**Upper Tribunal**
**(Immigration and Asylum Chamber)** **Appeal Number: HU/01232/2020**

**THE IMMIGRATION ACTS**

| **Heard at Birmingham Justice Centre** | **Decision & Reasons Promulgated** |
|---|---|
| **On the 14th September 2021** | **On the 13th October 2021** |

**Before**

**UPPER TRIBUNAL JUDGE MANDALIA**

**Between**

**THE SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Appellant

**and**

**SSA**
**(Anonymity Direction Made)**

Respondent

**Representation:**
For the Appellant: Mr C Bates, Senior Home Office Presenting Office
For the Respondent: Mr P Blackwood, instructed Direct Access

**DECISION AND REASONS**

1. An anonymity direction was made by the First-tier Tribunal. As this appeal concerns the best interests of a minor child, it is appropriate to make an anonymity direction. 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 other member of his family. This direction applies both to the appellant and to the respondent.

2. The appellant in the appeal before me is the Secretary of State for the Home Department ("SSHD") and the respondent to this appeal is SSA. However, for ease of reference, in the course of this decision I adopt the parties' status as it was before the FtT. I refer to SSA as the appellant, and the SSHD as the respondent.

3. The appellant is a national of Iraq. He arrived in the UK in May 2009. A claim for international protection was refused by the respondent but the appellant was granted discretionary leave to remain until 10th August 2010. He made an in-time application for further leave to remain which was refused by the respondent on 14th July 2011. His subsequent immigration and offending history are set out at paragraphs [3] to [6] of the decision of First-tier Tribunal Judge Shanahan:

> "3. On 18th July 2011, he was convicted at St Albans Crown Court of wounding with intent to do grievous bodily harm and having a bladed article. He was sentenced on 1st September 2011 to four and a half years imprisonment. The respondent withdrew the further leave to remain decision and served a liability to deportation notice on 9th December 2011. He was also served with a section 72 notice on 20th December 2011. His representatives made submissions in relation to his asylum and human rights claim and he was interviewed on 11th June 2013 in connection with this claim. However, on 17th July 2013, his asylum and human rights claims were refused and the Deportation Order was signed.
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> 4. The appellant lodged an appeal against these decisions but this was dismissed by a panel decision promulgated on 21st February 2014.
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> 5. The respondent detained the appellant under the Immigration Acts when his prison sentence was completed and he was released from this detention on 18th December 2013.
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> 6. Between 2016 and 2019, the appellant made a number of further applications to remain in the UK all of which were rejected under paragraph 353 of the Immigration Rules with no right of appeal. However following a Pre-Action Protocol letter on 31st October 2019 the respondent agreed to reconsider the claims and issued the decision dated 8th January 2020 again refusing the claims but providing for a right of appeal. This decision forms the basis for this appeal."

4. In her decision of 8th January 2020, the respondent noted the appellant is the father of LSA who was born on 7th February 2015 and is a British citizen. The respondent accepted the appellant has a genuine and subsisting relationship with his daughter

and that it would be unduly harsh for his daughter to live with the appellant in Iraq. However the respondent did not accept that it would be unduly harsh for LSA to remain in the UK without the appellant. The respondent noted that there is a 'Child Arrangement Order' in place and that LSA lives with her mother, NAM, who is her primary carer. The respondent concluded the deportation of the appellant would not result in a decrease in the level of care that LSA receives. The respondent concluded that the public interest in deportation of the appellant outweighs his Article 8 right to a private and family life.

