunal concludes that it is a case in which section 117C(3) or (6) says that the public interest 'requires' deportation, it is not open to the court or tribunal to deny this and to hold that the public interest does *not* require deportation."

34. In **NE-A (Nigeria) v Secretary of State for the Home Department** [2017] EWCA Civ 239, considered after **Hesham Ali** [2016] UKSC 60, Sir Stephen Richards, stated, at [14] and [15]

"In my judgment, the analysis of section 117C(6) in *Rhuppiah* is correct and should be followed. There is no inconsistency between that analysis and what was said in *Hesham Ali*. The focus in *Hesham Ali*, as is conceded, was on the Rules: indeed, Lord Reed noted in terms at paragraph 2 of his judgment that it was unnecessary to consider the amendments to the legislation effected by the Immigration Act 2014, i.e. the provisions of Part 5A of the 2002 Act. Moreover, integral to Lord Reed's reasoning was that the Rules "are not law … but a statement of the Secretary of State's administrative practice" and they "do not therefore possess the same degree of democratic legitimacy as legislation made by Parliament" (paragraph 17; see also paragraph 53); and that they do not govern appellate decision-making, although they are relevant to the determination of appeals (paragraph 41). Part 5A of the 2002 Act, by contrast, is primary legislation directed to tribunals and governing their decision-making in relation to Article 8 claims in the context of appeals under the Immigration Acts. I see no reason to doubt what was common ground in *Rhuppiah* and was drawn from *NA (Pakistan)*, that sections 117A-117D, taken together, are intended to provide for a structured approach to the application of Article 8

> which produces in all cases a final result which is compatible with Article 8. In particular, if in working through the structured approach one gets to section 117C(6), the proper application of that provision produces a final result compatible with Article 8 in all cases to which it applies. The provision contains more than a statement of policy to which regard must be had as a relevant consideration. Parliament's assessment that "the public interest requires deportation unless there are very compelling circumstances, over and above those described in Exceptions 1 and 2" is one to which the tribunal is bound by law to give effect.
>
> None of this is problematic for the proper application of Article 8. That a requirement of "very compelling circumstances" in order to outweigh the public interest in the deportation of foreign criminals sentenced to at least four years' imprisonment is compatible with Article 8 was accepted in *MF (Nigeria)* and in *Hesham Ali* itself. Of course, the provision to that effect in section 117C(6) must not be applied as if it contained some abstract statutory formula. The context is that of the balancing exercise under Article 8, and the "very compelling circumstances" required are circumstances sufficient to outweigh the strong public interest in the deportation of the foreign criminals concerned. Provided that a tribunal has that context in mind, however, a finding that "very compelling circumstances" do not exist in a case to which section 117C(6) applies will produce a final result, compatible with Article 8, that the public interest requires deportation. There is no room for any additional element in the proportionality balancing exercise under Article 8."

35. For the reasons clearly set out in the above extracts it is clear that the proportionality assessment under Article 8 takes place within the 'very compelling circumstances' provisions of s.117C. There was no requirement for the judge to consider any additional element in the proportionality balancing exercise, as she purported to do at [53]. Given that the factors she considered included an assessment of very compelling circumstances and the statutory factors in Part 5A of the 2002 Act, she did not misdirect herself.

36. I am not persuaded that the judge erred in law by failing to consider whether the appellant was a victim of trafficking. The respondent's bundle contained the decision of the Competent Authority. I have considered the Competent Authority's decision in detail. Although there were 'reasonable grounds' to initially believe the appellant may have been trafficked the Competent Authority concluded, in a Conclusive Grounds decision dated 12 September 2012, that he was not the victim of trafficking. The appellant was not found by the Competent Authority to be a credible witness. The account given by him in the September 2012 decision is significantly at odds with his claim to be in contact with his family in Nigeria. The Competent Authority's decision was adequately reasoned, and disclosed proper direction according to the appropriate legal provisions. It is also apparent that the Competent Authority applied the appropriate

'balance of probabilities' standard of proof. There was no judicial review challenge to the Competent Authority's decision.

