Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: HU/19917/2018

THE IMMIGRATION ACTS

Heard at Field House	**Decision & Reasons Promulgated**
On 13 January 2020	**On 04 February 2020**

Before

UPPER TRIBUNAL JUDGE CANAVAN

Between

S M
(ANONYMITY DIRECTION MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Anonymity
Rule 14: The Tribunal Procedure (Upper Tribunal) Rules 2008
Anonymity was granted at an earlier stage of the proceedings. I find that it is appropriate to continue the order. Unless and until a tribunal or court directs otherwise, the appellant is granted anonymity. No report of these proceedings shall directly or indirectly identify him or any member of his family. This direction applies both to the appellant and to the respondent.

Representation:
For the appellant: Mr A. Swain, instructed by Mansouri & Sons Solicitors
For the respondent: Mr D. Clarke, Senior Home Office Presenting Officer

DECISION AND REASONS

1. The appellant appealed the respondent's decision dated 26 September 2018 to refuse a human rights claim in the context of deportation proceedings.

2. First-tier Tribunal Judge M.A. Khan allowed the appeal in a decision promulgated on 03 May 2019. A panel of the Upper Tribunal found that the decision involved the making of an error of law in a decision promulgated on 28 October 2019. The case was relisted for the Upper Tribunal to remake the decision.

Background

3. The factual background is not in dispute. The appellant is a 43-year-old Nigerian citizen. He first came to the UK with his parents in 1979 when he was three years old. He remained in the UK until 1981 before returning to Nigeria. He returned to the UK with his family in February 1988, when he was 11 years old. He was granted Indefinite Leave to Remain on 11 January 1989. In total, he has lived in the UK for around 34 years of his life. His mother, brother and sister are settled in the UK and have become British citizens. The appellant is not in a relationship and does not have any children. He is said to have a close relationship with his sister and her family. He lives in the same household as his mother. The appellant was educated in the UK and attended Southbank University to study electrical engineering. Although the extent of his completed qualifications is somewhat unclear, the appellant has studied electrical engineering, there is evidence that he has been in employment, that he has recently completed a course in railway engineering, and is qualified to work as a construction labourer. The appellant says that he first tried crack cocaine in 1999 and subsequently developed a long-term drug habit, which he kept hidden from his family. It seems that the appellant was able to continue to work and outwardly maintain an apparently normal life until he was convicted of a serious criminal offence in 2016.

4. On 26 September 2018 the respondent made an automatic deportation order under section 32(5) of the UK Borders Act 2007 ("UKBA 2007") and section 5(1) of the Immigration Act 1971 ("IA 1971") following the appellant's conviction for fraud. He was sentenced to two years' imprisonment. The sentencing judge made the following remarks:

> "… It gives me no pleasure whatsoever to be sentencing you today, sentencing you for a serious fraud involving effectively the theft of about £125,000 from your employer.
>
> You're a man of previous good character and you're obviously from a supportive family. Your brother is here in court to support you and, as I understand it, your mother also knows about this appearance and I've little doubt it's caused them – it's quite clear it's caused your family distress. I also bear in mind when sentencing you that you're a man of hitherto good character and that you admitted your involvement from the outset. All of those stand to your credit.
>
> The fact is though that there was a serious breach of trust here. You were employed as the accounts manager or administrator for the [BFMP] from October 2009 onwards. Your job was to safeguard the cash. You were responsible for paying bills, you had immediate access to the practice accounts and you reported

> solely to the managing partner. What you did was simple, yet in its own way sophisticated, planned and sustained over a period of time. You diverted funds to your own accounts and, on occasion, to drug dealers' accounts, but entered in the ledgers that payment had been made to persons or companies and the like to whom payments were made regularly by the practice. So to a cursory inspection it would appear that a normal, regular payment had been made.
>
> I mention payments to drug dealers because you have fallen into the hands of drug dealers, having developed a potentially fatal drug addiction. I'm told that you have managed to kick that habit. I hope for your sake you have and I am sentencing you on the basis that you have and I'm giving you to some extent credit for that. That said, I must remind you that there's only one person who can really deal with that habit and that's you. There are in fact plenty of agencies and people ready, willing and able to assist you, but if you don't stay on the straight and narrow in that regard the drug will have a grip on you and one of two things will happen. You'll either be back here for a longer sentence or you'll be dead, one or other. The choice ultimately is yours. …
>
> … There's no two ways about it whatsoever, that your frauds have adversely affected the medical services delivered by the [BFMP] and, if they had continued, might well have driven it out of business. That's clear from the victim impact statement I have from Dr [H], the senior partner of the practice. In other words, hundreds of other people could have been harmed by your actions. That I regard as potentially as serious as anything in this particular case."

