Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: HU/03027/2015 V

THE IMMIGRATION ACTS

Heard at Field House by CVP	**Decision & Reasons Promulgated**
On 30 June 2021	**On 22 November 2021**

Before

UPPER TRIBUNAL JUDGE PITT
UPPER TRIBUNAL JUDGE BLUM

Between

ABIODUN CHRISTOPHER JUBA
(ANONYMITY ORDER NOT MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellant: Mr M Westgate QC and Ms M Cohen, instructed by Wilson Solicitors LLP
For the Respondent: Mr S Kovats QC, instructed by the Government Legal Department

DECISION AND REASONS

1. This decision is the remaking of Mr Juba's appeal against the respondent's decision served on 3 March 2015 which refused the appellant's Article 8 ECHR claim made in the context of deportation proceedings. This remaking follows on from our error of law decision issued on 5 March 2021.

2. The parties were in agreement that our task was to assess whether the appellant could show very compelling circumstances over and above those described in Exceptions 1 and 2 of Section 117C of the Nationality, Immigration and Asylum Act 2002 (the 2002 Act).

Background

3. The appellant was born in Nigeria on 17 December 1987. He is now 33 years' old.

4. The appellant came to the UK with his mother on 24 October 1989 when he was 1 year and 10 months' old. Having come to the UK on a visit visa, the appellant's mother overstayed and the family remained here for an extensive period of time without leave. However, on 8 October 2009, the appellant, his mother and his sister, Adetoun, were granted indefinite leave to remain (ILR).

5. The appellant began a relationship with a British national, Ms Sinnita Proud, in 2008. On 2 June 2009 the couple had a daughter, Kyah. The appellant lived with Ms Proud and their daughter until 2013.

6. The appellant began committing criminal offences in 2003 when he received a warning for taking a conveyance without authority. On 12 April 2005 he received a caution for possession of Class C drugs. On 25 April 2006 he was convicted of attempted robbery for which he was given a community service order of 180 hours and ordered to pay £50 compensation. Further convictions followed, mainly for possession of cannabis and for which he received community sentences.

7. On 25 November 2014 the appellant was convicted of detaining a child without lawful authority so as to keep from the lawful control of a person entitled to lawful control. He was sentenced to 18 months' imprisonment. A Sexual Offences Prevention Order was made for a 5 year term. He was ordered to pay a victim surcharge of £100.

8. Following this conviction, the respondent commenced deportation action against the appellant. A decision to deport dated 20 December 2014 was served on the appellant on 6 January 2015. In response, on 15 January 2015 and 13 February 2015, the appellant made submissions on Article 8 ECHR grounds setting out why he should not be deported.

9. In a letter dated 13 February 2015 the respondent refused the appellant's human rights claim and certified that claim under s.94B of the 2002 Act. On 3 March 2015 the respondent made a deportation order against the appellant.

10. Also on 3 March 2015, the Upper Tribunal refused permission to apply for a judicial review of the s.94B certificate. Permission to appeal to the Court of Appeal was refused.

11. On 28 July 2015 the appellant was deported to Nigeria. On 14 August 2015 he lodged an appeal from outside the UK against the refusal of his Article 8 ECHR claim.

12. The appeal was heard by the First-tier Tribunal on 19 May 2017. In a decision issued on 31 May 2017, First-tier Tribunal Judge Mitchell dismissed the appeal. The First-tier Tribunal heard oral evidence from the appellant's mother and father but no provision was made for the appellant to participate in the hearing from Nigeria.

13. The appellant appealed to the Upper Tribunal against the decision of First-tier Tribunal and was granted permission on 8 July 2017.

14. In response to further submissions made on 6 September 2017, the respondent maintained the deportation order and refusal of the Article 8 ECHR claim in a decision dated 27 September 2017.

15. After a hearing on 23 January 2018, the Upper Tribunal found an error of law in the First-tier Tribunal's decision and set it aside to be remade in the First-tier Tribunal. That decision was made by a Presidential panel and reported as AJ (Section 94B; Kiarie and Byndloss questions) Nigeria [2018] UKUT 115 (IAC). The Upper Tribunal concluded that the First-tier Tribunal erred in failing to assess whether the appeal could be determined fairly and justly without the appellant being physically present in the UK.

16. The appeal came before the First-tier Tribunal again on 11 and 12 February 2020 before a three-person panel which included the President. The appellant participated in the proceedings, giving live evidence via a video link from the British High Commission in Lagos.

