**Upper Tribunal**
**(Immigration and Asylum Chamber)** Appeal Number: HU/05725/2017

**THE IMMIGRATION ACTS**

| **Heard at Field House by video conference on 04 February 2021** | **Decision Reasons Promulgated on 15 March 2021** |
|---|---|

**Before**

**UPPER TRIBUNAL JUDGE CANAVAN**

**Between**

**R J**
**(ANONYMITY DIRECTION MADE)**

Appellant

**and**

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

Respondent

**Anonymity**
*Rule 14: The Tribunal Procedure (Upper Tribunal) Rules 2008*
Anonymity was granted at an earlier stage of the proceedings because the case involves child welfare issues. I find that it is appropriate to continue the order. I make clear that the order is not made to protect the appellant's reputation following his conviction for a criminal offence. Unless and until a tribunal or court directs otherwise, the appellant is granted anonymity. No report of these proceedings shall directly or indirectly identify him or any member of his family. This direction applies both to the appellant and to the respondent.

**Representation:**

For the appellant: Ms E. Sanders instructed by Duncan Lewis Solicitors
For the respondent: Ms S. Cunha, Senior Home Office Presenting Officer

**DECISION AND REASONS**

1. The appellant appealed the respondent's decision dated 31 March 2017 to refuse a human rights claim in the context deportation proceedings.

2. First-tier Tribunal Judge A.M. Black dismissed the appeal in a decision promulgated on 12 June 2019. The Upper Tribunal found that despite careful recitation of the evidence, the First-tier Tribunal failed to give adequate reasons to explain its decision. The case was listed for a resumed hearing in the Upper Tribunal for the decision to be remade. Due to the continued need to take precautions to prevent the spread of Covid-19 the hearing was conducted by way of a remote video hearing. I was satisfied that the parties could present their case fairly and effectively by this mode of hearing. There were few if any factual issues in dispute. The oral evidence required was limited. The appellant and his partner both speak English and could give evidence by video without any significant impairment of the quality of their evidence. The representatives were able to put forward submissions clearly.

3. It is agreed that the following factual circumstances are not in dispute or the findings are preserved.

   (i) The appellant's immigration history.
   (ii) The appellant is in a genuine and subsisting relationship with a British partner and children.
   (iii) It would be 'unduly harsh' for the children to relocate to Jamaica.
   (iv) The appellant's partner suffers from epilepsy.
   (v) The appellant's partner has some family members living nearby.
   (vi) That the oldest child needed help with emotional and behavioral issues when his father was in prison and is therefore likely to suffer similar issues if the appellant is deported.
   (vii) The appellant does not pose a risk of reoffending.

*Immigration history*

4. The appellant entered the UK on 27 December 2001, when he was 13 years old, with leave to enter as a visitor. His family brought him to the UK to live with his aunt because there was no one else to care for him in Jamaica after his grandmother died. An application for Indefinite Leave to Remain (ILR) outside the immigration rules was refused on 14 July 2003. The subsequent appeal was dismissed and his appeal rights because exhausted on 18 May 2006. At this stage he had just turned 18 years old. The appellant made a further application for leave and to remain outside the immigration rules and was granted ILR on 09 June 2011.

*Criminal history*

5. On 04 January 2016 the appellant was convicted of assault occasionaing actual bodily harm for which he was sentenced to 16 months' imprisonment. This was the appellant's first and only conviction.

6. The sentencing remarks indicate that it was a serious matter. The judge described the assault as a "nasty, aggressive attack on someone who was doing their job" (a traffic warden) and involved kicking the victim "in the region of the head". The appellant's guilty plea was taken into account. The judge also took into account the fact that he had no previous convictions and that the assault appeared to be out of character. The judge also considered the fact that the appellant had done "a lot of good public work".

7. The offence was not at the most serious end of the scale of assaults but was clearly a serious matter which attracted a custodial sentence. The sentence is in the medium category for deportation being between 12 months and 4 years. Within that range it is towards the lower end. First-tier Tribunal Judge Black heard evidence from the appellant. She noted that there was no OASys assessment. The appellant lost his temper with the traffic warden, but there was no evidence to suggest that he was prone to losing his temper. Although it was concerning that his reaction was so violent, she concluded that it was unlikely that he would offend again. I agree. There is no evidence to suggest that the appellant has a history of violent behaviour nor a history of repeated offending behaviour. As the sentencing judge noted in 2016, the offence appeared to be out of character. The fact that the appellant has not been convicted for any other offence since the index offence in 2014 is another indication that he poses a low risk of reoffending.