Scope of the appeal

5. The appellant is a 'foreign criminal' within the meaning of section 117D(2) of the Nationality, Immigration and Asylum Act 2002 ("NIAA 2002").

6. The appellant was sentenced to a period of imprisonment of less than four years and is eligible to argue that the exceptions to deportation contained in section 117C NIAA 2002 apply. He is not in a relationship with a partner and does not have a parental relationship with children in the UK.

7. The appellant argues that Exception 1 applies, which relates to his private life in the UK (section 117C(4) NIAA 2002). The exception contains three elements. The respondent accepts that the appellant meets the requirements of section 117C(4)(a) and (b). The appellant has been lawfully resident in the United Kingdom for most of his life and is socially and culturally integrated in the United Kingdom. However, the respondent does not accept that he meets the requirement of section 117C(4)(c) to show that there would be 'very significant obstacles' to his integration into the country to which it is proposed he be deported. If the appellant cannot show that he meets the requirements of Exception 1 he would need to show that there are 'very compelling circumstances' over and above the exceptions which outweigh the public interest in deportation for the purpose of section 117C(6) NIAA 2002.

8. A further factual issue relating to the appellant's sexual orientation as a gay man was raised before the First-tier Tribunal in April 2019. The First-tier Tribunal judge noted that it was a new matter but decided that he had discretion to consider the issue as

part of the overall Article 8 assessment, albeit he did not go on to make any findings [38]. However, it is unclear whether the Home Office formally granted or refused consent for the First-tier Tribunal to consider the issue as a 'new matter' with reference to section 85(5) NIAA 2002. If the Secretary of State refuses consent the Tribunal does not have discretion to consider the new matter.

9. At the last hearing in the Upper Tribunal the respondent was given an oral direction to confirm whether consent was given to consider this issue as a new matter. No written response was received. At the hearing, Mr Clarke confirmed that the Secretary of State did not give consent for the Tribunal to consider the new matter. He claimed that it would be unfair on the appellant because it was an issue that needed to be considered properly by the respondent. The purpose of section 85(5) is to provide the respondent with a fair opportunity to consider any new matters. The respondent has had more than sufficient time to consider the matter since it was first raised but has not done so. No explanation was provided for this failure. It is difficult to see how it would be unfair to the appellant to consider it as part of this appeal. In order to avoid abuse of the provision, consent should only be refused where the respondent is likely to be prejudiced by a new matter that has been raised at a late stage. I can see no prejudice in this case given the time that has elapsed since the issue was raised.

10. The appellant did not ask for an adjournment to consider whether there might be grounds to apply for judicial review of the respondent's decision to refuse consent. In the circumstances, the Upper Tribunal has no discretion. Inevitably this means that any Article 8 assessment undertaken by the Upper Tribunal will not take into account all the relevant circumstances. Mr Clarke recognised that if the appellant is a gay man (and it is worth noting that he was found to be a credible witness by the First-tier Tribunal) it would be a relevant issue given the evidence relating to attitudes towards LGBTQI+ people in Nigeria. Nevertheless, having refused consent for the Upper Tribunal to consider an issue that would be relevant to a proper assessment of the human rights appeal, the Upper Tribunal is obliged by operation of statute to exclude it from consideration.

11. The appeal proceeded with agreement that the following two issues should be determined:

    (i) Whether the appellant would face 'very significant obstacles to integration' in Nigeria for the purpose of section 117C(c) NIAA 2002; and if not

    (ii) Whether there are 'very compelling circumstances' that outweigh the public interest in deportation for the purpose of section 117C(6) NIAA 2002.

Decision and reasons

Best interests of children

12. It is not suggested that the appellant has a parental relationship with his sister's children or that Exception 2 applies in this case. The evidence shows that the appellant has a close and supportive relationship with his sister and her family. He

enjoys spending time with her children and no doubt they enjoy spending time with their uncle. The children have written a letter of support in which they say that their uncle is a kind person who is willing to spend time with them. He takes them to football and helps them with their education. He also helps their grandmother who suffers from high blood pressure and diabetes. She would be lonely if he is deported to Nigeria. The appellant's sister says that her children adore their uncle and that the resulting pain of his deportation would be "acutely felt by us all". She says that her children tell her "Uncle [S] is like having a great coach, a favourite teacher, and a best friend, all in one".