17. In a decision issued on 14 April 2020 the First-tier Tribunal concluded that there had been an effective hearing and that the appellant could not show that his Article 8 ECHR rights were breached by deportation. The appeal was therefore dismissed.

18. The appellant appealed again against the decision of the First-tier Tribunal panel. He was granted permission to appeal by the Upper Tribunal on 17 August 2020.

19. The appeal was heard by a three-person panel of the Upper Tribunal, including the President, on 1 December 2020. In a decision dated 5 March 2021, the Upper Tribunal found an error of law. As set out in paragraph 18 of the error of law decision, the appellant brought three overarching challenges against the First-tier Tribunal decision. These were:

> "Ground 1 - Was the appeal from abroad effective?
>
> Ground 2 - Were the credibility findings which underpinned the conclusion that there were no very significant obstacles to reintegration lawful?
>
> Ground 4 - When finding that there were no very compelling circumstances, did the First-tier Tribunal err in the approach to the appellant's long residence in the UK?"

20. The Upper Tribunal did not find that Ground 1 had merit, giving reasons for that conclusion in paragraphs 21 to 52 of the error of law decision. Ground 2 was also

found to be without merit with reasons set out in paragraphs 53 to 82. As the challenge to the credibility findings was unsuccessful, the conclusion of the First-tier Tribunal that the appellant and his mother had given unreliable evidence and that the appellant had not shown very significant obstacles to reintegration in Nigeria remained extant.

21. The Upper Tribunal did find that Ground 4 had merit, setting out its reasoning in paragraphs 83 to 112 of the error of law decision. The Upper Tribunal concluded in paragraph 113:

> "113. As can be seen from the foregoing analysis, the decision of the First-tier Tribunal does not fall to be disturbed on the grounds of Article 8 procedural unfairness or because of any error in the Tribunal's findings as to credibility. Although we have concluded that the decision must be set aside, this is only in respect of the Tribunal's Article 8 proportionality exercise, by reference to Section 117C(6). The Tribunal's findings of fact stand."

22. The appeal then came before us for remaking on 30 June 2021. The appellant gave evidence from Nigeria by video and we heard submissions from Mr Westgate QC and Mr Kovats QC.

23. On 16 July 2021 the Supreme Court delivered a decision in Sanambar v Secretary of State for the Home Department [2021] UKSC 30 on 16 July 2021. As the guidance from the Supreme Court was of potential relevance to this decision, on 23 July 2021 we directed the parties to provide any written further submissions in light of Sanambar. The appellant did so on 16 August 2021 and the respondent on 18 August 2021.

The Law

24. Part 5A of the 2002 Act sets out the legal framework that must be applied to an Article 8 ECHR claim brought in the context of a deportation order. We do not refer to the similar provisions contained in the Immigration Rules where the Court of Appeal has indicated that it is generally unnecessary to do so; see CI (Nigeria) v Secretary of State for the Home Department [2019] EWCA Civ 2027 at paragraph 21.

25. Section 117A of the 2002 Act provides, insofar as material, that:

> "(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 life and family life is justified under Article 8(2)".

26. Section 117B lists certain public interest considerations to which the court or tribunal must have regard in all such cases. These include the considerations that:

> "(1) The maintenance of effective immigrations 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.
>
> …"

27. Section 117C is entitled "Article 8: additional considerations in cases involving foreign criminals". It is the central provision in this appeal and provides:

> "(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".

28. There have been a significant number of cases addressing the correct interpretation and application of these provisions, including how to approach an assessment of very compelling circumstances. We set out below a summary of the principles relevant to this appeal.

29. The statutory framework is a "complete code" and the "... the entirety of the proportionality assessment required by article 8 can and must be conducted within it": HA (Iraq) v Secretary of State for the Home Department [2020] EWCA Civ 1176 at [27]. That means that we must also take into account Strasbourg case law and we set out the main cases below.

30. The appellant is a "medium" offender as he received a sentence of 18 months' imprisonment. The First-tier Tribunal found that he does not meet Exceptions 1 and 2 of s.117C(6), however, and those findings are extant. The appellant can therefore only succeed if he shows that there are very compelling circumstances over and above Exceptions 1 and 2. The Court of Appeal in NA (Pakistan) v Secretary of State for the Home Department [2016] EWCA Civ 662 at [32] provides guidance on how to approach the very compelling circumstances assessment in these circumstances:

> " … in 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 kind described in Exceptions 1 and 2 have such great force for Article 8 purposes that they do constitute very compelling circumstances whether taken by themselves or in conjunction with other factors relevant to Article 8 but not falling with the factors described in Exceptions 1 and 2."