37. In **Secretary of State for the Home Department v MS (Pakistan)** [2018] EWCA Civ 594, a decision decided before the significant amendments to the appeal regime wrought by the Immigration Act 2014, Lord Justice Flaux held, at [69] and [70],

> "In my judgment, it is absolutely clear that the Court of Appeal in *AS (Afghanistan)* was limiting the circumstances in which, on a statutory appeal against a removal decision, an appellant can mount an indirect challenge to a negative trafficking decision by the authority (in the circumstances where the appellant has not challenged it by way of judicial review), to where the trafficking decision can be demonstrated to be perverse or irrational or one which was not open to the authority, those expressions being effectively synonymous for present purposes. Mr Lewis is correct that there is a two stage approach. First, a determination whether the trafficking decision is perverse or irrational or one which was not open to the authority and second, only if it is, can the appellant invite the Tribunal to re-determine the relevant facts and take account of subsequent evidence since the decision of the authority was made.
>
> Of course, a trafficking decision, whether positive or negative, may well be relevant to the issue before the Tribunal as to the lawfulness of the removal decision. However, an appellant can only invite the tribunal to go behind the trafficking decision and re-determine the factual issues as to whether trafficking has in fact occurred if the decision of the authority is shown to be perverse or irrational or one which was not open to it. This is clearly what Longmore LJ was saying in the last two sentences of [18] of his judgment."

38. Mr Southey relies on **ES** and submits that the change in the appeal regime distinguishes **MS (Pakistan)** as the right of appeal now attaches to a refusal of a human rights claim and not a decision to remove, and because it is no longer possible for a judge to find that a decision is 'not in accordance with the law' as the only grounds available are, inter alia, that the refusal of the human rights claim is unlawful under section 6 of the Human Rights Act 1998. Whilst I accept that the changes are as stated by Mr Southey, I am not persuaded that they render **MS (Pakistan)** inapplicable to the instant appeal. The principle reason identified by the Upper Tribunal in **ES** for distinguishing **MS (Pakistan)** relied on the UK's obligations under the Refugee Convention and the lower standard of proof (the 'real risk' standard) in protection claims (see [27] and [30] to [34] of **ES**). The standard of proof in human rights claims, such as the underlying claim in the present appeal, is the balance of probabilities, the same standard as that applied by the Competent Authority. Given that the instant appeal does not involve the Refugee Convention and the lower standard of proof, I consider myself bound by the Court of Appeal's decision.

39. Mr Southey additionally relies on FG's conviction for fraud subsequent to the Competent Authority's decision. Although my attention was not drawn to any independent evidence of FG's conviction, I have no reason to doubt the assertion that she was subsequently convicted of fraud. It is however apparent that the Competent Authority were aware of the concerns surrounding the alleged relationship between JT and FG, and therefore FG's character, as the EEA residence permits applications made on 4 August 2004 were refused on 19 January 2005 on the basis that the marriage was bogus. I do not find that the subsequent conviction materially undermines the Competent Authority's conclusion, especially when one considers the significant differences in the account given by the appellant to the Competent Authority in comparison to his present account of events.

40. I note further the absence of clear evidence before the First-tier Tribunal that the therapy received by the appellant related to the circumstances of his entry and initial residence in the UK. Mr Southey relied on a letter from the Refugee Therapy Centre, dated 28 February 2018, but this indicated that the organisation did not provide reports for external agencies in any circumstances because of a wish to keep its therapeutic surface for people's mental well-being and not for practical issues such as immigration matters. The letter confirmed the frequency of the appellant's psychotherapy sessions and that he was making gradual progress. I am satisfied the judge did not materially err in law in failing to consider for herself whether the appellant was a victim of trafficking. Had she done so, she would have misdirected herself in law.

41. I do not accept Mr Southey's submission that the judge failed to engage in an adequate assessment of NN's best interests. There was no requirement for the judge to refer to or replicate all of the ISW's findings. It is sufficiently clear, having considered the decision holistically, that the judge lawfully engaged with and took account of the ISW's report and that this fed into the judge's assessment of the child's best interests. At [36] the judge noted the principal elements necessary in undertaking a 'best interests' assessment including NN's age, that he resided all his life with his parents, that his mother worked full-time hours, that when NN is not at school he is cared for by the appellant, that the appellant is a loving father, that NN would be distraught by being separated from the appellant, and that as a British citizen it was in NN's best interests to remain with both his parents in the UK. Although the judge did not expressly mention the inferior nature of the Nigerian health and education system or the challenging environment in that country in [36], it is irresistibly clear that the judge appreciated the advantages NN would enjoy in terms of health and education when noting that, if he resided in the UK, he would be able to benefit from all that citizenship entails. The judge did, in any event, make express reference to the existence of an education system and health system in Nigeria, and the unreliability of electricity supply or running water in all parts of Nigeria, at [39],

albeit in the context of an undue harshness assessment. This suggests that the judge was, at all times, mindful of these factors.

