Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number**: PA/07871/2019 (V)**

THE IMMIGRATION ACTS

Heard at Manchester CJC
At a remote hearing via Skype for Business
On 26 November 2020

Decision & Reasons Promulgated
On 08 December 2020

Before

UPPER TRIBUNAL JUDGE PLIMMER

Between

VASAN [K]

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellant: Mr Muquit, Counsel
For the Respondent: Mr Bates, Senior Home Office Presenting Officer

DECISION AND REASONS (V)

Introduction

1. This decision should be read alongside my 'error of law' decision sent on 23 September 2020, in which I found that the decision of the First-tier Tribunal ('FTT') sent on 6 January 2020 ('the 2020 FTT), contained errors of law such that it was set aside, to be remade in the Upper Tribunal ('UT').

2. I now remake the decision arising from the appellant's appeal against the respondent's decision dated 1 August 2019 to refuse his international protection and human rights claims. As agreed at the 'error of law' hearing and confirmed in the appellant's skeleton argument before me, the appeal is now limited - the appellant places no reliance upon his international protection claim or Article 3, ECHR; he contends that his particular circumstances, including his private life, are such that his appeal should be allowed on Article 8, ECHR grounds.

3. Although the FTT made an anonymity direction, the appellant no longer relies upon his claim for international protection. I did not grant an anonymity order for the purposes of my 'error of law' decision, and no application for anonymity has been made before me.

Background

4. The appellant is a citizen of Sri Lanka, now aged 50. He entered the United Kingdom ('UK') in 1998, when he claimed asylum. Although his asylum claim was refused and a subsequent appeal to a Special Adjudicator dismissed in a decision dated 13 December 1999 ('the 1999 decision'), the appellant made further submissions to remain in the UK on 15 March 2002. I was not told why there was a lengthy delay in responding to these submissions or the basis for the grant, but the appellant was granted indefinite leave to remain ('ILR') on 15 September 2014.

5. The appellant was convicted of fraud on 19 March 2015 and sentenced to 30 months imprisonment. The respondent issued him with a deportation order on 4 November 2016, having refused his asylum and human rights claims. The appellant appealed against this decision to the FTT but did not pursue submissions on asylum, only Article 8, albeit the FTT made adverse findings on the asylum claim.

Resumed hearing before the UT

6. At the beginning of the resumed hearing before me, the parties agreed that the appellant should be treated as vulnerable in the light of the contents of an independent psychiatric report dated 28 October 2020, prepared by Dr Pranveer Singh, a Consultant Psychiatrist. Mr Muquit submitted that there was no need to make structural adjustments to the hearing itself but that the requisite caution should be applied to questions asked and the approach to the appellant's answers. Mr Bates agreed with this approach and the hearing proceeded on this basis.

7. Each party relied upon their respective bundle of materials. I confirmed that prior to the hearing I had read both bundles together with the respective written submissions. Mr Muquit also submitted a helpful document summarising some of the key evidence relied upon by the appellant. The parties were also able to clarify the following with a view to narrowing the issues in dispute:

(i) The appellant would be called as a witness and would be subject to cross-examination but at all material times, treated as a vulnerable witness.

(ii) The appellant's friend, who wished to be referred to as Mr Nathan, would also be called as a witness and cross-examined. Time was taken to check Mr Nathan's immigration history in the UK. Mr Bates confirmed that he was satisfied that Mr Nathan came from Sri Lanka to the UK as a student in 1979 and was naturalised as a British citizen in 1992.

(iii) Mr Bates agreed that the OASYS report dated 15 May 2017 relied upon by the appellant assessed him as having a low risk of re-offending in 2017, and this remained unaltered with the passage of time. When I asked whether the risk could now be said to be very low as the appellant has been entirely compliant, Mr Bates submitted that this was to be expected given the deportation proceedings.

(iv) Mr Bates accepted Dr Singh's diagnosis that the appellant suffered from moderate depressions but did not accept his conclusion that there would be a deterioration in the appellant's mental health condition upon return to Sri Lanka. Mr Bates noted in this regard that Dr Singh did not address the availability of treatment in Sri Lanka or that the appellant's fears in Sri Lanka are not well-founded.

(v) Both representatives placed reliance upon country background evidence on mental health facilities in Sri Lanka contained in the respondent's *Country Policy and Information Note, Sri Lanka: Medical treatment and healthcare, July 2020* ('the CPIN').

(vi) Both representatives agreed expressed broad agreement as to the applicable legal framework when undertaking an Article 8 assessment in the context of the deportation of a foreign criminal. I drew their attention to the recent Strasbourg judgment of Unuane v UK, App no. 80343/17 (24 November 2020). They were both familiar with it and agreed that this did not materially change the complexion of the guidance that has recently been provided by the Court of Appeal on this issue.

(vii) Mr Muquit confirmed that he did not rely upon Article 3 or international protection, and the appellant's case was firmly predicated upon Article 8 only. As to Article 8, Mr Muquit accepted that Exception 2 in s. 117C(5) of the Nationality Immigration and Asylum Act 2002 ('the 2002 Act') did not apply because the appellant had no family life for the purposes of Article 8 in the UK. Mr Muquit also acknowledged that s. 117C(4)(a) could not be met but that (b) and (c) were met in such a strong way that they amounted to *"very compelling circumstances over and above those described in Exceptions 1 and 2"* required to outweigh the requisite public interest, for the purposes of s. 117C(6).

8. I heard evidence from the appellant and Mr Nathan. They confirmed the truth of their respective witness statements and were cross-examined briefly. I asked a few questions to clarify matters.

9. I then heard helpful detailed submissions from each representative. Mr Bates invited me to find that the seriousness of the appellant's offending was such that there remained a very strong public interest in his deportation notwithstanding his low risk of reoffending. He submitted that this public interest could not be outweighed by the appellant's lengthy but weak private life. Mr Muquit reminded me that the public interest is multi-faceted and flexible. Upon careful scrutiny I should find that the public interest in this appellant's deportation is weak and in any event outweighed by the very compelling circumstances of his case. He relied in particular upon the appellant's length of stay outside of Sri Lanka and his particular vulnerabilities, which he submitted constituted very significant obstacles to his re-integration with Sri-Lanka. I address the representatives' submissions in more detail when I make my findings below.