31. Of relevance to Exception 1 and the issue of integration in the proposed country of destination set out in s.117C(4)(c), The Court of appeal said this in Secretary of State for the Home Department v Kamara [2016] EWCA Civ 813 at [14] in the now well-known passage:

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

32. The very compelling circumstances test is a high one. In a case where an appellant cannot come within the Exceptions in s.117C(4) and (5) "great weight should generally be given to the public interest in the deportation of such offenders, but … it can be outweighed, applying a proportionality test, by very compelling circumstances: in other words, by a very strong claim indeed"; Hesham Ali v Secretary of State for the Home Department [2016] UKSC 60. Hesham Ali at [38] and HA (Iraq) at [32] set out the need to respect the "high level of importance" which the legislature attaches to the deportation of foreign criminals.

33. When considering whether there are very compelling circumstances, we must assess the weight that attracts to the public interest. The public interest is "minimally fixed" as it "can never be other than in favour of deportation"; [45] of Akinyemi v Secretary of State for the Home Department (No. 2) [2019] EWCA Civ 2098. The Court of Appeal goes on to say in [50] of Akinyemi No.2:

> "In my judgment there can be no doubt, consistent with the Strasbourg jurisprudence, that the Supreme Court has clearly identified that the strength of the public interest will be affected by factors in the individual case, i.e. it is a flexible or moveable interest not a fixed interest. Lord Reed provides the example at [26] of a person who was born in this country as a relevant factor. Applying this approach to the weight to be given to the public interest in deportation on the facts of this case could lead to a lower weight being attached to the public interest.

34. The Court of Appeal set out at [92] of HA (Iraq) that "a potential deportee can rely, as part of the overall proportionality assessment, on the fact that his offence was at or near the bottom of the scale of seriousness" but cautioned, in [93]:

> "It cannot be the case that an appellant can rely on the fact that his offence attracted a sentence of, say, "only" twelve months as sufficient by itself to constitute very compelling circumstances for the purpose of section 117C (6): that would wholly subvert the statutory scheme. But if there were other compelling circumstances in his case the fact that his offence was comparatively less serious could form an element in his overall case that the strong public interest in deportation was outweighed."

35. The Strasbourg cases of particular relevance are well known. They include Boultif v Switzerland (2001) 33 EHRR 50, Üner v Netherlands (2007) 45 EHRR. 14 and Maslov v Austria [2009] INLR 47. Maslov provides in paragraph 74:

> "Although Article 8 provides no absolute protection against expulsion for any category of aliens (see *Üner*, cited above, § 55), including those who were born in the host country or moved there in their early childhood, the Court has already found that regard is to be had to the special situation of aliens who have spent most, if not all, their childhood in the host country, were brought up there and received their education there (see *Üner*, § 58 *in fine*)."

36. Drawing on this Strasbourg authority, the Court of Appeal in CI (Nigeria) at [113] considered the situation where, as here, a migrant has spent most of his childhood in the host country:

> " … although 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, it would not (as the Upper Tribunal judge recognised) be fair to adopt this approach on the particular facts of this case, where the grant of indefinite leave to remain was delayed for many years when CI was a child for no good reason and through no fault of his. In determining whether it is compatible with article 8 to deport him from the UK, CI should not in these circumstances have less weight accorded to the fact that he has spent his childhood and youth in the UK than would be the case if he had had a vested right of residence for most of that period."

37. The factors identified in [57] and [58] of Uner have been approved subsequently in both European and domestic case law and are uncontentious. Of relevance here are (i) the nature and seriousness of the offence committed by the applicant (ii) the length of the applicant's stay in the country from which he or she is to be expelled (iii) the time elapsed since the offence was committed and the applicant's conduct during that period (iv) the solidity of social, cultural and family ties with the host country and with the country of destination. The Supreme Court in Sanambar v Secretary of State for the Home Department [2021] UKSC 30 identified at [46] that Maslov does not set down a "condition subsequent" to the Uner criteria of a requirement for "very serious reasons" justifying deportation.

38. The Strasbourg Court provides in [72] of Maslov that the age of an individual when committing crimes is a relevant criteria when assessing the nature and serious of the offending, the Supreme Court in Sanambar recognising the relevance of the distinction between an adult and a juvenile offender at [42].