42. Nor am I persuaded that the judge failed to consider NN's best interests when assessing whether the appellant's deportation would have an unduly harsh impact on the child. Having previously identified NN's best interests at [36], it is necessarily implicit in the subsequent assessment of undue harshness, at [37] to [43], that the judge bore in mind the child's best interests. This is particularly apparent at [39] and [43] when the judge considers in detail NN's circumstances if he were to relocate to Nigeria or remain in the UK.

43. Mr Southey criticises the judge's accordance of 'due weight' to the fact that the appellant had built his family life with LN and NN in the full knowledge that he had no status to remain in the UK. The paragraph begins, "in relation to my consideration of the issues below…" The issues then considered "below" related to undue harshness. I am not satisfied that the judge inappropriately attached limited weight to the appellant's relationship with his son in the context of a best interests assessment, which occurred in the preceding paragraph. I bear in mind that, in his skeleton argument (paragraph 5), Mr Southey abandoned the ground that argued that the judge erred in her approach to the harshness of the situation faced by NN.

44. I do have some concern that, by giving "due weight" to the appellant's relationship with his son because it was established in the full knowledge that he was present unlawfully, the judge may have attached less weight to the father-son relationship. Neither sections 117B(4) or (5) require the attachment of little weight to a family life relationship between a parent and child. Whilst the judge was undoubtedly entitled (and was indeed obliged) to attach little weight to the private life established by the appellant in the UK, and to the family life relationship with LN, the same does not, at least by reference to s.117B, extend to his relationship with NN, and **Zoumbas** [2013] 1 WLR 3690 makes it clear that a child must not be blamed for matters for which he is not responsible, such as a parent's conduct. The judge does however consider s.117B at [50], and, in her assessment in this context, does not refer to NN, suggesting that she has not reduced the weight she attached to the father-son relationship because it was established when the appellant was present unlawfully. The judge, in any event, found the relationship between the appellant and NN to be strong [36] and demonstrably attach significant weight to that relationship.

45. Mr Southey helpfully went through the chronology of events supporting his delay argument. I note in particular that the appellant claimed asylum in May 2011, that he was released on licence in June 2012, but the deportation decision was made on 11 September 2013, that the first-tier Tribunal allowed his appeal on the basis that it was

not in accordance with the law on 10 October 2014, that the respondent attempted to remove the appellant on 21 December 2015 and that the new decision to deport him was made on 23 January 2016, that he made further representations on 22 February 2016, and that the respondent responded to the submissions by refusing his human rights claim on 22 May 2017.

46. Although the appellant was released on licence in June 2012, the initial decision to deport him and the decision to refuse his asylum claim were not served on him until 11 September 2013, a delay of one year and 3 months. Mr Southey accepts that any delay by the First-tier Tribunal in listing the appeal cannot be attributed to the respondent. Following the decision of the First-tier Tribunal on 14 October 2014 there was a further delay of one year and approximately 2 months before the respondent unlawfully attempted to remove the appellant and then issued the new decision to deport him. Following the appellant's further representations in February 2016, there was a further delay of one year and 3 months until the respondent made his decision that was the subject of the appeal before the judge.