*Deportation proceedings*

8. The respondent served a notice of intention to deport on 10 February 2016. The appellant was served with a deportation order and a decision to refuse a human rights claim on 04 July 2016. The claim was certified under section 94B of the Nationality, Immigration and Asylum Act 2002 ('NIAA 2002'). The appellant challenged the certificate by way of judicial review proceedings, which settled by consent on 02 December 2016 with the respondent agreeing to consider further evidence. A fresh decision to refuse a human rights claim was made on 31 March 2017, which is the subject of this appeal.

## Decision and reasons

*Article 8(1) – private and family life*

9. For the purpose of this decision is is not necessary to set out the appellant's family circumstances in detail. The First-tier Tribunal already did so at some length and they are not in dispute. The appellant says that he began a relationship with his partner 'AH' in 2009. It is accepted that the appellant is in a genuine and subsisting relationship and that the couple have three children. 'A' is nine years old, 'B' is six years old and 'C' is one year old. The respondent accepts that it would be 'unduly harsh' for the children to relocate to the country to which the appellant will be deported. I am satisfied that the consequence of deportation would be to separate the family. The decision would interfere with the appellant's right to family life in a

sufficiently grave way to engage the operation of Article 8(1) of the European Convention.

10. In assessing the best interests of the children I have considered the broad principles outlined in *ZH (Tanzania) v SSHD* [2011] UKSC4, *Zoumbas v SSHD* [2013] UKSC 74 and *EV (Philippines) and others v SSHD* [2014] EWCA Civ 874. The best interests of children are a primary consideration although they are not the only consideration.

11. The respondent must have regard to the need to safeguard the welfare of children who are "in the United Kingdom". I take into account the statutory guidance "UKBA Every Child Matters: Change for Children" (November 2009), which gives further detail about the duties owed to children under section 55. In the guidance, the respondent acknowledges the importance of international human rights instruments including the UN Convention on the Rights of the Child (UNCRC). The guidance goes on to confirm: "The UK Border Agency must fulfil the requirements of these instruments in relation to children whilst exercising its functions as expressed in UK domestic legislation and policies." The UNCRC sets out rights including a child's right to survival and development, the right to know and be cared for by his or her parents, the right not to be separated from parents and the enjoyment of the highest attainable standards of living, health and education without discrimination. The UNCRC also recognises the common responsibility of both parents for the upbringing and development of a child.

12. It is in the interests of the children to be brought up by both parents. It is accepted that A found it particularly difficult without his father when he was in prison and needed professional support for behavioural issues. It is accepted that he is likely to find it equally difficult if he were to be separated from his father again. There is recent evidence to show that A has been referred to CAMHS for support.

13. At the current time the appellant is constrained by his bail conditions from staying overnight in the family home although he says that he spends all day at the house and waits until his partner has gone to bed before leaving. This leaves the family in a precarious position overnight when the appellant is not at home. AH's condition is serious. The evidence from her doctors indicates that they are still in the process of finding the right combination of medication to reduce the number of seizures. In evidence AH said that despite being on a high level of medication her seizures are not yet under control. She suffers from absence seizures on a regular basis, which are dangerous in and outside the home. She described recently suffering a burn on her harm from the cooker during an absence seizure. It is dangerous for her outside near roads. She suffers Grand Mal seizures about once or twice a month. Although she was previously able to work, her condition deteriorated to the extent that she has not been able to work for some time and is unable to drive. Recent evidence from her doctor indicates that she is at risk of seizures and Sudden Unexpected Death in Epilepsy (SUDEP). There is also recent evidence from the Department of Work and Pensions relating to Personal Independence Payment, which accepts that AH has difficulties 'preparing food, managing therapy or monitoring a health condition,

washing and bathing and managing toilet needs'. The assessor accepted that her health condition caused her great difficulty planning and following journeys.

14. It is accepted that AH has some family members living nearby including her grandmother and her sister. When the appellant, who currently stays overnight at her grandmother's house, had to isolate after her grandmother caught Covid, she struggled without the appellant's support. She said that her sister was able to bring food and check on the children but she has her own life and couldn't be there all the time. When the appellant had to isolate, a friend of hers who is a single mother came to stay with her for a while, but she could not do that on a regular or long term basis.