39. The Supreme Court in Sanambar at [18] and the Court of Appeal in [106] of CI (Nigeria) set out the important distinction in European Court case law, for example in Jeunesse v The Netherlands [2004] 60 EHRR 17, between settled migrants with a right of residence in the host country and those without such status. In paragraph 112 of CI (Nigeria), Leggatt LJ identifies:

> "… the distinction of principle drawn in the case law of the European Court is between the expulsion of a person who has no right of residence in the host country on the one hand and, on the other hand, expulsion which involves the withdrawal of a right of residence previously granted."

40. Having set out these various and competing considerations that must be taken into account, we remind ourselves of our basic task, identified by Lord Reed JSC in [50] of Hesham Ali:

> "In summary, therefore, the tribunal carries out its task on the basis of the facts as it finds them to be on the evidence before it, and the law as established by statute and case law. Ultimately, it has to decide whether deportation is proportionate in the particular case before it, balancing the strength of the public interest in the deportation of the offender against the impact on private and family life. In doing so, it should give weight to Parliament's and the Secretary of State's assessments of the strength of the general public interest. . . and also consider all factors relevant to the specific case in question."

Analysis: Article 8 ECHR

41. We must decide whether the appellant can show very compelling circumstances over and above Exceptions 1 and 2 as set out in s.117C(4) and (5) of the 2002 Act. The guidance in NA (Pakistan) indicates that we should begin by considering the features set out in Exceptions 1 and 2 so as to establish whether they might be capable in themselves or when taken together with other factors of amounting to very compelling circumstances.

42. There is nothing controversial in that approach in itself but we recognised that our task was not entirely straightforward where the First-tier Tribunal found that the Exceptions were not met and those findings are extant. Mr Kovats identified helpfully in his oral submission that the evaluation we had to conduct had to take into account the extant findings of the First-tier Tribunal but also had to include the extent to which new evidence showed that events had moved on factually since then. We agreed with Mr Kovats that our evaluative exercise of whether there are very compelling circumstances should be based on these two aspects of the evidence where we had to make findings as of the date of the hearing but where the findings of the First-tier Tribunal on the evidence as it was before them have been upheld.

Exception 2 – S.117C(5)

43. It is expedient to deal with Exception 2 first. The First-tier Tribunal indicated in paragraph 83 of its decision dated 14 April 2020 that it was "common ground that s.117C(5), exception 2" does not apply." No challenge to that statement has been made to the Upper Tribunal. There was no suggestion that the appellant had a qualifying partner at any material time. The evidence indicated that after he separated from his ex-partner in 2013, he saw his daughter approximately once a month and had almost no contact with her after he went to prison in 2014. After he was deported he spoke to her occasionally when she went to stay with his mother

but all contact between the appellant and his family and his daughter ceased from September 2019 onwards. We did not find that the evidence showed that there was anything capable of carrying material weight regarding a partner or child to be carried forward into the very compelling circumstances assessment.

Exception 1 – S.117C (4)

S.117C(4)(a)

44. It is undisputed that the appellant cannot meet s.117C(4)(a) as he has not been lawfully resident in the UK for most of his life. He came aged just under 2 years' old and was deported when he was 27 years' old. He only had lawful leave from 2009 until his deportation in 2015. The s.117C(4)(a) criteria were clearly not met. The weight to be attached to the appellant's long residence, which includes most of his childhood, and settled status when deportation action was taken are factors we return to in the assessment of very compelling circumstances below, however.

S.117C(4)(b)

45. The First-tier Tribunal found that the appellant was socially and culturally integrated in the UK, setting out in paragraph 92:

> "Our view is that there is every indication that the appellant was culturally and socially integrated here. Given the age at which he came to the United Kingdom, we find that his entire social and cultural identity has been formed here and was not lost because of his offending. He attended nursery school from January 1991. Since March 1993 he attended church with his family. He was baptised. He was registered with a GP and a dentist. He achieved ten GCSEs and completed an award in visual arts at level 3. He was awarded a Sports Mark Gold Award in recognition of outstanding commitment to promoting the benefits of physical education and school sport when he was 15 – 18 years old. He was in employment from May 2011 to September 2013. He formed relationships here and his daughter was born in 2009. We find that the appellant's offending here was not such as to mean that he lived on the side-lines of British society."

46. It appeared to us that this finding showed that s.117(4)(b) was not just met but was amply met. As the First-tier Tribunal put it, the appellant's "entire social and cultural identity has been formed here". We saw nothing in the more recent evidence to indicate that this aspect of the appellant's profile had changed. In his statement dated 22 June 2021 the appellant set out that he remains close to his UK family and in contact with his friends here. He also continued to identify strongly with British culture, watching British television, reading British newspapers and following British news, football and other sport. He stated that he could not connect with Nigerian culture despite the amount of time that he had been there.