10. At the conclusion of the hearing both representatives confirmed that they were content that the hearing, which took place over the course of some four hours via Skype for Business, was conducted fully and fairly and they had no concerns whatsoever. We took a number of breaks and the process was explained to the appellant at every stage. The representatives were satisfied, as was I, that this mode of hearing involved no prejudice to the interests of either party. This was a public hearing as I sat in court at Manchester CJC. I am satisfied that the mode of hearing was necessary, appropriate and proportionate.

Legal framework

11. The proper approach to the relevant Article 8 balancing exercise in a case such as this, where a deportation order has been made against a foreign national, is to be found in paragraphs 398-399A of the Immigration Rules and Part 5A (s. 117A-D) of the 2002 Act. It is generally unnecessary for a tribunal to refer to the Immigration Rules in a case such as this where there is no dispute that the relevant provisions are reflected within Part 5A – see HA (Iraq) v SSHD [2020] EWCA Civ 1176 at [22]. I therefore turn immediately to the relevant text of Part 5A of the 2002 Act.

> "**117A** Application of this Part
>
> (1) This Part applies where a court or tribunal is required to determine whether a decision made under the Immigration Acts -
>
> (a) breaches a person's right to respect for private and family life under article 8, and
>
> (b) as a result would be unlawful under section 6 of the Human Rights Act 1998.
>
> (2) In considering the public interest question, the court or tribunal must (in particular) have regard -
>
> (a) in all cases, to the considerations listed in section 117B, and

(b) in cases concerning the deportation of foreign criminals to the considerations listed in section 117C.

(3) In subsection (2), 'the public interest question' means the question of whether an interference with a person's right to respect for private and family life is justified under article 8(2).

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

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

…

(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

…"

12. S. 117B is followed by this at s. 117C:

"Article 8: additional considerations in cases involving foreign criminals

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

(2) The more serious the offence committed by a foreign criminal, the greater is the public interest in deportation of the criminal.

(3) In the case of a foreign criminal ("C") who has not been sentenced to a period of imprisonment of four years or more, the public interest requires C's deportation unless Exception 1 or Exception 2 applies.

(4) Exception 1 applies where—

(a) C has been lawfully resident in the United Kingdom for most of C's life,

(b) C is socially and culturally integrated in the United Kingdom, and

(c) there would be very significant obstacles to C's integration into the country to which C is proposed to be deported.

(5) Exception 2 applies where C has a genuine and subsisting relationship with a qualifying partner, or a genuine and subsisting parental relationship with a qualifying child, and the effect of C's deportation on the partner or child would be unduly harsh.

(6) In the case of a foreign criminal who has been sentenced to a period of imprisonment of at least four years, the public interest requires deportation unless there are very compelling circumstances, over and above those described in Exceptions 1 and 2…"

13. Foreign criminals who fall within s. 117C(3) because they have been sentenced to a period of imprisonment of at least 12 months but less than four years have

been referred to in the case law as 'medium offenders', in contrast to those with a sentence of four years or more, who are described as 'serious offenders'.

14. As I set out above, at the hearing before me, there was no real dispute between the parties as to the applicable legal framework. The dispute turned upon the application of the factual matrix to the governing legal test in s. 117C(6) in the 2002 Act, as informed by the remainder of Part 5A and the criteria to be considered as part of the relevant balancing exercise contained in the Strasbourg authorities on Article 8. It was undisputed that although the appellant was a 'medium offender' and not a 'serious offender' for the purposes of s. 117C, ss. (6) still applied to him – see NA (Pakistan) v SSHD [2016] EWCA 662, [2017] 1 WLR 207 at [25] to [27].

15. As set out above, the parties accepted that Unuane did not materially change the complexion of the recent Court of Appeal guidance in HA (Iraq). At [29(A)] Underhill LJ made it clear that in a case such as this wherein it is accepted that the appellant is a 'medium offender' who cannot meet the requirements of the Exceptions:

> "… a full proportionality assessment is required, weighing the interference with the article 8 rights of the potential deportee and his family against the public interest in his deportation. In conducting that assessment the decision-maker is required by section 117C (6) (and paragraph 398 of the Rules) to proceed on the basis that "the public interest requires deportation unless there are very compelling circumstances over and above those described in Exceptions 1 and 2"."

16. In short, the parties agreed that Part 5A of the 2002 Act provides scope for all relevant factors to be taken into account in the proportionality assessment and that, in considering whether 'very compelling circumstances' for the purposes of s. 117C(6) exist, the tribunal should consider the proportionality test required by the Strasbourg Court – see [27] and [38] of HA (Iraq) and [81] of Unuane. For the avoidance of doubt, when I refer to 'very compelling circumstances' during the course of this decision, I am merely using this as shorthand for the full expression contained in s. 117C(6) i.e. "*very compelling circumstances, over and above those described in Exceptions 1 and 2…*".

17. In my judgment, the parties were correct to adopt the position they did. After all, as set out at [82] of Unuane, in Hesham Ali v SSHD [2016] UKSC 60 Lord Reed made it clear at [46] that it was "*the duty of appellate tribunals, as independent judicial bodies, to make their own assessment of the proportionality of deportation in any particular case on the basis of their own findings as to the facts and their understanding of the relevant law*", although he acknowledged that in doing so "*they should attach considerable weight to [the policy adopted by the Secretary of State].*" This was re-emphasised by Lord Reed in R (Agyarko) v SSHD [2017] UKSC 11, where he highlighted that the test remains one of proportionality. These Supreme Court decisions turned on the application of the Immigration Rules alone and before the advent of Part 5A of the 2002 Act. However, as the

Court of Appeal explained at [46] to [50] of Akinyemi v SSHD [2019] EWCA Civ 2098, [2020] 1 WLR 1843, ('Akinyemi (no. 2)') the underlying principles relevant to the assessment of the weight to be given to the public interest and Article 8 have not been changed by the introduction of the new regime in Part 5A, and Hesham Ali remains authorative. The purpose of the new regime was to give statutory force, accompanied by some re-wording, to principles which had already been established in the case-law relating to the Immigration Rules. Subsequent authorities have highlighted the continued importance of conducting a proportionality exercise after the implementation of s. 117C. As Underhill LJ went on to observe in HA (Iraq) at [30]:

> "It will be convenient to refer to the second stage as the exercise "required by section 117C(6)" or similar phrases, but that is arguably slightly misleading. The second stage is necessary not because of section 117C(6) but because the effect of article 8 is that a proportionality assessment is required in every case (at least where the issue is raised): what section 117C(6) does is to prescribe the weight that has to be given to the public interest in deportation when carrying out that assessment (in a case where neither Exception applies)."