13. It seems clear that the children have a loving relationship with their uncle and that he also likes to spend time with them. However, he does not live with the children nor does he have parental responsibility. His relationship with the children does not display any compelling features beyond the usual loving relationship that one might expect between an uncle and his nieces and nephews. It is in the best interests of the children to remain in the UK in the care of their parents. Understandably, they would prefer their uncle to remain in the UK, but it could not be said that their best interests point strongly towards him remaining here. In the circumstances, the interests of the children are not a weighty consideration in this case.

Article 8(1) – private and family life

14. The appellant is a 43-year-old man who came to the UK as a young child and has lived in the UK for around 34 years. The appellant has spent most of his life in the UK and it is accepted that he is socially and culturally integrated. The only family members with whom the appellant has any meaningful relationships live in the UK. He continues to live in the same household with his mother and they provide each other with mutual support. He has grown up in the UK and has strong links to this country. The appellant has established a significant private life in the UK. I am satisfied that his removal in consequence of the decision would affect his right to private and family life in a sufficiently grave way as to engage the operation of Article 8(1) of the European Convention.

Article 8(2) – proportionality

15. Article 8 of the European Convention protects the right to private and family life. However, it is not an absolute right and can be interfered with by the state in certain circumstances. It is trite law that the state has a right to control immigration and that rules governing the entry and residence of people into the country are "in accordance with the law" for the purpose of Article 8. Any interference with the right to private or family life must be for a legitimate reason and should be reasonable and proportionate.

16. Part 5A NIAA 2002 applies where a court or tribunal is required to determine whether a decision made under the Immigration Acts breaches a person's right to respect for private and family life under Article 8 of the European Convention. In cases concerning the deportation of foreign criminals the additional public interest considerations contained in section 117C apply. The 'public interest question' means

the question of whether an interference with a person's right to respect for private and family life is justified under Article 8(2).

17. The courts have repeatedly emphasised that significant weight should be given to the public interest in deportation. However, that is not to say that the weight to be given to the public interest in deportation is uniform or monolithic: see *Akinyemi v SSHD* [2019] EWCA Civ 2098. The more serious the offending behaviour; the greater the weight is placed on the public interest in deportation. The less serious the offending behaviour; the more readily an individual's compelling or compassionate circumstances might outweigh the public interest in deportation.

18. The exceptions to deportation outlined in section 117C NIAA 2002 reflect the respondent's position as to where a fair balance is struck between the weight that must be given to the public interest in deporting foreign criminals and the person's right to private or family life. If the appellant meets the requirements of one of the exceptions the respondent accepts that his removal would be disproportionate.

Section 117C(4)(c) - 'Very significant obstacles to integration'

19. The respondent accepts that the appellant meets the first two requirements of Exception 1. In *SSHD v Kamara* [2016] 4 WLR 152 the Court of Appeal set out the essence of the 'integration' test as follows:

> "14. In my view, the concept of a foreign criminal's "integration" into the country to which it is proposed that he be deported, as set out in section 117C(4)(c) and paragraph 399A, is a broad one. It is not confined to the mere ability to find a job or to sustain life while living in the other country. It is not appropriate to treat the statutory language as subject to some gloss and it will usually be sufficient for a court or tribunal simply to direct itself in the terms that Parliament has chosen to use. The idea of "integration" calls for a broad evaluative judgment to be made as to whether the individual will be enough of an insider in terms of understanding how life in the society in that other country is carried on and a capacity to participate in it, so as to have a reasonable opportunity to be accepted there, to be able to operate on a day-to-day basis in that society and to build up within a reasonable time a variety of human relationships to give substance to the individual's private or family life."

20. The facts of this case indicate that the appellant is a healthy man with qualifications that are likely to enable him to find work. However, the Court of Appeal made clear that the test is not confined to his ability to find work and to sustain life. Exception 1 recognises that people who have lawfully resident in the UK for most of their life, and who are socially and culturally integrated, might find it particularly difficult to establish themselves in their country of nationality, which after a long passage of time might seem like a foreign land to them.

21. The appellant has lived in the UK for most of his life. He left Nigeria as a young child and has no experience of independent life there as an adult. He says that he visited Nigeria once in 1996. He stayed with relatives who escorted him throughout the visit.