15. The picture that emerges is of a family where both parents are needed to safeguard the children. Without the appellant, the children are left in an extremely precarious position. None of AH's relatives are in a position to be with her and the children on a regular basis in a way that would safeguard the children if she were to have a seizure. Even in the current circumstances the children's safety is compromised overnight when the appellant has to return to his designated bail address. His long term absence would leave AH and the children in an extremely vulnerable position. During seizures AH and the children are at risk. It is not reasonable to expect A, who is still a young child himself, to take responsibility for raising the alarm to other relatives or the emergency services. The fact that all three children are so young, including an infant, makes the situation even more risky. Sadly, AH is aware of the risk of sudden death from epilepsy. If the appellant is deported, the children will face the loss of physical and emotional support of one parent and will be left with the possibility of the sudden loss of the other. AH quite rightly pointed out that in such circumstances there was a risk that her children might be taken into care. A has already suffered difficulties as a result of the earlier separation from his father to the extent that he has been referred to CAMHS. Further separation from his father in circumstances where he would also be left in precarious position as a result of his mother's medical condition would not be in his best interests. I conclude that the best interests of the children point very strongly to them remaining in the care of both parents in the UK.

*Article 8(2) – proportionality*

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

17. Part 5A of the Nationality, Immigration and Asylum Act 2002 ('NIAA 2002') applies where a court or tribunal is required to determine whether a decision made under the Immigration Acts breaches a person's right to respect for private and family life

under Article 8 of the European Convention. In cases concerning the deportation of foreign criminals the additional public interest considerations contained in section 117C apply. The 'public interest question' means the question of whether an interference with a person's right to respect for private and family life is justified under Article 8(2).

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

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

20. Section 117C(5) states that an exception to deportation applies where a person has a genuine and subsisting relationship with a qualifying partner or children and the effect of deportation would be 'unduly harsh'. In *HA (Iraq) v SSHD* [2020] EWCA Civ 1176 the Court of Appeal made clear that earlier cases stating that this required a level of harshness beyond the 'ordinary' harsh effects of deportation should not be read to require exceptional circumstances. The assessment must still focus on the effect of deportation on the particular child and whether the degree of harshness is sufficiently severe to outweigh the public interest in deportation. How a child will be affected by a parent's deportation will depend on range of different factors.

21. The best interests of the children are not determinative but inform the assessment of whether the effect of deportation would be unduly harsh. On the facts of this case I find that it is clear that deportation of the appellant would have an unduly harsh effect on the children. The evidence shows that the appellant is an involved and supportive father. But for his current immigration bail conditions he would live full time in the family home with the children. AH is dependent on him to safeguard her and the children. If she has a seizure she is at risk of harm and so are the children. Although she has some family members nearby, none of them are in a position to give the level of support required to keep the children safe. AH did her best with some support from family members when the appellant was in prison, but her circumstances were precarious. The evidence shows that A would be most affected by his father's absence. He had difficulty dealing with his absence before. He has been recommended for behavioural support. In his father's absence he would be left with the unreasonable burden of alerting family or emergency services if his mother has a seizure even though he is still a young child himself. Unfortunately, the nature of AH's condition also gives rise to a risk of sudden

death, which in addition to the other risks to the children, may leave them without parental support if the appellant is removed. I am satisfied that the circumstances of this particular family are compelling and that the effect of deportation on three young children would clearly be 'unduly harsh' for the purpose of section 117C(5).

22. Section 117C(6) NIAA 2002 states that the public interest requires deportation unless there are 'very compelling circumstances' over and above Exceptions 1 and 2. The test has repeatedly been described as a demanding one involving a high threshold: see *NA (Pakistan)* and *KO (Nigeria) v SSHD* [2018] UKSC 53.

23. The assessment under section 117C(6) of the NIAA 2002 and paragraph 398 of the immigration rules reflects the overall balancing exercise undertaken by the Strasbourg court when assessing whether the interference with a person's private or family life is justified and proportionate under Article 8(2) of the European Convention. After all, that is the stated intention of the statutory scheme. The need to consider the relevant principles outlined in the Strasbourg jurisprudence was emphasised by the Supreme Court in *Hesham Ali* v SSHD [2016] 1 WLR 4799 [25-33]. After section 117C NIAA 2002 was introduced the Court of Appeal in *NA (Pakistan)* expressly recognised the need to consider Strasbourg principles when applying the statutory scheme [38].

24. Even if I had not found that the appellant met the exception to deportation under section 117C(5) I would conclude that the appellant's personal circumstances are sufficiently compelling to outweigh the public interest in deportation. Significant weight must be placed on the public interest in deportation of foreign criminals. The appellant's offence was serious and this was reflected in the sentence. However, it is his only conviction, which falls within the medium range of sentences for the purpose of deportation. The sentencing judge took into account the fact that his actions appeared to be out of character. There is no evidence to suggest that the appellant poses a risk of reoffending. The weight to be given to the public interest in deportation may vary depending on the facts of each case.