18. The public interest is movable and in certain cases must be approached flexibly for the reasons outlined in Akinyemi No. 2 at [39] to [52]. In other words, although there may be few such cases, it must be recognised that there will be cases where the circumstances in the individual case reduce the legitimate and strong public interest in removal – hence the flexible approach to the public interest. A full assessment of the public interest must then be balanced against an assessment of the Article 8 factors said either on their own or cumulatively to constitute 'very compelling circumstances'. The flexibility of the public interest does not mean that the s. 117C(6) test is anything less than "*extremely demanding*". As Underhill LJ put it at [38] of HA (Iraq):

> "The effect is clear: circumstances will have to be very compelling in order to be sufficiently compelling to outweigh the strong public interest in deportation."

19. That remains the test under s. 117C(6) and it is the test that I apply.

20. The list of relevant factors to consider when applying that test "*is not closed*" (see GM (Sri Lanka) v SSHD [2019] EWCA Civ 1630 at [31]) and requires "*a wide-ranging exercise*", so as to ensure that Part 5A produces a result compatible with Article 8 - see NA (Pakistan) at [29] and [32] as endorsed in HA (Iraq) at [33]. This means that the foreign criminal is permitted to rely upon matters relevant to one or both Exceptions as well as his ability to meet these in conjunction with other factors collectively. In particular, the concept of private life, as set out in Strasbourg authorities such as Uner v The Netherlands [2006] 45 EHRR 14 and summarised in Akinyemi No. 2 at [46]-[51] is wide. This includes social ties with relatives and friends as well as ties formed through employment and participation in communal activities. The totality of social ties between settled migrants and the community as well as social identity must be

carefully considered – see CI (Nigeria) v SSHD [2019] EWCA Civ 2027 at [57] to [59].

21. The wide-ranging evaluative exercise required under s. 117C(6) clearly includes an application of the principles in the Strasbourg authorities to ensure compatibility with the UK's obligations under Article 8 and must be accommodated within the statutory scheme - see NA (Pakistan) at [29] and [38]; HA (Iraq) at [28] and Unuane at [72-75] and [81-83]. The Strasbourg authorities set out the relevant criteria to use in order to assess whether an expulsion measure was necessary in a democratic society and proportionate to the legitimate aim pursued. The respective weight to be attached to these criteria will inevitably vary according to the specific circumstances of each case – see Unuane at [78]. These criteria (for an Article 8 case not relying upon family life) include the following *inter alia*:

    – the nature and seriousness of the offence committed;

    – the length of the stay in the UK;

    – the time elapsed since the offence was committed and the conduct during that period;

    – the nationalities of the various persons concerned;

    – the seriousness of the difficulties the person is likely to encounter in the country to which the applicant is to be expelled;

    – the solidity of social, cultural and family ties with the host country and with the country of destination.

22. This is a case in which it was conceded that the requirements of the Exceptions cannot be met. Nevertheless, facts and matters relevant to the assessment of whether an Exception applies remain relevant to the overall assessment, and could be sufficient to outweigh the public interest in deportation either, if especially strong, by themselves or in combination with other factors. It is therefore important to assess matters relevant to Exception 1, including the appellant's social and cultural ties to the UK and the extent of any obstacles to re-integration with Sri Lanka. As the Court put it in NA (Pakistan) at [29] (as endorsed in HA (Iraq) at [33]):

> "… [A] foreign criminal is entitled to rely upon such matters, but he would need to be able to point to features of his case of a kind mentioned in Exceptions 1 and 2 (and in paras. 399 or 399A of [the Rules]), or features falling outside the circumstances described in those Exceptions and those paragraphs, which made his claim based on Article 8 especially strong." (my emphasis)

23. At [32] of NA (Pakistan) the Court specifically addressed the case of medium offenders, as follows:

> "… [I]n the case of a medium offender, if all [the potential deportee] could advance in support of his Article 8 claim was a 'near miss' case in which he

> fell short of bringing himself within either Exception 1 or Exception 2, it would not be possible to say that he had shown that there were 'very compelling circumstances, over and above those described in Exceptions 1 and 2'. He would need to have a far stronger case than that by reference to the interests protected by Article 8 to bring himself within that fall back protection. But again, in principle there may be cases in which such an offender can say that features of his case of a kind described in Exceptions 1 and 2 have such great force for Article 8 purposes that they do constitute such very compelling circumstances, whether taken by themselves or in conjunction with other factors relevant to Article 8 but not falling within the factors described in Exceptions 1 and 2. The decision maker, be it the Secretary of State or a tribunal, must look at all the matters relied upon collectively, in order to determine whether they are sufficiently compelling to outweigh the high public interest in deportation." (my emphasis)

24. Only "*a very strong claim indeed*" will be successful, requiring "*very compelling reasons*" to outweigh the "*strong public interest in the deportation of foreign nationals*" – per Lord Reed at [37] and [38] of Hesham Ali. Generally, "*every foreign criminal who appeals against a deportation order by reference to his human rights must negotiate a formidable hurdle before his appeal will succeed*" and "*needs to be in a position to assemble and present powerful evidence*" – per Lord Wilson at [55] of R (Blyndloss) v SSHD [2017] 1 WLR 2380. The cases in which circumstances are sufficiently compelling to outweigh the high public interest in deportation will be "*rare*" - see NA (Pakistan) at [33].

Findings

Factual findings

25. In making my findings I bear in mind as a starting point the adverse credibility findings in the 1999 decision. The Adjudicator rejected the appellant's claim to have been arrested and detained by the authorities during which time he was questioned about the LTTE. He also rejected his claim to have been targeted by the LTTE but found that in any event he could relocate away from his home area in northern Sri Lanka to Colombo. I note however that this decision makes no clear reference to the relevant country background material relevant to Tamils living in the north of Sri Lanka at this time and the apparent plausibility of the appellant's account when viewed in that context – see GJ and others (post-civil war: returnees) Sri Lanka CG [2013] UKUT 00319 (IAC), which contains references to the history of the conflict in Sri Lanka.