The appeal before me

5. The respondent claims Judge Shanahan fails to give adequate reasons for her findings and misdirects herself as to the law. The respondent claims Judge Shanahan refers, at [37], to NAM lacking alternative support such that there is a risk she would struggle to manage her daughter's ongoing care needs in the absence of the appellant, but in reaching her conclusion, Judge Shanahan failed to consider how NAM coped when the appellant was in prison. Furthermore, although the Independent Social Worker concluded that if the appellant is deported, the child would experience great distress and trauma which would cause harm to her emotional development, her behavioural development and her overall development', Judge Shanahan fails to have adequate regard to the fact that it is unclear how the social worker reached that conclusion. The respondent claims Judge Shanahan also failed to consider the support that would be available to NAM and LSA from social services, and Judge Shanahan failed to make any finding regarding the availability of support from the child's maternal grandmother, PY. The respondent claims Judge Shanahan fails to give adequate reasons for her conclusion, at [50], that it would be unduly harsh for the appellant's daughter if the appellant is deported, and that because of the child's circumstances, these also amount to very compelling circumstances. It is said that Judge Shanahan failed to describe the role played by the appellant in his daughter's life, and that is material because the appellant does not live with his daughter and NAM has had to cope

without support from the appellant for long periods, both when the appellant was in prison and when he was denied contact by NAM because he had formed relationships with other women.

6. The respondent claims that in reaching her decision, Judge Shanahan failed to have due regard to the decision of the Court of Appeal in HA (Iraq) v SSHD [2020] EWCA Civ 1176 and the need to identify a level of harshness above that which would ordinarily be experienced by a child if a parent were deported. In any event, the respondent claims that the appellant was required to establish that there are very compelling circumstances over and above whether the effect of the appellant's deportation on the child would be unduly harsh. The respondent claims that at paragraph [50], Judge Shanahan found that it would be unduly harsh for the appellant's daughter to remain in the UK without the appellant and then simply states that "*..because of the child's circumstances, I consider that these also amount to very compelling circumstances.*", without explaining how the high threshold of "very compelling circumstances over and above", is said to have been met. Finally, the respondent claims that in reaching her decision, Judge Shanahan placed undue weight on rehabilitation and failed to have proper regard to the fact that the significance of rehabilitation is limited by the fact that the risk of reoffending, is only one facet of the public interest.

7. Permission to appeal was granted by First-tier Tribunal Judge O'Garro on 23rd December 2020.

8. Before me, Mr Bates properly accepts that the respondent's grounds are incorrect in their assertion that the Judge failed to consider how NAM had been able to care for LSA whilst the appellant was in prison. LAS was born after the appellant's release from detention.

9. Mr Bates submits Judge Shanahan made no findings regarding the evidence of NAM's mother, PY and the support she might be able to provide. He submits that although the appellant's case is summarised at paragraph [12], Judge Shanahan

does not address the claim that PY has her own health difficulties and is unable to provide the necessary support for NAM and LSA. Mr Bates submits there is equally no consideration or finding regarding the availability of support from social services and the role that they might play in the care required by LSA. He refers to the report of the independent social worker, who noted, at [4.18] of his report that pending the outcome of an autism assessment, LSA's parents have been advised to apply for an Education, Health and Care Plan, which would involve a formal assessment of all aspects of her additional needs and how they can be met until she achieves the age of 25, albeit reviewed annually. He submits the expert acknowledges that a support package from Social Services may be necessary whether or not the appellant is in the UK, and Judge Shanahan did not consider the support that could be put in place to assist NAM in the absence of the appellant given the likelihood of a need for support in any event.

10. Mr Bates submits that at paragraph [37], Judge Shanahan refers to the conclusion of the independent social worker that if the appellant is deported, the child would experience great distress and trauma which would cause harm to her emotional development, her behavioural development and her overall development. He submits that overlooks the fact that LSA presents with difficulties even with the appellant in the UK and that a support package would be available to NAM and LSA. Mr Bates submits the failure to consider such relevant factors is material to the outcome of the appeal because of the particularly high threshold that is applicable. He submits Judge Shanahan erred in concluding the factors referred to in her decision are sufficient to establish that it would be unduly harsh for the child to remain in the UK without the appellant and that in turn, has infected her consideration of whether there very compelling reasons over and above.

11. Mr Bates accepts that at paragraph [44], Judge Shanahan acknowledges the seriousness of the offence. However, he submits, at [45], she gives credit to the appellant for the fact that he immediately took responsibility and pleaded guilty and showed genuine remorse. However, the appellant had already received credit

for those factors when the 4½ year sentence of imprisonment was imposed, and he should not receive credit for those factors again. The absence of those factors in the sentencing exercise would have resulted in a significantly longer period of imprisonment.