Unfortunately, his aunt died in a car crash while he was there. His remaining cousins died since then. After having heard evidence from the appellant and other members of the family the First-tier Tribunal judge was satisfied that the appellant would have no family support if he returned to Nigeria.

22. The appellant was a long-term drug addict who says that he has not taken drugs since he was sent to prison in 2016. The evidence shows that his family members in the UK have been instrumental in providing support during recovery. Although there is no expert evidence relating to this issue, I find that it is reasonable to take judicial notice of the fact that drug addicts are vulnerable to relapse. I find that the continued support of his family is important if he is going to continue to remain drug-free. In contrast, he has no family support in Nigeria and would be more vulnerable to relapse.

23. The appellant has spent most of his life in the UK and no longer has any meaningful connections with Nigeria. He says that he understands a little Hausa but does not speak any local languages. I bear in mind that English is an official language in Nigeria and that it would be possible for him to operate in that language to a large extent. The appellant has no practical experience of how day-to-day life in Nigeria works and no family members there to help him understand. As an expert tribunal that deals with many Nigerian cases, I take judicial notice of the fact that family support is particularly important in Nigerian society because there is no safety net of state support similar to the UK. The appellant might be able to find some menial work and could receive limited financial support from family members in the UK. However, it is likely that he would return to Nigeria with no meaningful connections and no idea of how life operates there. He would live an isolated existence because he has no family or friends there. As a result, he might be vulnerable to relapse, which in turn is likely to affect his ability to integrate. In my assessment, it is unlikely that he will be able to build up within a reasonable time a variety of human relationships that would give substance to his private and family life. After a careful evaluation of all the relevant circumstances, and taking into account the fact that the provision is said to reflect where a fair balance should be struck for the purpose of Article 8(2), I conclude that the appellant would face 'very significant obstacles to integration' in Nigerian society within the broad meaning of the phrase. I conclude that the appellant meets the requirements of Exception 1.

Section 117C(6) – 'Very compelling circumstances'

24. Even if I am wrong in my assessment I turn to consider the alternative exception. Section 117C(6) NIAA 2002 states that the public interest requires deportation unless there are 'very compelling circumstances' over and above Exceptions 1 and 2. The test has repeatedly been described as a demanding one involving a high threshold: see *NA (Pakistan), KO (Nigeria) v SSHD* [2018] UKSC 53 and *RA (s.117C: "unduly harsh"; offence; seriousness) Iraq* [2019] UKUT 123.

25. The assessment under section 117C(6) of the NIAA 2002 and paragraph 398 of the immigration rules reflects the overall balancing exercise undertaken by the

Strasbourg court when assessing whether the interference with a person's private or family life is justified and proportionate under Article 8(2) of the European Convention. After all, that is the stated intention of the statutory scheme. The need to consider the relevant principles outlined in the Strasbourg jurisprudence was emphasised by the Supreme Court in *Hesham Ali* v SSHD [2016] 1 WLR 4799:

> "25. The question whether the deportation of a foreign offender would be incompatible with article 8 has been considered by the European court in numerous judgments. In cases concerning "settled migrants", that is to say persons who have been granted a right of residence in the host country, the court has accepted that the withdrawal of that right may constitute an interference with the right to respect for private and/or family life within the meaning of article 8. If there is an interference, it must be justified under article 8(2) as being "in accordance with the law", as pursuing one or more of the legitimate aims set out in that paragraph, and as being "necessary in a democratic society", that is to say justified by a pressing social need and proportionate to the legitimate aim pursued. ….. In practice, the critical issue is generally whether the "necessity" test is met. In that regard, the court has often said that the task of the court or tribunal applying article 8(2) consists in ascertaining whether the decision struck a fair balance between the relevant interests, namely the applicant's right to respect for his private and family life, on the one hand, and the prevention of disorder or crime, on the other.
>
> 26. In a well-known series of judgments the court has set out the guiding principles which it applies when assessing the likelihood that the deportation of a settled migrant would interfere with family life and, if so, its proportionality to the legitimate aim pursued. In *Boultif v Switzerland* (2001) 33 EHRR 50, para 48, the court said that it would consider the nature and seriousness of the offence committed by the applicant; the length of the applicant's stay in the country from which he or she is to be expelled; the time elapsed since the offence was committed and the applicant's conduct during that period; the nationalities of the various persons concerned; the applicant's family situation, such as the length of the marriage, and other factors expressing the effectiveness of a couple's family life; whether the spouse knew about the offence at the time when he or she entered into a family relationship; whether there are children of the marriage, and if so, their age; and the seriousness of the difficulties which the spouse is likely to encounter in the country to which the applicant is to be expelled. Two further factors were mentioned in *Ùner v Netherlands* (2007) 45 EHRR 14, para 58: the best interests and well-being of the children, in particular the seriousness of the difficulties which any children of the applicant are likely to encounter in the country to which the applicant is to be expelled; and the solidity of the social, cultural and family ties with the host country and with the country of destination. In *Maslov v Austria* [2009] INLR 47, paras 72-75, the court added that the age of the person concerned can play a role when applying some of these criteria. For instance, when assessing the nature and seriousness of the offences, it has to be taken into account whether the person committed them as a juvenile or as an adult. Equally, when assessing the length of the person's stay in the country from which he or she is to be expelled and the solidity of the social, cultural and