26. I also acknowledge the adverse credibility findings made by the 2020 FTT at [43] to [46]. The asylum claim was formally withdrawn before me and it was therefore unnecessary to address those findings in my error of law decision. However, some of the findings are undermined by the errors of law vitiating the decision on Article 8 grounds. At [12] of my 'error of law' decision I concluded that the FTT erred in its approach to the OASYS report before it. This undermines the findings at [44] and [45]. The finding at [46] rejecting the appellant's account of not being able to trace his family members in Sri Lanka

has not engaged with the country background evidence relevant to the widespread killing of civilians around 2009, when the appellant lost touch with his family. Indeed, I note that the respondent regarded this claim to be plausible at [46] and [47] of the decision under appeal.

27. The appellant has provided a consistent account over a lengthy period that he lost contact with his parents in around 2009. This is consistent with the background evidence and I accept his evidence. I note that the appellant told Dr Singh that he used to support his parents and brother in Sri Lanka and worried about them. Mr Bates did not pursue this issue in cross-examination. Mr Bates focussed his efforts understandably on apparent weaknesses in the appellant's private life and the appellant's ability to overcome obstacles in Sri Lanka. Mr Bates did not dispute the genuineness of the appellant's subjective beliefs but submitted they are well-founded.

28. I accept that although there have been adverse credibility findings made regarding the appellant, he provided credible oral evidence before me on the main themes relevant to his Article 8 claim: he has some friendship ties in the UK albeit he has found it difficult to develop these more because of his mental health since his imprisonment; he has no friendship or family ties remaining in Sri Lanka; he feels 'scared to death' to return to Sri Lanka because he believes that he will have 'no life' there and will be subjected to serious harm for reasons relating to his claimed history, Tamil ethnic origin and absence of any support, such that he will be entirely unable to secure employment and accommodation. This evidence was supported by Mr Nathan and is consistent with the contents of the OASYS report and Dr Singh's comprehensive history of the matter in his report. The previous decision-makers did not have the benefit of a report from a Consultant Psychiatrist and therefore did not treat the appellant as vulnerable. I note that an adjournment to obtain psychiatric evidence was made to the 2020 FTT but refused.

Approach to S. 117(6) / proportionality balancing exercise

29. As the Exceptions in s. 117C are clearly not met in this case it is unnecessary to take that 'shortcut' (see [60] of HA (Iraq)). I therefore proceed directly to the proportionality assessment to be determined under s. 117C(6), with a view to considering whether there are 'very compelling circumstances' which are sufficiently compelling to outweigh the strong public interest in deportation. I turn first to the public interest side of the scales in this case before then conducting the 'wide-ranging exercise' of considering all the circumstances pertinent to this appellant, on the other side of the scales. Each of these assessments and then the overall balancing exercise inevitably involves the weighing of 'pros' and cons' and I do so, albeit I have not found it helpful to explicitly categorise the relevant factors in this manner, in this particular case.

Public interest

30. Respect must be paid to the high level of importance given to the public interest in deporting foreign criminals and I remind myself of the guidance I set above in this respect. The public interest is multi-faceted and it is important to carefully evaluate the particular facets of the public interest in this case.

Nature and seriousness of offending

31. I begin with the seriousness of the offending, which is directly relevant to s. 117C(6) itself (see HA (Iraq) at [91] to [95]) and comprises one of the most important of the Strasbourg criteria set out above. The authorative measure of the degree of seriousness is the sentence imposed, as explained in the sentencing comments.

32. The appellant has committed an offence involving dishonesty and fraud of an undoubtedly concerning nature, as evidenced by the length of the prison sentence. Mr Muquit submitted that the appellant self-evidently could not be described as a 'serious offender' for the purposes of Part 5A, as he was sentenced to 30 months imprisonment and must therefore be considered a 'medium offender'. Mr Bates submitted that it is relevant that this sentence was significantly above the minimum level to qualify the appellant as a 'medium offender', given the bracket begins at 12 months. It is sufficient to categorise the seriousness of the appellant's offending by reference to Part 5A in this way: although a 'medium offender' the length of sentence is a clear indicator that his offence must be regarded as serious, albeit his sentence was below the requisite four years to be categorised as a 'serious offender'. The sentence of 2.5 years is just beyond the half way of the range for a 'medium offender'. In any event, I treat the appellant as having committed an offence of sufficient seriousness to attract a sentence of 30 months, no more and no less.

33. That being said, as noted in Unuane at [87], the Strasbourg Court has tended to consider the seriousness of a crime in the context of the balancing exercise not merely by reference to the length of the sentence imposed but also by reference to the nature and circumstances of the particular criminal offence or offences committed and their impact on society as a whole. In that context, the Court has consistently treated crimes of violence and drug-related offences as being at the most serious end of the criminal spectrum. This is not such an offence. In addition, it represents a 'one-off' for the appellant. The appellant was of good character and employed full time for many years prior to the single offence and has not re-offended.

34. The sentencing judge's comments are comprehensive and run to 10 pages. The appellant and his then partner (with whom he no longer has any contact) were each convicted of one count of fraud. This included the setting up of a bogus company which then lead to the fraudulent withdrawal of £274,000. The partner pleaded guilty and the judge regarded this as unsurprising as the evidence against her was "*overwhelming*". The judge observed that the

evidence against the appellant "*wasn't quite as obvious*" and he pleaded not guilty, but he was convicted by a jury. The judge noted that there were implements at their property being used as part of a "*fraud tool kit*", and two messages to the appellant's phone revealed his individual involvement.

35. Mr Muquit focussed upon the mitigating features identified by the judge. These include: the fact that the case fell in the "*second category of medium culpability*" for fraud; the appellant was considered "*fairly low down the chain of the fraud*"; and was "*used*" by others. I also note the sentencing judge described the appellant as a "*sorry character. He came from Sri Lanka 17 years ago…here is certainly absolutely no evidence of any previous misconduct, no criminal convictions and it is a great shame that after a history of 17 years of hard work he now finds himself in this position"*. It appears that the appellant was not regarded as someone who gained in any significant way relative to the value of the fraud. Indeed, the judge observed that the appellant and the partner were living "*on top of each other*" in a single small room in a "*fairly impecunious environment*".