47. We did not consider that this factor being amply met, where the appellant remains strongly socially and culturally integrated in the UK, was in any way a "trump" card but it was our view that it was a factor attracting real weight that had to be taken into account in the very compelling circumstances assessment.

S.117C(4)(c)

48. The First-tier Tribunal did not find that the appellant could show that he faced very significant obstacles to reintegration in Nigeria. The First-tier Tribunal found in paragraph 110 that:

> "We do not accept that the appellant has been destitute in Nigeria. We do not accept that he lives on the margins of society, nor do we accept that he has been unable to find settled accommodation and does not have the connections to obtain employment; there is no credible evidence to suggest the same."

49. The Tribunal also found in paragraph 111 that "since mid-2018, on the appellant's own evidence, his mother had been sending him more money than before and his life has been better since then". In paragraph 112, the First-tier Tribunal found that the appellant's sister would be prepared to support him financially. The Tribunal went on to conclude in paragraph 113:

> "We find that we have not presented with an accurate or a complete picture of the appellant's circumstances in Nigeria. The appellant has been to various agencies, churches, attended a course in Nigeria and has a significant relationship there with his friend Tunde. We find on the balance of probabilities that the appellant has integrated in Nigeria. We find he is supported there by various means although as we have indicated, the appellant has chosen not to be honest with us as to the precise nature of his support. Be that as it may, he is a young, single man with no health problems who can make his own way in Nigeria."

50. As above, we also had to take into account the additional evidence provided on the appellant's circumstances in the period since the findings of the First-tier Tribunal were made. In his witness statement dated 22 June 2021, the appellant set out evidence on his recent circumstances. In 2020 he was sleeping at the National Stadium but this was closed due to the Covid-19 pandemic. He found out about a shelter run by a church and was able to sleep there on a mattress together with other homeless people and was given basic washing facilities and food. In August 2020 a couple from the church, Solomon and Fagba, offered him a place to sleep in a small storage room in their flat and the appellant had been living there ever since. He continued to receive money from his mother and also earned a little money on the street using Fagba's computer to download materials onto MP3 and MP4 players for people who did not have their own computers enabling them to do so.

51. The appellant commented on the degree of his integration in Nigeria in paragraphs 15 to 17 of his witness statement:

> "15. I have adapted how I dress so that I look more like the locals here and so I don't stick out too much. But other than that I do not feel like I belong here, even after being here for almost 6 years. I feel like the only thing I have in common with most people here is the colour of my skin. It is very difficult to chat to people because we have completely different backgrounds and lives. A lot of small talk here seems to focus on Nigerian politics but I don't know enough about that to get involved. Tunde is still the only person I would call a friend here in Lagos

and these days I see him less than I used to – maybe a couple of times a month. Other than him, I do not have people I regard as friends. I get on with Solomon and Fagba and I'm grateful to them for providing me with somewhere to stay for the moment, but I do not feel like we have connected as friends.

16. I feel like all of my mental energy is used on getting by from one day to another and I can't plan for the future. It is difficult to explain but I just cannot see a decent life of any sort for me here. I am from the UK and that is where my life was, that is where I grew up and everything I knew was there. It is hard to get across just how different and difficult life is in Nigeria. I feel hopeless about my life here.

17. I feel like my mental universe is in the UK. I frequently have dreams about being on a boat or a plane coming home to the UK. I dream about hugging my mum. I have dreamt about walking down the roads I used to live on in Clapham and Brixton."

52. We approached this evidence with caution given that the First-tier Tribunal found that the appellant had not given reliable evidence on his circumstances in Nigeria. His evidence in the most recent witness statement on his life in Nigeria was not challenged as to its factual accuracy by the respondent, however, and it appeared to us, in the context of someone with the appellant's history and resources, to be credible.

53. The respondent did question, however, why the appellant's mentality had not changed and whether this was why his integration remained limited. It was put to the appellant in cross-examination that he had been unable to progress in establishing himself in Nigeria because these proceedings still held out the possibility that he might be able to return to the UK. The appellant stated that he had tried to adapt but had not been able to do so, that the only home he could contemplate was in the UK and it remained "really hard to comprehend" how Nigeria could become his home.

54. In his oral submissions, Mr Kovats accepted that the appellant still regarded the UK as "the centre of his mental universe" and that he should not be criticised for that. The appellant's position was understandable where the appeal still held out the possibility of returning to the UK. However, objectively, as a young, fit adult the appellant could be expected to take a different view of his future in Nigeria and manage greater adaptation in the event that he was unable to return to the UK.