12. Mr Bates submits Judge Shanahan failed to apply the high threshold applicable to establish that the deportation of the appellant is outweighed by very compelling circumstances over and above the fact that the effect of the appellant's deportation on LSA would be unduly harsh. He submits that although Judge Shanahan was entitled to have regard to matters such as rehabilitation, the Court of Appeal confirmed in HA (Iraq) that rehabilitation will rarely be something that carries "great weight".

13. Finally Mr Bates submits that in reaching her decision, Judge Shanahan referred at [49], to factors such as the appellant's residence in the UK since May 2009, his age, his ability to speak English fluently and that he has, as far as possible, sought to integrate into life in the UK apart from the conviction. Mr Bates submits that is to ignore the fact that the appellant is unable to satisfy the requirements set out in paragraph 276ADE of the immigration rules and in any event, when considering the public interest, factors such as the appellant's ability to speak English are, at their highest, neutral in any balancing exercise. Mr Bates submits Judge Shanahan gives undue weight to factors without providing adequate reasons and attaches weight to irrelevant factors at paragraph [49]. He submits that reading the decision as a whole, the Tribunal cannot be sure that Judge Shanahan would have reached the same decision, if the proper tests were applied.

14. On behalf of the appellant, Mr Blackwood adopted his skeleton argument dated 13th September 2021. The appellant urges restraint and submits the Upper Tribunal in the exercise of the powers conferred upon it by the Tribunals, Courts and Enforcement Act 2007, is not entitled to find an error of law or seek to remake the decision of the FtT simply because it does not agree with it, or because it thinks it can produce a better decision. It forms no part of the Upper Tribunal's function

to seek to restrict the range of reasonable views which may be reached by Judges of the FtT in the judgements they must make, by substituting the views of the Upper Tribunal as to the outcome. The Tribunal does not have a broad discretion to find an error of law where no such error exists. The appellant submits Judge Shanahan gave adequate reasons for her findings and directed herself properly with regard to all material aspects of the law. The appellant submits the respondent's grounds of appeal demonstrate no more than a mere disagreement with the decision of Judge Shanahan.

15. Before me, Mr Blackwood submits that at paragraph [49], Judge Shanahan simply refers to factors that are relevant to the public interest considerations where a Tribunal is required to determine whether a decision breaches a person's right to respect for private and family life under Article 8 and clearly demonstrate that the Judge had proper regard to the public interest considerations applicable in all cases. He submits there is nothing said in that paragraph, that demonstrates Judge Shanahan attached any particular weight to those factors one way or another. He submits that the decision, read as a whole discloses an adequate basis for allowing the appeal and it was not necessary for Judge Shanahan to address all the evidence before the Tribunal and each of the competing claims made, provided the gist of the reasons are clear. Here, the Judge gave adequate reasons for the conclusion that she reached. He submits Judge Shanahan directed herself to the relevant authorities and in reaching her decision, she approached her task having proper regard to the relevant legislation and authorities, having repeatedly directed herself to the significant weight to be attached to the public interest in light of the appellant's conviction and the sentence imposed. He refers to paragraphs [140] and [141] of the decision of the Court of Appeal in HA (Iraq) and submits that rehabilitation is a relevant consideration, and one that cannot be excluded from the overall consideration, albeit not a factor that will usually carry great weight. Here, Judge Shanahan was able to consider the risk assessment by reference to the views expressed in the OASys report, taken together with the appellant's conduct during the significant passage of time since his release from immigration detention at the

end of 2013, and the hearing before the FtT. He submits Judge Shanahan was entitled to have regard to the risk assessment and rehabilitation and the weight to be attached to those as relevant factors was in the end, a matter for the Judge.