36. As Mr Muquit submitted, the offence itself was non-violent, limited in temporal scope both in terms of the period offending itself and relative to the period of unblemished good character up to its perpetration. On the other hand, although the appellant was found to be fairly low down the chain of the fraud, he was convicted of individual involvement in it. As Mr Bates emphasised, the fraud involved a significant loss and was part of a wider operation. It was not a victimless crime. This sort of offending causes considerable upset and uses up huge resources that could be better used elsewhere. In addition, the judge found that the appellant and the partner both played an equal part even though he sought to blame her. These, together with the sentencing comments as a whole, are all matters I weigh in the assessment of the public interest when conducting the balancing exercise.

37. I note that the appellant has consistently maintained and continues to maintain his innocence of this offence. He has explained that the partner was duped to assist a friend and she used his phone to access the internet without him being aware of her actions. The appellant has been convicted of the offence of fraud and I do not in any way go behind that conviction. The appellant was clearly convicted and sentenced to 30 months imprisonment, and I must approach the public interest with that firmly in mind, notwithstanding his denial.

Time elapsed since offence committed / conduct during that period / risk of re-offending / rehabilitation

38. After reviewing the relevant authorities, Underhill LJ concluded at [141] of HA (Iraq) that positive evidence of rehabilitation, and thus a reduced risk of re-offending, cannot be excluded from the overall proportionality exercise. Where a tribunal is able to make an assessment that the foreign criminal is unlikely to re-offend, that is a factor which can carry some weight.

39. I appreciate that tribunals should be cautious about their ability to make findings on the risk of re-offending, and will usually be unable to do so with any confidence based on no more than the undertaking of prison courses or mere assertions of reform by the offender or the absence of subsequent offending for what may be a relatively short period. Although I have not been provided with any up to date forensic assessment of the appellant's risk of re-offending, I am satisfied that this is one of those rare cases where I have sufficiently cogent material to confidently make an assessment of this.

40. First, over five years have elapsed since the appellant's conviction and four years have elapsed since his release. During his imprisonment and since his release, it is undisputed that the appellant's conduct and compliance with the law has been exemplary. Indeed, upon his release the appellant was able to persuade his former employer to re-employ him in the position of trust he held before his conviction. This employment continued without incident until the appellant was told by the respondent that as a result of the deportation order he was no longer permitted to work. I bear in mind that much of this period has coincided with the full glaze of deportation proceedings. Mr Bates submitted that it was inevitable that the appellant would stay out of trouble whilst threatened with deportation. The appellant has done more than that – he has done his very best to live an entirely law-abiding, productive and useful life since his conviction.

41. Second, Dr Singh has set out a compelling and detailed account of the impact of the appellant's conviction, subsequent imprisonment and threat of deportation upon him. It has been no less than serious and life-changing. Prior to his imprisonment (when he was in his late 40s) the appellant suffered no mental health concerns. As a consequence of it he became a "*changed person*" who experienced persistent mental and emotional stress of a significant nature and intensity. He developed an adjustment disorder and this progressed to moderate depression – see 15.1 to 15.5 of Dr Singh's report. Having considered the appellant's evidence, including his oral evidence together with this report, I am satisfied that the appellant's conviction and imprisonment with the associated deportation proceedings, have frightened him to such an extent that he seriously considered suicide as the only viable option during the course of his imprisonment. He has been frightened to his very core and this has played a pivotal role in his firm commitment, which I accept, to staying very far from any type of individual or circumstances that might lead to any type of criminal offending.

42. Third, there is forensic evidence to assist the risk assessment process in the form of an OASYS assessment dated 15 May 2017, in which he was assessed by the probation service to be a low risk of re-offending. It is important that the author of the report took into account the appellant's denial of the offence but nonetheless assessed him as motivated to address offending behaviour and concluded that he recognised "*the impact and cost of offending to victim, community/wider society*". Probation officers are skilled at assessing the

rehabilitation generally of 'deniers', as well as the thinking and behaviour skills. The conclusions in the OASYS report were not disputed by Mr Bates. Although this assessment is of some vintage and over three years old, it has not been submitted that it has proven to be inaccurate.

43. Having considered all the evidence holistically, I am satisfied that since May 2017 the appellant's risk has reduced further such that in all the circumstances it can now be described as very low. I am satisfied that it is most unlikely that he will re-offend. Although the 's. 72 presumption' is no longer relevant and has not been relied upon by Mr Bates, for completeness I do not accept the appellant is a danger to society.

Deterrence and public concern

44. As Underhill LK noted in HA (Iraq) at [141] the weight which rehabilitation bears will vary from case to case, but it will rarely be of great weight bearing in mind that the public interest in the deportation of criminals is not based only on the need to protect the public from further offending by the foreign criminal in question but also on wider policy considerations of deterrence and public concern. These are particularly relevant here. The public is entitled to feel particularly concerned about the increasing blight of offences based upon fraudulent activities and dishonesty in the use of bank accounts and financial dealings, particularly when committed by a foreign national. As Mr Bates submitted, other foreign nationals should be given the clear message that if they undertake these type of criminal activities, they face a concrete risk of deportation.

Public interest conclusions

45. There are mitigating features to the appellant's offence as set out in the sentencing comments. The sentencing judge regarded the type of fraud to be in the medium and not the serious category. However, I bear in mind that these are matters that are already reflected in the length of sentence imposed. The sentence of 30 months comfortably exceeds the minimum requirement for automatic deportation. The mandatory presumption is therefore that deportation is in the public interest. As the sentence sits more than half way up the medium offender category, the public interest correspondingly increases – as s. 117C(2) clearly states: "*The more serious the offence committed by a foreign criminal, the greater is the public interest in deportation of the criminal*". There are justifiable public concerns about this type of offending, particularly when committed by a foreign national albeit one with settled status. I also bear in mind wider policy considerations of deterrence and public concern.

46. On the other hand, I am prepared to attach some weight to the appellant's behaviour and rehabilitation in this case. Although the appellant has denied the offence I am clearly satisfied that he presents no more than a very low risk of reoffending.

47. Having considered the various facets of the public interest in this case in the round, I do not consider the public interest can be said to be either generally very strong or generally very weak in this case (as submitted by the respective representatives). I assess the public interest as remaining strong albeit lessened by reason of the offence being a 'one-off' and the very low risk of re-offending.

Wide-ranging exercise

Exception 1

48. Although I have not thus far addressed the requirements of Exception 1, it is helpful to conduct the wide-ranging exercise by reference to the broad subject-matter relevant to each of the three limbs in s. 117(C)(4) at (a) to (c). This is because Exception 1 provides a useful benchmark for the type of private life cases deemed to be capable of breaching Article 8. In addition, how close an applicant gets to meeting these requirements and matters linked to them, will be a relevant factor to consider for the purposes of the wide-ranging exercise required by s. 117C(6).