55. Again, we considered the appellant's evidence on his circumstances in Nigeria and why they might be so with care given that his account of his life in Nigeria was not found credible by the First-tier Tribunal. The First-tier Tribunal found that he was not destitute, not living on the margins, had been to agencies including churches, had been on a course, formed a friendship and did not accept that he was without connections allowing him to find employment.

56. There is no dispute that the appellant's basic needs are met by way of some support in Nigeria and from his mother in the UK. He has a place to sleep and earns a small

amount of money from downloading on the street. He has a friend he sees approximately monthly. Integration requires more than "the mere ability to find a job or to sustain life while living in the other country", however. It was our conclusion that the evidence taken as a whole showed that the appellant's current circumstances did not amount to meaningful integration in the terms identified in Kamara.

57. We recognised the potential force of Mr Kovats' submission that the appellant has not been able to make the mental shift required to progress his life in Nigeria whilst these proceedings are unresolved and that as he is young and healthy he could still do so. It is not disputed, however, that the appellant's "entire social and cultural identity" remains British and that he had no experience or knowledge of Nigerian society before he went there. He has been in Nigeria now for over 6 years. His evidence set out above of having tried but failing to adapt and progress further into Nigerian society was not seriously disputed. Given this appellant's profile and his situation after living in Nigeria for 6 years we did not find that his inability to adapt resulted from being unable to accept that he was going to have to remain in Nigeria. Against the evidence as a whole, we found that it was speculative to suggest that he had the capacity to adapt more meaningfully if he had to accept that he could not return to the UK. We did not find that the appellant had the option of becoming more of an "insider" with prospects of more meaningful integration or a private or family life of substance.

58. It is common ground that the finding of the First-tier Tribunal that the appellant does not meet s.117(4)(c) stands. Our findings set out above, however, must be taken into account in the very compelling circumstances assessment.

59. Having considered the statutory Exceptions, we turn now to the issue of the very compelling circumstances assessment required by s.117(C)(6) of the 2002 Act. This is the "over and above" question.

Factors in favour of deportation

60. We begin with the question of the public interest in deportation and the appellant's criminal history which must be at the forefront of the very compelling circumstances assessment. The appellant is a foreign criminal. It is therefore in the public interest that he be deported (section 117C(1) of the 2002 Act). There is no question but that weight must be given to the public interest in the appellant's deportation.

61. The appellant has a criminal record that began 10 years before he committed the index offence that led to his deportation and we took into account his full criminal history:

a. On 29 July 2003 the appellant received a warning for taking a conveyance without authority.

b. On 12 April 2005 the appellant received a caution for possession of Class C drugs. On 25 April 2006 he was convicted of attempted robbery for which he

was given a community service order of 180 hours and ordered to pay £50 compensation.

c. On 18 December 2007 he was convicted of possession of a Class C drug (cannabis) and sentenced to a fine and costs.

d. On 5 August 2008 he was convicted of possession of a Class C drug (cannabis) and sentenced to a fine and costs.

e. On 10 October 2008 he was convicted of possession of a Class C drug (cannabis) and sentenced to a community order programme of 30 days and 60 days unpaid work requirement and costs. He was also convicted at the same time of failing to surrender to custody at the appointed time and sentenced to a community order and unpaid work requirement.

f. On 12 December 2008 he was convicted of a breach of a community order. The community order dated 10 October 2008 was continued and an order for an additional 7 hours work requirement made.

g. On 13 February 2009 he was convicted of possession of a Class B drug (cannabis) and sentenced to a fine and costs.

h. On 24 April 2009 he was convicted of possession of a Class B drug (cannabis) and sentenced to a fine and costs.

62. The respondent's case, understandably, did not focus on these offences given that they are relatively minor and attracted only fines and community orders. We find that they must attract weight on the public interest side of the balance, albeit not heavy weight. We note that the first two criminal matters occurred when the appellant was a minor but that all of his offending thereafter took place when he was an adult. He is not entitled to consideration or less weight as regards his offending because of his age therefore.

63. The appellant's index offence was significantly more serious than any of his previous offences. He was convicted of detaining a child without lawful authority so as to keep from the lawful control of a person entitled to lawful control. He was sentenced on 25 November 2014 to 18 months' imprisonment. A Sexual Offences Prevention Order was made for a 5 year term. He was ordered to pay a victim surcharge of £100.