16. Mr Blackwood submits the respondent's claim that Judge Shanahan failed to consider the support that would be available to NAM and LSA from social services, and the claim Judge Shanahan failed to make any finding regarding the availability of support from the child's maternal grandmother, PY, is to miss the point. He refers to paragraphs [4.22] and [4.23] of the report of the independent social worker in particular, and the conclusion set out at paragraph [5.3] of the report. The independent social worker concluded that in the event that the appellant is removed from the UK, LSA would experience great distress and trauma, which would cause harm to her emotional development. He expressed the opinion that this in turn would impact on her behavioural development and lead to increased outbursts and aggressive behaviour. It could also cause regression in her overall development. The expert provided an opinion that there is a high likelihood that a deterioration in her emotional and behavioural well-being would undermine her situation both at home and at school. The expert noted NAM lacks any alternative support network locally, and there is a risk that without the appellant, she could struggle to manage the ongoing care needs of her daughter which would lead to the intervention of children services. The expert expressed the opinion that in terms of schooling, the outcome would be that LS would suffer harm to her educational development, but a greater cause for concern is that a mainstream school would struggle to continue to support her aggressive behaviour and outbursts, and she may require some form of education for children with additional needs. It is the removal of the appellant, that would be particularly detrimental to the child and the catalyst for additional involvement by social services.

17. Mr Blackwood submits that in the end the first question for the Tribunal was whether the effect of the appellant's deportation on his daughter would be unduly harsh. The Judge attached due weight to the conclusions of the expert, and it was

open to Judge Shanahan to conclude, at [40], that having considered all the evidence about the nature of the relationship between the appellant and his daughter, and her individual needs and circumstances, the appellant's deportation would result in unduly harsh consequences that are not in the best interests of LSA. Mr Blackwood submits that having reached that conclusion, Judge Shanahan properly went on to consider whether there are very compelling circumstances over and above the unduly harsh finding. He submits Judge Shanahan had proper regard to relevant factors and reached a decision that was open to the Tribunal on the evidence before it.

Discussion

18. The Immigration Rules set out the approach to be followed by the Secretary of State where a foreign criminal liable to deportation claims that the deportation would be contrary to the United Kingdom's obligations under Article 8 ECHR. Insofar as is relevant here, paragraph 398 of the Immigration Rules states:

> "398. Where a person claims that their deportation would be contrary to the UK's obligations under Article 8 of the Human Rights Convention, and
>
> (a) the deportation of the person from the UK is conducive to the public good and in the public interest because they have been convicted of an offence for which they have been sentenced to a period of imprisonment of at least 4 years;
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> …
>
> the Secretary of State in assessing that claim will consider whether paragraph 399 or 399A applies and, if it does not, the public interest in deportation will only be outweighed by other factors where there are very compelling circumstances over and above those described in paragraphs 399 and 399A"

19. Section 117A of the 2002 Act in Part 5A provides that, when 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, and, as a result, would be unlawful under section 6 of the HRA 1998, the court, in considering the public interest question, must (in particular) have regard to the considerations listed in section 117B and, additionally, in cases concerning the deportation of foreign criminals, to the considerations listed in section 117C.

20. I reject the claims made by the respondent that Judge Shanahan fails to give adequate reasons for her findings and misdirects herself as to the law. Applying paragraph 398 of the immigration rules and s117C(6) of the 2002 Act, the public interest required the appellant's deportation unless there are very compelling circumstances over and above those described in Exceptions 1 and 2 of the 2002 Act. Exception 2 applies if the appellant has a genuine and subsisting relationship with a qualifying child and the effect of the appellant's deportation on the child would be unduly harsh. The issue in the present case was whether the decision to refuse the human rights claim made by the appellant was a justified interference with the right to respect for family life, in the context of the appellant's conviction and the fact that he is a 'foreign criminal' as defined in s117D(2) of the 2002 Act. The core issue to be determined was whether there are various compelling circumstances over and above those described in Exception 2.