Residence and private life in the UK

49. The appellant has conceded that the lawful residence requirement in s. 117(4)(a) cannot be met. The appellant has spent a very lengthy period in the UK from April 1998 i.e. some 22 years. This does not constitute a period that can be said to be for 'most of his life' because he spent some 28 years in Sri Lanka. The appellant has spent most of his adult life in the UK but the entirety of his childhood in Sri Lanka.

50. Although the appellant was not granted any form of leave until 2014, the application which led to the grant of ILR had been outstanding since 2002. The grant of ILR must be seen within this context. The respondent has offered very little to explain this delay. The appellant was a failed asylum seeker and overstayer after his appeal was dismissed in 1999 but he remained in the UK from 2002 pending an outstanding claim that was ultimately successful. Although the relevant period of residence between 2002 and 2014 was not lawful in the sense that he had some form of leave, it can be explained – the appellant sought to regularise his immigration status and was entitled to remain in the UK (and therefore could not be lawfully removed and was permitted to work) whilst his application was resolved – see Akinyemi v SSHD [2017] EWCA Civ 236; [2017] 1 WLR 3118 at [42]. However and for the avoidance of doubt, I do not treat the appellant as having been 'lawfully resident' in the UK save for his initial period of residence after claiming asylum, until that was finally determined in December 1999 and the period from the grant of ILR in September 2014. For the reasons explained by Leggatt LJ in CI (Nigeria) at [48] and [51], the appellant's legal status did not change because his 2002 application was pending, and only changed when he was granted ILR.

51. It follows that the majority of the appellant's residence in the UK has not been lawful and can more readily described as 'precarious'. However, I am satisfied that I should not apply the 'little weight' provisions in s. 117B of the 2002 Act in this case - see Rhuppiah v SSHD [2018] UKSC 58; [2018] 1 WLR 5536. Little weight should generally be given to a private life established when a person was present in the UK unlawfully or without a right of permanent residence, absent "*particularly strong features*". I am satisfied that the flexible approach envisaged in Rhuppiah should apply to enable more than limited weight to be given to the appellant's private life on the particular facts of this case. The flexible approach is appropriate in the light of the combination of all these factors: lengthy residence; British identity and language; few meaningful ties to Sri Lanka; friendship / social ties; past employment and future employment opportunities; law-abiding behaviour over an extended period with the exception of the one offence of fraud (as discussed in more detail above); the appellant was granted ILR and became a 'settled' migrant. As to the last factor, I bear in mind that the appellant offended shortly after he became 'settled' in the UK. On the other hand, the decision to grant ILR was delayed for many years with no clear explanation from the respondent as to why.

Social and cultural integration in the UK

52. The appellant spent the majority of his life (some 28 years) in Sri Lanka, where he was born and brought up. The importance of upbringing and education in the formation of a person's social identity is well recognised. It is important to note that the appellant spent no part of his childhood in the UK and only came here as an adult.

53. Relevant social ties obviously include relationships with friends, as well as ties formed through employment or other paid or unpaid work or through participation in communal activities. Mr Bates was correct to point out that although the appellant's employment history is impressive, his friendship and community ties are not and have never been extensive. However, I accept the appellant's evidence that he is a shy and private person who spent much of his time and energy at work. He worked in a position of trust as a customer manager and according to the OASYS at one stage held two jobs. He worked for the same employer for nearly ten years in total. His ties must be seen in that context. The appellant has friendships he relies on for emotional support in the UK. The appellant's friends including Mr Nathan come mainly from the Sri Lankan diaspora. That does not lessen the support they provide. Mr Nathan is a long standing British citizen with firm social and employment ties to the UK. The appellant has lived with others in a house share environment and has lived with a supportive friend since his release from imprisonment in early 2016. That friend did not provide a statement or attend the hearing but I accept the evidence from the appellant and Mr Nathan that he is nonetheless a supportive friend.

54. I note that the appellant has continued to volunteer by assisting the elderly during the pandemic and according to his second witness statement has been spending a lot of time at the temple and assisting in helping the community. I also accept that the appellant has undertaken some voluntary activities as set out in a letter from the Hanuman Community Centre Trust, as accepted by the respondent.

55. Prior to his conviction in 2015 the appellant had undertaken work-related courses in management and health and safety, and had worked for many years in the UK. Indeed, the sentencing judge described him as having prior to his conviction a "*history of 17 years hard work*" and having a "*good history, good character and no convictions*" which culminated in the grant to him of ILR. The appellant's employment with McCall Martin Retail continued after his release from prison and he has demonstrated an employment relationship of nearly 10 years with the same employer. The appellant was also able to take on two jobs at the same time.

56. A person's social identity is not defined solely by such particular relationships but is constituted at a deep level by familiarity with and participation in the shared customs, traditions, practices, beliefs, values, linguistic idioms and other local knowledge which situate a person in a society or social group and generate a sense of belonging. I accept the appellant's evidence that he preferred to speak in English and gradually adjusted over a long period to living a British life which has generated the requisite sense of belonging.

57. Criminal offending and time spent in prison can in principle indicate that the person concerned lacks (legitimate) social and cultural ties in the UK. Thus, a person who leads a criminal lifestyle, has no lawful employment and consorts with criminals or pro-criminal groups can be expected, by reason of those circumstances, to have fewer social relationships and areas of activity that are capable of attracting the protection of 'private life'. Periods of imprisonment represent time spent excluded from society during which the prisoner has little opportunity to develop social and cultural ties and which may weaken or sever previously established ties and make it harder to re-establish them or develop new ties (for example, by finding employment) upon release. In this case upon his release from prison, the appellant was able to resume employment and quickly make firm friends with law abiding citizens. Those friends have supported the appellant with finances and accommodation since he has not been permitted to work.

58. I am satisfied that although the appellant was brought up and educated in Sri Lanka, he spent a lengthy time working in the UK with friends and associates such that prior to his imprisonment he was socially and culturally integrated in the UK and any interruption caused by his imprisonment, has been resumed since his release. Although he has not been in employment this is because he is no longer permitted to work because he faces deportation. The appellant has however regained friendship ties and continues with his community activities.