47. The judge considered the issue of delay at [52], concluding that there was no 'undue delay'. 'Undue' generally means unwarranted or excessive. It is not apparent from the decision what particular periods of delay were considered by the judge, and it is unfortunate that she did not identify the relevant periods in greater detail given the prominence of these submissions in the arguments presented to her. Although the judge did set out a general chronology of events at [2], she later erroneously stated that the first deportation order was issued in 2014 when it was in fact issued in September 2013. The delays in excess of a year as described above are not uncommon in this jurisdiction, and given that each individual period of delay was, at most, a year and 3 months, I find the judge was entitled to conclude that the delays did not reflect a lack of interest by the respondent in deporting the appellant, or that the public interest was thereby diminished. The delays were nevertheless, when cumulatively considered, relatively significant in the context of a married man with a young child. I therefore accept that the cumulative effect of the delays allowed the appellant's community ties to strengthen and that, even though they were aware of his extremely precarious immigration status, it allowed NL to become pregnant. It is not however apparent that the judge took this consequence of the delays into account. I find this constitutes an error of law, although its materiality remains to be considered.

48. I additionally see some merit in Mr Southey's argument that, through no fault of her own, the judge misdirected herself in holding that the appellant was not financially independent because he was supported by LN. I do not read the Supreme Court's decision in **Rhuppiah** as departing from the Court of Appeal's conclusion that the fact of

financial independence is, at most, a neutral factor. The judge however, in finding that the appellant was not financially independent, actively held this against him. It became a further factor in favour of the public interest in the appellant's deportation. Following **Rhuppiah**, the judge was not entitled to hold this particular public interest against the appellant. I am not however persuaded that this error, on its own, was capable of materially undermining the sustainability of the judge's decision. This is a relatively small factor in the face of what were otherwise strong public interest factors in the appellant's deportation.

49. In assessing whether the judge erred in her overall proportionality assessment (with reference to the 'very compelling circumstances' test) I have regard to the conclusions of the Supreme Court in **Regina (R) v Chief Constable of Greater Manchester Police and Another**, and note that an error of law may be disclosed not by a specific error of principle in a narrow sense, but because of a flaw in the reasoning underlying the First-tier Tribunal's conclusion.

50. whilst I am not persuaded that the judge erred in law in failing to determine whether the appellant was a victim of trafficking, it is nevertheless clear from the decision, read as a whole, that she accepted that the appellant experienced a "traumatic time at the hands of his supposed guardian", who abused and neglected him. The judge noted, at [43], that it was in this context that the appellant committed crimes and got involved in a gang. The circumstances in which the appellant came to the UK, as a 13-year-old boy leaving his family and accompanying a relative stranger who mistreated him, whilst not excusing his criminality, may nevertheless constitute a relevant consideration when determining the existence of 'very compelling circumstances'. Whilst the judge was aware of this when assessing the issue of undue harshness, it is not apparent from her brief assessment at [51] that she took this into account.

51. I further accept Mr Southey's criticism that the judge's assessment of 'very compelling circumstances' only referred to the breakup of the family. Whilst this was undoubtedly an extremely significant factor, there were other factors relevant to a lawful assessment. I have already mentioned the circumstances in which the appellant entered and resided in the UK and which constituted the context for his drift into criminality. When assessing 'very compelling circumstances', the judge did not take express account of the significant efforts undertaken by the appellant to turn his life around or his length of residence in the UK, or the cumulative delays by the respondent and the impact this had on the establishment of further family and private life ties. Although the judge clearly made positive findings in respect of the appellant's rehabilitation, I am unable to find, even by way of implication, that this was considered in the assessment of very compelling circumstances. Although the judge may well have been entitled, having lawfully considered these other factors, to conclude

that they did not amount to very compelling circumstances and therefore would not result in a disproportionate breach of Article 8, I am not satisfied that this would have been an inevitable conclusion. I consequently find that these identified errors, cumulatively considered, render the decision unsafe such that it must be set aside.

52. I see no reason in disturbing the factual findings made by the judge. These factual findings are retained. I am aware that an application has been made pursuant to rule 15 (2A) of the Tribunal Procedure (Upper Tribunal) Rules 2008 to adduce fresh evidence, and I am aware that the appellant's 2nd child has now been born. I grant permission for the new material to be considered. In these circumstances I consider it appropriate to remake the decision at a further hearing.

Notice of Decision

The First-tier Tribunal decision is vitiated by material errors on points of law and is set aside.

The decision will be remade at a further hearing.

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

Unless and until a Tribunal or court directs otherwise, the appellant in this appeal 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.

4 December 2018
Signed Date
Upper Tribunal Judge Blum