21. In KO (Nigeria) -v- SSHD [2018] UKSC 53, Lord Carnwath considered the meaning of the expression "unduly harsh". He observed, at paragraph 23:

> "The expression "unduly harsh" seems clearly intended to introduce a higher hurdle than that of "reasonableness" under section 117B(6), taking account of the public interest in the deportation of foreign criminals. Further the word "unduly" implies an element of comparison. It assumes that there is a "due" level of "harshness", that is a level which may be acceptable or justifiable in the relevant context. "Unduly" implies something going beyond that level. The relevant context is that set by section 117C(1), that is the public interest in the deportation of foreign criminals. One is looking for a degree of harshness going beyond what would necessarily be involved for any child faced with the deportation of a parent. What it does not require in my view (and subject to the discussion of the cases in the next section) is a balancing of relative levels of severity of the parent's offence, other than is inherent in the distinction drawn by the section itself by reference to length of sentence. Nor (contrary to the view of the Court of Appeal in IT (Jamaica) v Secretary of State for the Home Department [2017] 1 WLR 240, paras 55 and 64) can it be equated with a requirement to show "very compelling reasons". That would be in effect to replicate the additional test applied by section 117C(6) with respect to sentences of four years or more.".

22. In NA (Pakistan) -v- SSHD [2016] EWCA Civ 662, as to the meaning of "very compelling circumstances" over and above those described in Exceptions 1 and 2, Lord Justice Jackson said:

> "28. … The new para. 398 uses the same language as section 117C(6) . It refers to "very compelling circumstances, over and above those described in paragraphs 399 and 399A." Paragraphs 399 and 399A of the 2014 rules refer to the same subject matter as Exceptions 1 and 2 in section 117C , but they do so in greater detail.
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> 29. In our view, the reasoning of the Court of Appeal in JZ (Zambia) applies to those provisions. The phrase used in section 117C(6), in para. 398 of the 2014 rules and which we have held is to be read into section 117C(3) does not mean that a foreign criminal facing deportation is altogether disentitled from seeking to rely on matters falling within the scope of the circumstances described in Exceptions 1 and 2 when seeking to contend that "there are very compelling circumstances, over and above those described in Exceptions 1 and 2". As we have indicated above, 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 2014 rules), or features falling outside the circumstances described in those Exceptions and those paragraphs, which made his claim based on Article 8 especially strong.

23. The appellant's case before the First-tier Tribunal is summarised at paragraphs [7] to [12] of the decision of Judge Shanahan. Referring to the appellant's relationship with his daughter, Judge Shanahan noted:

> "11. LSA is now aged five years old and suffers from a number of significant health problems. She is deaf in both ears, her development is significantly delayed, she has behavioural difficulties and she has had an assessment for autism. At the date of the hearing, the results had not been received but were expected imminently. It is anticipated that she will be given a formal diagnosis.
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> 12. NAM relies on the appellant for a substantial amount of help with their daughter and would find it impossible to manage and cope without this assistance. LSA is very attached to her father and it would be very difficult for her to understand why he was no longer physically present in her life. NAM would move to Iraq if he is deported and would face significant difficulties in caring for her daughter alone. Although she is in contact with her mother (PY), she has her own health difficulties and is unable to provide the necessary support for NAM and LSA. In short if the appellant is deported NAM and LSA would face unduly harsh circumstances in the UK which would amount to very compelling circumstances."

24. Judge Shanahan heard evidence from the appellant, and NAM. Her findings and conclusions are set out at paragraphs [18] to [51] of the decision. At paragraph [20] she noted that she must attach great weight to the public interest, as set out in primary legislation. At paragraphs [22] to [26], she referred to the appellant's conviction and the sentencing remarks of His Honour Judge Plumstead. At paragraph [29] of her decision, Judge Shanahan referred to the immigration rules and s117C of the Nationality, Immigration and Asylum Act 2002. She noted that as

the appellant has been sentenced to a period of imprisonment of at least four years, the public interest requires his deportation unless there are very compelling circumstances over those described in Exceptions 1 and 2 of s117C. At paragraph [31], she states that she started with a consideration of whether the effect of the appellant's deportation on his child would be unduly harsh. She noted, at [32], that the respondent accepts the appellant has a genuine and subsisting parental relationship with his daughter and accepts that it would be unduly harsh for the child to go with the appellant to Iraq. The initial focus was upon whether it would be unduly harsh for the child to remain in the UK if the appellant is deported.