Obstacles to re-integration to Sri Lanka

59. In Kamara v SSHD [2016] EWCA Civ 813, [2016] 4 WLR 152, Sales LJ provided guidance at [14] in the following terms:

> "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."

60. For the purposes of s. 117C(4)(c) the obstacles to re-integration must reach a very high threshold: the obstacles to re-integration must be 'very significant'.

61. The appellant grew up in Sri Lanka and continues to have friendships with members of the diaspora, and will be familiar with its linguistic, cultural and social mores. As Mr Bates submitted he can make use of his English and employment skills in Sri Lanka. Although his length of time outside of Sri Lanka means that he will face obstacles, if he was fit and well, all other matters being equal, he should be able to overcome these obstacles in order to re-adapt to life in Sri Lanka. It is now necessary to turn to the appellant's mental health concerns in more detail.

62. I accept the diagnosis of Dr Singh and note he specifically addressed the clinical plausibility of the symptoms described – see [16.1] to [16.3] of his report. The appellant has "*experienced a condition of persistent mental and emotional stress typically involving disturbance of sleep and recall of experiences*" since his imprisonment and this has continued, such that "*his current mental health is exerting a negative impact on his life in respect of his social and occupational functioning*" - see [15.2] to [15.8] of Dr Singh's report. He is suffering from a depressive episode of moderate severity. He has been prescribed anti-depressants (Mirtazapine) since May 2017. I also accept that the appellant had counselling and is reported to being less depressed upon its conclusion in January 2018, but awaits further counselling. I therefore accept Mr Muquit's submission that the appellant has mental health vulnerabilities, which compromise his day to day functionality. I particularly note that the appellant experienced suicidal ideation and self-harm whilst imprisoned, but these have not been repeated due in large part to the important role the appellant's support network (which includes his friends, the temple, his GP and counsellor) have played.

63. It is important to assess whether the appellant's mental health will deteriorate, and if so to what extent upon removal to Sri Lanka. Dr Singh was careful to highlight that prognosis depends on a range of variables and the precise likelihood and magnitude of improvement or deterioration is difficult to predict – see [17.3] of his report. However, Dr Singh made it clear that deterioration was likely to follow as a consequence of the appellant's conditions being

untreated or unaddressed, in which case he was said to be at risk of developing "*severe and prolonged distress and depression*", with an increase in the risk of self-harm and suicidal ideations – see [17.5] to [18.2] of his report. At [18.5] Dr Singh concluded that it was "*likely*" that the appellant would experience "*a significant deterioration in his mental health conditions*".

64. Dr Singh has quite properly not been prepared to quantify or give a clear time-line for such eventualities. As Mr Bates submitted, it is for me to conduct that assessment in the light of all the evidence available including the availability of the treatment in Sri Lanka and the appellant's ability to access that treatment. I am satisfied that the appellant will be adequately supported during the course of the removal process and is likely to be given a supply of his medication to last him a while. Having considered all the evidence in the round, within a relatively short period of time in Sri Lanka, the appellant's mental health is likely to significantly worsen (well beyond moderate depression) for several reasons considered cumulatively. It is important to make it clear that I accept that the appellant can potentially receive treatment in Sri Lanka. Section 9 of the *Report of a Home Office fact-finding mission to Sri Lanka* published on 20 January 2020 ('the FFM report') and the CPIN set out a number of challenges within the healthcare system for the treatment of mental health conditions but it is sufficiently clear that the type of treatment identified by Dr Singh is potentially available in Sri Lanka. The appellant is however likely to find this treatment very difficult to *access*.

65. First, the appellant is likely to feel even more anxious, stressed and distressed within a short period of his arrival in Sri Lanka and this is likely to hamper his ability to seek treatment. The appellant has an entrenched subjective fear of the Sri Lankan authorities and the general discrimination shown toward Tamils – see [12.2] and [18.1] of Dr Singh's report. As Mr Bates properly pointed out his subjective fears of serious harm are not well-founded – see J v SSHD [2005] EWCA Civ 629 at [60]. He seems to approach the conditions in Sri Lanka as he left them some 22 years ago rather than in the light of the current country conditions. These are far from perfect as the applicable country guidance on Sri Lanka and the FFM report make clear, but it has been conceded that the appellant is not at current real risk of harm.

66. Nonetheless, the appellant's fears remain genuinely extreme, and have caused and continue to cause him significant distress. That level of distress is likely to increase upon return to Sri Lanka. As Dr Singh noted at [18.3] the appellant has felt safe in the UK and as his mental health deteriorates in Sri Lanka (at least in part due to a perception that he is unsafe), he has a corresponding reduced ability to ask for help.

67. The appellant's more general fears are not entirely without objective foundation. The return process to Sri Lanka and the likely approach of the authorities is described in GJ and more recently in a *Report of a Home Office fact-finding mission to Sri Lanka published on 20 January 2020* ('the FFM report') at

[4.1.1] to [4.1.3] and [8.1.3]. For the avoidance of doubt, I entirely accept that this appellant's background history is such that the authorities will not consider him to be of adverse interest. However, it is likely that he will be questioned at the airport as a failed asylum seeker. Even though this is likely to lead to his release, the appellant's fears are such that he will continue to be very distressed about being targeted and followed. Those fears are likely to be interlinked with genuine concern and feelings of anxiety as a result of the likely discrimination he will face. I accept, as Mr Nathan highlighted in his evidence, that the appellant is likely to find life difficult and experience discrimination by reason of being from the 'Up-country' Tamil community, who do not speak Sinhalese – see the discrimination described in the FFM report at [2.1.1] and the CPIN at [3.1.1]. The latter reference makes it clear that 'Up-country' Tamils face direct and indirect discrimination including lack of access to health care.

68. Second, the appellant has not a single friend or family member to turn to in Sri Lanka, a society where family support plays a particularly important role (FFM report at [9.1.7]). As Mr Nathan confirmed, the appellant has grown accustomed to turning to his friends in the UK to accompany him to appointments. The appellant has claimed that he has lost all touch with anyone he once knew in Sri Lanka and knows of no family or friends there to turn to for support. I accept this evidence. After all he has been away from Sri Lanka for a very lengthy period on any view and during that time there have been fundamental changes in Sri Lanka. As a consequence of the civil war many have been displaced or died. He has lost touch with his parents who are presumed to be dead.