64. The Sentencing Judge said this:

> "Mr Juba, you have been found guilty by the jury of child abduction. The victim in this case [A] was a 14 year old child. It is perfectly apparent from the exchange of messages that she was infatuated with you. She spent at least one night at your flat and was then found by police hiding on the stairs outside your flat at 3 o'clock in the morning the following day.

> In my judgment you made little or no effort to assist the police in recovering the child and returning her to her parents. There is no doubt in my mind that you are the one who is responsible for her SIM card being down the toilet in your flat. The only inference that I can draw from that is that you were afraid the data on it would incriminate you and I do not doubt that this is the case.
>
> You are 26 years of age. You have got a number of previous convictions but none of them are of any direct relevance. This is a serious offence. The maximum sentence is one of seven years' imprisonment. There is, it is fair to say, no evidence of sexual contact between yourself and [AW] but there is no doubt in my mind that your motive was to groom this child for sexual activity in due course.
>
> You have been convicted on the clearest possible evidence by the jury in my judgment and show no remorse for your actions. In the circumstances, the least sentence I can impose is one of 18 months' imprisonment.
>
> I make a sexual offences prevention order in the following terms. You will be prohibited for a period of five years from today from communicating with or being in the company of a female under the age of 16 or being involved in any voluntary or recreational contact with such a female unless you have the consent of the female's parent or guardian and except where such contact may be inadvertent or not reasonably avoidable in the course of daily life. That prohibition does not apply to members of your own family. If you breach that order in the next five years you will be committing a serious criminal offence which would make you liable to arrest and imprisonment in due course.
>
> 18 months' imprisonment. You are likely to serve up to half. The time you have already spent in custody counts towards that, as your Counsel will no doubt explain to you. The surcharge provisions apply to this case and the order will be drawn up accordingly."

65. Section 117C(2) of the 2002 Act provides that the more serious the offence committed the greater the public interest in deportation. The offence of child abduction and sentence of 18 months' imprisonment and imposition of a Sexual Offences Prevention Order are clearly serious matters weighing on the public interest side of the balance. We bear in mind that the offending is not at the highest end of the scale of "medium" offending, however, and that the term of imprisonment of 18 months was imposed in the context of a maximum available sentence of 7 years' imprisonment.

66. We noted the comments of the Sentencing Judge that the appellant's motive was to "groom" the victim for "sexual activity in due course", albeit there was "no evidence of sexual contact" between the appellant and the victim, and took into account the imposition of the Sexual Offences Prevention Order. These aspects of the offence are inevitably matters of public concern and add to the weight attracting to the public interest.

67. We were provided with an OASys assessment which was issued on 4 October 2017 but contained details of an assessment conducted in 2015. We accept that the report is far from current but found that it remained of relevance to the issue of reoffending.

The OASys assessment found that the appellant posed a medium risk in the community to children, that is, that he has "the potential to cause serious harm but is unlikely to do so unless there is a change in circumstances". He was assessed as low risk regarding the public and adults known to him. His Offender Groups Reconviction score (OGRS), an indicator of probability of reconviction within 2 years' of release was found to be medium. The appellant's risk of reconviction for non-violent offending on the OASys General Predictor score (OGP) was also found to be medium. His OASys Violence Predictor score (OVP), predicting risk of reconviction for a violent offence, was low.

68. We were also provided with an independent forensic psychology report dated 17 January 2020 from Ms Lisa Davis. Ms Davies took into account the OASYs report and conducted her own assessment in October 2019, interviewing the appellant by video link. Ms Davies concluded that the appellant posed a low risk of sexual offending, a low risk of violent offending and a medium risk of general reoffending, with a medium risk of serious harm if he were to offend; see paragraph 1.12 of the report.

69. Notwithstanding the four year gap between the two risk assessments, it did not appear to us that they differed materially and there was no suggestion to the contrary from either the appellant or the respondent. The OASys and the report of Ms Davies indicate that the appellant poses a medium risk of general reoffending and this is of concern and weighs against him.

70. The appellant sought to rely on the absence of offending since 2014 as showing that less weight should attach to the public interest. We accept that there has been an extended period of time during which he has not offended and that this has the potential to alter the weight attracting to the public interest. We did not find that to be the case here, however. The formal risk assessments, albeit not current, are consistent as to a medium risk of general re-offending. We were also cautious in placing material weight on the absence of offending given that the appellant has been in Nigeria since 2015 and in circumstances wholly other than those pertaining were he to return to the UK.