25. At paragraph [35] of her decision, Judge Shanahan refers to the health of LSA and at paragraphs [36] and [37], she refers to the report of the independent social worker and his conclusions. I have considered the conclusions set out at paragraphs [5.1] to [5.5] of the report of the independent social worker and I am quite satisfied that Judge Shanahan accurately refers to the conclusions expressed by the expert. At paragraph [36] Judge Shanahan noted that she was prepared to attach weight to the conclusions expressed. In reaching her decision, Judge Shanahan clearly had regard to the evidence before the Tribunal regarding the health of the appellant's daughter and the impact that his deportation is likely to have upon her. The evidence before the Tribunal was that the deportation of the appellant would cause the appellant's daughter great distress and trauma and impact upon her emotional, behavioural and overall development. The expert noted the risk of NAM struggling to manage her daughter's ongoing care needs and the possibility that that might lead to the intervention of children's services. The expert noted that the circumstances will also have an adverse impact upon the child's education and her mainstream school would struggle to continue to support her aggressive behaviour and outbursts leading to some form of educational provision for children with additional needs.

26. The evidence before the Tribunal was that PY, lives in Bedfordshire. NAM and LSA live in Mansfield, Nottinghamshire. At paragraph [9] of her statement, PY said

that she personally, would not be able to help NAM if the appellant is no longer in the UK. She confirmed that that is because of her own health. She is registered disabled and has osteoarthritis and brittle bone disease. She said that she also suffers from panic attacks, is bipolar, and it would be impossible for her to be involved in helping NAM with LSA. The independent social worker had interviewed PY when preparing his report and noted that she visits her daughter when she can. He also noted her ill health. The evidence of where PY lives, and her health was not an issue. At paragraph [38], Judge Shanahan makes it clear that she had considered the evidence from the appellant, NAM and PY, and at paragraph [39], she noted the evidence of NAM that her mother is unable to help because of her own physical and mental health and there are no other family or friends who could fulfil the appellant's role or provide any help.

27. As Underhill LJ said, at [56], in HA & others v SSHD [2020] EWCA Civ 1176, the test under section 117C(5) does indeed require an appellant to establish a degree of harshness going beyond a threshold "acceptable" level. However, how a child will be affected by a parent's deportation will depend on an almost infinitely variable range of circumstances and it is not possible to identify a baseline of "ordinariness". Here, Judge Shanahan had in mind throughout, all the evidence that was before the Tribunal including the evidence set out in the report of the independent social worker regarding the impact of the absence of the appellant, upon the child.

28. At paragraphs [40] and [41] Judge Shanahan said:

> "40. Having considered all the evidence about the nature of the relationship between the appellant and his daughter, her individual needs and circumstances and the impact on her mother I find his deportation would result in unduly harsh consequences which are not in the best interests of this particular child.
>
> 41. However this of itself is not sufficient to allow the appellant's appeal and I must now consider, as required by paragraph 399A and section 117C(6) whether there are very compelling circumstances over and above the unduly harsh finding.

29. At paragraph [44], Judge Shanahan referred to the appellant's conviction of wounding with intent to do grievous bodily harm and concluded that such an

offence is so serious that deportation is entirely justified and as such, weighs heavily against the appellant. At paragraph [45] she said:

> "However in conducting the balancing exercise I have taken account of the fact the appellant immediately took responsibility and pleaded guilty at the earliest time and that the Sentencing Judge and Pre-sentence Report refer to his genuine remorse. I consider this weighs in the balance for the appellant."