69. Third, the appellant will find it very difficult to make the contacts and ties to build up a support system to assist him to access the necessary treatment he requires. Whereas in the UK the appellant relies upon the Temple and his friends, this will be much more challenging to do in Sri Lanka. As the CPIN states at [8.1.2]:

> "*Mental illness is not widely discussed in Sri Lankan society and carries stigma at the community level. This, in turn, deters victims from revealing and seeking treatment for mental illness.*"

70. Fourth, the appellant's confidence is at rock bottom since he has not been able to work. He has described in very clear terms his feelings of inadequacy and hopelessness. This will not assist him in seeking to access the mental health treatment he requires in the absence of a support system, particularly at a time when the pandemic has led to the closure of public health clinics (see section 10 of the CPIN). I note that there are community mental health nurses and helplines but it is unlikely that the appellant will be in a position to access these, given his particular circumstances.

71. The evidence demonstrates that the appellant would be unable to *access* the mental health facilities or community assistance he requires. When assessing the extent of the obstacles likely to be faced by the appellant it is important to

consider the matter holistically. Mr Bates submitted that the appellant would be able to survive on remittances provided by friends from the UK and in any event he would be in a good position to obtain employment. He has a good work record and has gained important skills including his use of English. For the reasons I have set out the likely deterioration in the appellant's mental health together with the discrimination he is likely to encounter as an 'Up-country' Tamil are such that he is unlikely to be able to obtain employment in Sri Lanka. Mr Nathan confirmed that any remittances would be very limited. In any event this would not assist in accessing the requisite treatment for the reasons I have outlined.

72. The appellant's vulnerability and mental health presentation in the UK takes on an entirely different character in Sri Lanka for the reasons I set out above. I am satisfied that because of the peculiarities of the appellant's background, beliefs and current circumstances, within a reasonable period of time upon return to Sri Lanka, he would not be able to access the appropriate treatment and support he requires to obviate a likelihood of developing severe and prolonged distress and depression. This in turn will lead to an exacerbation of his current symptoms and impact adversely upon his day to day functioning such that he will face very significant obstacles in being able to operate on a day-to-day basis in Sri Lankan society or to build up within a reasonable time a variety of human relationships. I am therefore satisfied that the evidence relied upon by the appellant demonstrates obstacles to reintegration in Sri Lanka that are 'very significant'.

Balancing exercise

73. For the reasons I have provided the public interest in favour of the appellant's deportation remains strong but tempered by his offence being a 'one-off' and his very low risk of re-offending. However, this is just one factor which has to be weighed in the balance, which must also include the other criteria which emerge from the Strasbourg authorities. I must balance public interest against the nature and extent of the appellant's private life and the circumstances said to be very compelling in his case.

74. The appellant's case would cause no rupture to family relationships and comes nowhere close to meeting Exception 2. The appellant does not meet the first limb of Exception 1, albeit his residence has been very lengthy. He meets the second and third limbs of Exception 1 and I am prepared to attach weight to his private life in the UK for the reasons I have provided.

75. The appellant must meet the extremely demanding test in s. 117C(6). As Jackson LJ explained in NA (Pakistan) at [32], discussing the case of a 'medium offender':

> "… if all he could advance in support of his article 8 claim was a 'near miss' case in which he fell short of bringing himself within either Exception 1 or Exception 2, it would not be possible to say that he had shown that there

> were 'very compelling circumstances, over and above those described in Exceptions 1 and 2'. He would need to have a far stronger case than that by reference to the interests protected by article 8 to bring himself within that fall back protection. But again, in principle there may be cases in which such an offender can say that features of his case of a kind described in Exceptions 1 and 2 have such great force for article 8 purposes that they do constitute such very compelling circumstances, whether taken by themselves or in conjunction with other factors relevant to article 8 but not falling within the factors described in Exceptions 1 and 2. The decision maker, be it the Secretary of State or a tribunal, must look at all the matters relied upon collectively, in order to determine whether they are sufficiently compelling to outweigh the high public interest in deportation."

76. The appellant cannot meet the Exceptions in s. 117C and that is a 'con' of considerable importance in the case of a 'medium offender'. His private life cannot be described as very strong in recent times, albeit it can be described as strong in the light of the matters I have discussed above in relation to the first two limbs of Exception 1. The appellant's private life has narrowed with the onset of mental health difficulties from the time of his imprisonment. Prior to this I am satisfied, as he explained to me, that his private life was very strong and he has the potential to return to this position once his mental health condition is properly treated in the manner explained by Dr Singh. On the other hand there are matters, supported by cogent evidence, which constitute 'very compelling circumstances', when viewed collectively:

    (i) the appellant's lengthy residence in the UK, where he has become socially and culturally integrated;

    (ii) he has no friendship or family ties in Sri Lanka and his mental health is likely to deteriorate because in the absence of a support system and in the light of his intense subjective fears he is unlikely to be able to *access* the requisite treatment he requires;

    (iii) this in turn means that he is likely to develop severe and prolonged depression, with an intensification of the symptoms he already finds very difficult to cope with such as persistent and emotional stress, disturbance of sleep, constant recall of experiences, with the consequence that it is unlikely that he will be able to develop any type of support system or secure employment in Sri Lanka;

    (iv) the likely deterioration in his mental health is likely to give rise to very significant obstacles to his re-integration;

    (v) and in addition cause him considerable mental suffering and anguish (albeit not at the threshold required to meet Article 3) particularly in the light of his suffering as a consequence of losing every member of his family and his genuinely held but not well-founded entrenched fear of the Sri Lankan authorities;

(vi) he is likely to suffer discrimination as an 'Up-country Tamil' without the respite that membership of a family or community can bring in such circumstances;

(vii) by contrast the appellant's prognosis in the UK is significantly better, where he has the support system to be able to *access* the requisite treatment in order to return to employment and financial independence.

77. Having considered all the relevant factors on both sides of the scales, including in particular the strong public interest in deportation, I am satisfied that the appellant has been able to identify features of his case of a kind described in and linked to Exception 1, which have such great force for Article 8 purposes that they constitute 'very compelling circumstances' which are sufficiently compelling to outweigh the strong public interest in deportation, such that the high test required by s. 117C(6) is met.

Decision

78. I allow the appeal on human rights grounds (Article 8, ECHR).

Signed: *UTJ Melanie Plimmer*
Upper Tribunal Judge Plimmer

Dated: 1 December 2020