71. It was also argued for the appellant that the risk of reoffending formed only part of the public interest and that deterrence and public concern were also relevant factors. Mr Westgate submitted that the factor of deterrence had been met to a considerable degree where the appellant was deported to Nigeria six years ago. He submitted that this was a factor that should reduce the weight attracting to the public interest.

72. We did not accept this submission. We were in agreement with Mr Kovats that the time that the appellant has spent in Nigeria is a factor that is potentially relevant to an application to revoke a deportation order but not, in our view, to the lawfulness of the original decision to deport. It appeared to us that the legitimate aim of general deterrence that lay behind the decision to deport under challenge here could not be weakened by the fact of deportation itself.

73. We did find, however, that the public interest here was notably reduced by the fact of the appellant having lived in the UK from the age of 1 year and 10 months' old until he was deported 25 years later at the age of 27. This is a very extensive period of time, encompassing almost all of his childhood. As above, Strasbourg case law has identified the importance of the "special situation of aliens who have spent most, if not all, of their childhood in the host country." It is undisputed that the appellant was not present lawfully at all during his childhood but CI (Nigeria) explains, drawing on Maslov and Jeunesse, that the appellant "should not in these circumstances have less weight accorded to the fact that he spent his childhood and youth in the UK than would be the case if he had a vested right of residence for most of that period." This was, in our view, an important issue here reducing the public interest in deportation. The fact that at the time of deportation the appellant had been a settled migrant for 6 years is an additional feature to be taken into account and which we find further reduces the public interest side of the balance, albeit to a much lesser degree than the appellant's extensive period of residence.

Factors against deportation

74. Where we have weighed the importance of the appellant's long residence in the UK and his settled status as part of our assessment of the public interest, we do not address them again here so as to avoid "double counting".

75. We set out above in our consideration of s.117C(4)(b) of the 2002 Act that we found that the appellant's strong and continued social and cultural integration in the UK was significant and amply met the statutory requirement. We do not need to repeat all that we said again here and find that where, in terms of culture, education and outlook, he is British this is a factor of importance that weighs on his side of the balance in the very compelling circumstances assessment.

76. After considering the features of the kind described in s.117C(4)(c), we concluded that the evidence before us indicated that the appellant had not, even after 6 years, managed to participate in Nigerian society to the extent that he been able to build up a private or family life of substance. We found that this factor also added weight for the appellant in the proportionality assessment.

77. We did not find that the appellant's relationship with his mother attracted material weight to the appellant's side of the balance or showed that they had a family life for the purposes of Article 8 ECHR. We accept that the appellant's mother has provided emotional and practical support since he was deported to Nigeria in 2015 and that this has been very important to him. The evidence also indicated, however, that they had lived independently for some years prior to his deportation, the appellant cohabiting with Ms Pond for a period and living in his own flat after they separated. Nothing in the appellant's witness statements or those of his mother indicated to us that they had a particularly close or in any way dependent relationship prior to 2015 or after the appellant became an adult in 2005.

78. We have also indicated above that the appellant has not had any contact with his daughter for at least two years and only very limited contact prior to that for several years. The evidence indicated that there is little prospect of his doing so even if he returns to the UK. We did not find that this factor could add any meaningful weight to the appellant's side of the balance.

Conclusion on "very compelling circumstances"

79. The higher courts have been consistent that only "a very strong claim indeed" can outweigh the weight of the public interest in deportation of an appellant where the test that must be met is that of very compelling circumstances. We recognise that this is a high threshold.

80. It is nevertheless our conclusion that the balance here comes down in favour of the appellant after weighing and balancing the factors we have considered above. The public interest is clearly in favour of deportation given the nature and seriousness of offending itself together with the risk of reoffending. The public interest is reduced, however, by the appellant's twenty-five year period of residence in the UK, including almost all of his childhood, that residence attracting significant weight where it falls to be considered as if he had been here lawfully. This was a particular feature of this case which, when taken together with the appellant's social and cultural integration in the UK and inability to integrate in Nigeria, we found outweighed the public interest in deportation.

81. For these reasons, it is our judgment that there are very compelling circumstances here such that the appellant's deportation to Nigeria amounts to a disproportionate interference with his rights under Article 8 ECHR. We therefore allow the appeal.

Notice of Decision

82. The decision of the First-tier Tribunal contained an error on a point of law and has been set aside to be remade.

83. We remake the appeal as allowed under Article 8 ECHR.

Signed: *S Pitt* Date: 17 November 2021
Upper Tribunal Judge Pitt