30. I reject the claim made by the respondent that Judge Shanahan had undue regard to the question of rehabilitation. In HA (Iraq), the Court of Appeal confirmed that rehabilitation is not generally a factor carrying great weight, but it is a consideration in striking the relevant proportionality balance. Underhill LJ said:

> "141. What those authorities seem to me to establish is that the fact that a potential deportee has shown positive evidence of rehabilitation, and thus of a reduced risk of re-offending, cannot be excluded from the overall proportionality exercise. The authorities say so, and it must be right in principle in view of the holistic nature of that 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 in the balance when considering very compelling circumstances. The weight which it will bear will vary from case to case, but it will rarely be of great weight bearing in mind that, as Moore-Bick LJ says in *Danso* , 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. I would add that tribunals will properly 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 will typically be a relatively short period."

31. At paragraph [46] Judge Shanahan states that she has taken into account the fact the appellant has no prior convictions and no convictions since. She also referred to the OASys report which stated that the appellant was initially assessed as a "medium" risk to the public and that by showing compliance and actively engaging with his sentence plan, the appellant has lowered the risk of harm to the public although that would not be proven until his release. At paragraph [47], Judge Shanahan noted the appellant had been released from immigration detention at the end of 2013 and there has been no further offending. She noted. At [48], that whilst serving his sentence the appellant participated in education and other activities on a voluntary basis. She concluded that overall, it appears the appellant has taken a

number of steps to rehabilitate himself and that having been back in the community for seven years, he is of very low risk of offending or causing harm to the public. Judge Shanahan was on the evidence before her, able to make an assessment regarding the risk posed by the appellant and whether he is likely to re-offend. That was a factor which can carry some weight in the balance when considering very compelling circumstances. The weight which it will bear will vary from case to case, but it will rarely be of great weight. There is nothing in the decision that suggests Judge Shanahan gave undue weight to her assessment of the risk posed by the appellant. At paragraphs [49] to [51], she concluded:

> "49. I have considered the appellant has been resident in the UK since May 2009, now over 11 years. He was 16 years old when he arrived and is now 27 years old. He speaks fluent English and has as far as possible sought to integrate into life in the UK, apart from the conviction. His main focus is his daughter and he has said if allowed to remain it would be his intention to work and support her.
>
> 50. I have found that it would be unduly harsh for the appellant's daughter if he is deported and because of the child's circumstances, I consider these also amount to very compelling circumstances.
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> 51. Therefore considering all the evidence and the above factors I am satisfied that, despite the seriousness of the offence in 2011, there are very compelling circumstances over and above those mentioned in the exceptions which just outweigh the public interest in the appellant's deportation. Accordingly he meets the requirements of the immigration rules and as such has demonstrated that his article 8 rights and those of his daughter would be breached by his deportation from the United Kingdom."

32. I reject the claim that at paragraph [49] Judge Shanahan gave undue weight to the fact that the appellant has been resident in the UK since May 2009 and that he speaks English fluently. There is nothing said in paragraph [49] that demonstrates that Judge Shanahan considered the factors referred to, as being anything more than neutral. They are however factors that the Judge was entitled to have regard to in the balance.

33. Reading the decision as a whole I am quite satisfied that Judge Shanahan properly directed herself to the strong public interest in the deportation of foreign offenders who commit serious offences but found that on the particular facts, the strong public interest is outweighed for the reasons set out in her decision. In reaching her decision Judge Shanahan was particularly concerned about the impact upon the

appellant's child who is a British citizen and who herself has complex needs. In my judgment, in reaching her decision, the judge clearly applied the correct tests. Where a judge applies the correct test, and that results in an arguably generous conclusion, it does not mean that it was erroneous in law.

34. The assessment of such a claim is always a highly fact sensitive task. The FtT judge was required to consider the evidence as a whole and she plainly did so, giving adequate reasons for her decision. The findings and conclusions reached by the judge are neither irrational nor unreasonable. The decision was one that was open to the judge on the evidence before her and the findings made.

35. It follows that I dismiss the appeal

Decision:

36. The appeal is dismissed and the decision of First-tier Tribunal Judge Shanahan, stands.

Signed *V. Mandalia* Date 16th September 2021

**Upper Tribunal Judge Mandalia**