25. The appellant was not a person who was remaining without leave. He was a settled migrant with ILR. He entered the UK as a child and has lived here for 19 years. He has a long established relationship with a British citizen and has three young children who are largely dependent on him to safeguard them. It is accepted that it would be unduly harsh for the children to relocate to the country to which he would be deported. For the reasons given above I have found that it would also be unduly harsh for the children to remain in the UK without him. In so far as the assessment of 'very compelling circumstances' must reflect a proportionality assessment under Article 8(2) which is compliant with Strasbourg principles, I conclude that deportation of the appellant would not strike a fair balance on the facts of this particular case.

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

27. A discussion took place at the hearing about the appellant's bail conditions. The current position appears to be that bail is being handled by the respondent. In light of this decision the respondent may want to give immediate consideration to whether the conditions should be amended or discharged given the precious position of AH and the children when the appellant is unable to stay in the family home.

DECISION

The appeal is ALLOWED on human rights grounds

Signed *M. Canavan* Date 11 March 2021
Upper Tribunal Judge Canavan

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**NOTIFICATION OF APPEAL RIGHTS**

1. A person seeking permission to appeal against this decision must make a written application to the Upper Tribunal. Any such application must be **received** by the Upper Tribunal within the **appropriate period** after this decision was **sent** to the person making the application. The appropriate period varies, as follows, according to the location of the individual and the way in which the Upper Tribunal's decision was sent:

2. Where the person who appealed to the First-tier Tribunal is **in the United Kingdom** at the time that the application for permission to appeal is made, and is not in detention under the Immigration Acts, the appropriate period is **12 working days (10 working days, if the notice of decision is sent electronically).**

3. Where the person making the application is in detention under the Immigration Acts**, the appropriate period is 7 working days (5 working days, if the notice of decision is sent electronically)**.

4. Where the person who appealed to the First-tier Tribunal is **outside the United Kingdom** at the time that the application for permission to appeal is made, the appropriate period is **38 days (10 working days, if the notice of decision is sent electronically).**

**5. A "working day" means any day except a Saturday or a Sunday, Christmas Day, Good Friday or a bank holiday.**

**6. The date when the decision is "sent' is that appearing on the covering letter or covering email**

**ANNEX**

**Upper Tribunal**
**(Immigration and Asylum Chamber)** Appeal Number: HU/05725/2017

**THE IMMIGRATION ACTS**

**Remote hearing at Field House on 16 June 2020 (V)**

**Decision Promulgated**

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**Before**

**UPPER TRIBUNAL JUDGE CANAVAN**

**Between**

**R J**
**(ANONYMITY DIRECTION MADE)**

Appellant

**and**

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

Respondent

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

**Representation:**

For the appellant: Ms E. Sanders, instructed by Duncan Lewis Solicitors
For the respondent: Ms S. Cunha, Senior Home Office Presenting Officer

**DECISION AND REASONS**

1. The appellant appealed the respondent's decision dated 31 March 2017 to refuse a human rights claim in the context of deportation proceedings.

2. First-tier Tribunal Judge A.M. Black ("the judge") dismissed the appeal in a decision promulgated on 12 June 2019.

3. Both the First-tier Tribunal and the Upper Tribunal refused permission to appeal. The appellant sought to challenge the decision made by Upper Tribunal Judge Mandalia dated 27 August 2019 by way of an application for judicial review. Her Honour Judge Walden-Smith granted permission in an order sealed on 20 November 2019 on the ground that it was arguable that the First-tier Tribunal failed to consider more up to date medical evidence or to engage adequately with the expert reports. The Upper Tribunal granted permission to appeal on 02 January 2020. The appeal comes before the Upper Tribunal to decide whether the First-tier Tribunal decision involved the making of an error on a point of law.

4. Public health measures needed to be put in place as a result of the Covid-19 pandemic. With the agreement of the parties, the hearing proceeded by way of a remote hearing held at the Upper Tribunal in Field House on Skype. At the beginning of the hearing I checked that both parties were working from the same documents. The Upper Tribunal file was missing three bundles previously filed by the appellant, but it was agreed that the hearing could proceed without that evidence. The appellant should note that the bundles have since been linked to the file, so it is no longer necessary to report a data loss.