family ties with the host country, it makes a difference whether the person came to the country during his or her childhood or youth, or was even born there, or whether he or she only came as an adult. Some of the factors listed in these cases relate to the strength of the public interest in deportation: that is to say, the extent to which the deportation of the person concerned will promote the legitimate aim pursued. Others relate to the strength of the countervailing interests in private and family life. They are not exhaustive.

27. As the Grand Chamber noted in *Jeunesse v Netherlands* (2015) 60 EHRR 17, para 105, these criteria cannot be transposed automatically to the situation of a person who is not a settled migrant but an alien seeking admission to a host country: a category which includes, as the facts of that case demonstrate, a person who has been unlawfully resident in the host country for many years. The court analysed the situation of such a person, facing expulsion for reasons of immigration control rather than deportation on account of criminal behaviour, as raising the question whether the authorities of the host country were under a duty, pursuant to article 8, to grant the person the necessary permission to enable her to exercise her right to family life on their territory. The situation was thus analysed not as one in which the host country was interfering with the person's right to respect for her private and family life, raising the question whether the interference was justified under article 8(2). Instead, the situation was analysed as one in which the person was effectively asserting that her right to respect for her private and family life, under article 8(1), imposed on the host country an obligation to permit her to continue to reside there, and the question was whether such an obligation was indeed imposed.

...

33. Considering next the factors which should be taken into account, those mentioned in the *Boultif* line of cases have a bearing on the proportionality of the deportation of foreign offenders, whether they are settled migrants or not. Where they are not settled migrants, it will also be necessary to have regard to the factors mentioned in *Jeunesse,* so far as relevant and not already taken into account: notably, whether there are insurmountable obstacles or major impediments in the way of the family living in the country of origin of the alien concerned; whether there are factors of immigration control, such as a history of breaches of immigration law; and whether the family life was created at a time when the persons involved were aware that the immigration status of one of them was such that the persistence of that family life within the host state would from the outset be precarious. Those factors were mentioned in *Jeunesse* in a context where family life was relied on to defeat immigration control at the point of admission to the host country. But it is also relevant to consider, in the context of liability to deportation because of criminal behaviour, whether the offender has a bad immigration history, or whether there are major impediments to continuing family life in his country of origin, or whether family life was established in the knowledge that, because of the immigration status of one of the persons involved, its continuation in the UK was uncertain. If that were not so, the perverse consequence would follow that these matters would be liable to carry greater weight if a non-offender were sought to be removed on account of his irregular

> immigration status than if an offender with the same immigration status were sought to be removed on account of serious criminal conduct."

26. After section 117C NIAA 2002 was introduced the Court of Appeal in *NA (Pakistan)* expressly recognised the need to consider Strasbourg principles when applying the statutory scheme:

> "38. Against that background, one may ask what is the role of the Strasbourg jurisprudence? In particular, how does one take into account important decisions such as *Uner v Netherlands* (2007) 45 EHRR 14 and *Maslov v Austria*? Mr Southey QC, who represents KJ and WM, rightly submits that the Strasbourg authorities have an important role to play. Mr Tam rightly accepted that this is correct. The answer is that the Secretary of State and the tribunals and courts will have regard to the Strasbourg jurisprudence when applying the tests set out in our domestic legislation. For example, a tribunal may be considering whether it would be "unduly harsh" for a child to remain in England without the deportee; or it may be considering whether certain circumstances are sufficiently "compelling" to outweigh the high public interest in deportation of foreign criminals. Anyone applying these tests (as required by our own rules and legislation) should heed the guidance contained in the Strasbourg authorities. As we have stated above, the scheme of Part 5A of the 2002 Act and paras. 398-399A of the 2014 rules is to ensure compliance with the requirements of Article 8 through a structured approach, which is intended to ensure that proper weight is given to the public interest in deportation whilst also having regard to other relevant factors as identified in the Strasbourg and domestic caselaw. The new regime is not intended to produce violations of Article 8."

27. I conduct my assessment with these principles in mind. I turn to consider what weight should be placed on the public interest in deportation and what factors might weigh in favour of the appellant in order to assess whether the decision strikes a fair balance for the purpose of Article 8(2) of the European Convention.

28. The appellant was sentenced to two years' imprisonment. It was a serious offence involving a breach of trust. A significant amount of money was embezzled from the GP practice where he worked. The sentencing remarks make clear that the offence had a serious impact given the nature of his employer's work. Significant weight must be placed on the public interest in the deportation of foreign criminals and the need to deter others from committing similar offences. The more serious the offence the greater is the public interest in deportation.

29. Although it was a serious offence, it was not in the most serious category of offences involving periods of imprisonment of over four years. The appellant does not have any other convictions and was previously of good character. There is no OASys assessment. The appellant was released from prison over two years ago and there is no evidence to suggest that he has been convicted of any further offences. It is clear from his evidence, and the remarks made by the sentencing judge, that his drug addiction was the root cause of the offence. There is no evidence to suggest that the appellant holds pro-criminal attitudes or that he has been involved in other types of crime. The appellant says that he has been drug free since he went to prison.

30. On the other side of the balance the appellant is a long term settled migrant who has lived most of his life in the UK with lawful leave to remain. He entered the UK as a young child and has strong and enduring connections to the UK. He is socially and culturally integrated. All of his close family members live in the UK. His strong ties to the UK are a compelling factor that should be given significant weight.

31. The appellant speaks English and has training to enable him to be financially independent. He has taken steps to retrain and is actively looking for work. Those factors are neutral. The appellant has a single conviction. Albeit a serious offence it was not at the higher end of the scale of offending behaviour. He expresses remorse for his actions. It is clear that his conviction led him to reflect on his addiction. The fact that the appellant has remained drug free for several years is a positive indication. With support from his family he remains drug-free. He denies any relapse. Given that the underlying cause of his offence was his addiction to drugs, if he remains drug free, it seems unlikely that he will reoffend. Of course, everyone is expected to abide by the law. The fact that the appellant is unlikely to reoffend just does not add any further weight to the public interest considerations.

32. The respondent accepts the appellant meets the first two requirements of Exception 1 and I have found that there would be very significant obstacles to his integration in Nigeria. His private and family life is entrenched in the UK. In contrast, if he were returned to Nigeria, he would face an isolated existence in a country that is foreign to him.

33. I remind myself that the provisions contained in the statutory scheme are intended to be compliant with a proper application of Article 8 of the European Convention. In assessing whether a fair balance has been struck between the undoubted weight that must be placed on the public interest in deportation and the individual circumstances of this case, I conclude that, while none of the factors are sufficient if taken alone, the cumulative effect of the appellant's circumstances are sufficiently compelling to amount to 'very compelling circumstances' that outweigh the public interest in deportation. The factors upon which I base this cumulative assessment are:

    (i) The appellant's particularly long length of lawful residence;

    (ii) The strength of his entrenched private and family life ties to the UK;

    (iii) The positive progress he has made to combat his addiction, which was the root cause of the offence;

    (iv) The fact that, while he remains drug free, he is unlikely to reoffend; and

    (v) The very significant obstacles to integration in Nigeria, which include social isolation and increased vulnerability to relapse without family support.

34. For these reasons I conclude that removal of the appellant in consequence of the decision would be unlawful under section 6 of the Human Rights Act 1998.

35. I have found that deportation would be a disproportionate response at the current time. However, the appellant should be aware that if he commits any further offences, particularly of a serious kind, it would be open to the Secretary of State to consider whether further deportation action might be appropriate. This should act as a strong incentive for him to remain drug free and to abide by the law.

DECISION

The appeal is ALLOWED on human rights grounds

Signed  Date 30 January 2020
Upper Tribunal Judge Canavan