5. The appellant seeks to challenge the First-tier Tribunal decision on the following grounds:

   (i) The First-tier Tribunal erred in its assessment of whether it would be 'unduly harsh' for the appellant's children to remain in the UK without him.

   (ii) The First-tier Tribunal failed to consider relevant medical evidence relating to the appellant's partner.

   (iii) The First-tier Tribunal failed to make adequate findings relating to expert evidence.

   (iv) A series of complaints relating to specific findings made by the First-tier Tribunal.

   (v) A series of complaints relating to the assessment of whether it would be 'unduly harsh' for the appellant's partner to remain in the UK without him.

   (vi) A series of complaints relating to the assessment of whether there were 'very compelling circumstances' to outweigh the public interest in deportation.

**Decision and reasons**

6. The lengthy First-tier Tribunal decision set out the factual circumstances in detail. The judge worked through the relevant legal framework in a logical order. She considered whether, in practical terms, the appellant's partner, who suffers from epilepsy, could look after their two young children (now three) without his support given that her mother and grandmother live nearby. The judge accepted that the evidence indicated that the appellant's partner was likely to have seizures once or twice a month. She also considered whether safety measures could be put in place for her and the children should she have a seizure. The judge considered medical evidence relating to his partner's condition up to November 2017, but other evidence contained in the appellant's bundles was more recent. For example, a letter from a consultant neurologist at the Royal Surrey Hospital dated 03 January 2019 to her GP outlined the advice given to the appellant's partner about safety issues and confirmed that the patient was "aware of sudden unexplained death in epilepsy".

7. The judge accepted that there was likely to be a deterioration in the children's emotional stability and behaviour if the appellant is removed. In particular, she noted the negative effect on his oldest child while his father was in prison. She considered that adequate support could be provided for the children. The judge also accepted that remote forms of communication were no substitute for personal contact with such young children. The appellant's partner was unlikely to be able to take the children to visit him in Jamaica once every four years. The judge considered whether it might be possible for members of his partner's family to accompany her there when she needed to visit.

8. Having considered several negative issues that were likely to impact on the children if their father was deported the judge concluded at [92]:

> "I am unable to find that it would be unduly harsh for the appellant's children to remain in the UK if the appellant were deported. The appellant does not meet the criteria in paragraph 399(a)"

9. The judge went on to consider whether there were 'very compelling circumstances' to outweigh the public interest in deportation for the purpose of paragraph 398 of the immigration rules. She considered the nature of the offence and the fact that it was the appellant's only conviction. She was satisfied that there was no risk of reoffending. The judge gave "significant weight" to the fact that the appellant had lived in the UK since he was 13 years old and had Indefinite Leave to Remain (ILR). She noted that he had been diagnosed with PTSD but concluded that this would not inhibit him from finding work. She considered the interests of the children but noted her earlier conclusion that deportation would not be 'unduly harsh'. She considered the position of the appellant's partner and concluded that she would have the support from family members and the local authority if necessary. She accepted that deportation would be harsh, but not 'unduly harsh'. At [131] the judge concluded:

> "While the appellant's and, particularly, his partner's circumstances and, thus, those of the children, are compelling and deserving of compassion the evidence is not sufficient to describe them as "very compelling circumstances over and above those described in paragraphs 399 and 399A""

10. Although the judge stated at [107] that she carried out an evaluative assessment, on an overall reading of the decision, it is difficult to ascertain how the judge weighed the evidence in order to come to the conclusions that she did. The decision recited a series of factors that the judge described as compelling, which were relevant to an evaluative assessment, including (i) the appellant's long residence since childhood; (ii) the fact that he had ILR; (iii) the diagnosis of PTSD; (iv) his partner's medical condition; (iv) the potential risks to his partner and the children as a result of her medical condition; and (v) the fact that the oldest child had already suffered emotional distress and behavioural problems while his father was in prison.

11. Despite the lengthy analysis of the appellant's circumstances, what is lacking from the decision is any explanation of <u>how</u> the judge weighed up these competing factors to come to the conclusions that she did. Having set out the details, the findings at [92] and [131] fail to adequately explain how the judge reached the conclusion she did. There were compassionate factors in this case which arguably went beyond the usual disruption of family life caused by deportation. Ms Cunha expressed concerns about the way in which the judge assessed the position of the children and accepted that the judge erred in her assessment of whether it was 'unduly harsh' on the children to remain in the UK. She also accepted that this error was also likely to impact on the overall balancing exercise conducted with reference to paragraph 398 and section 117C(6) of the Nationality, Immigration and Asylum Act 2002 ("NIAA 2002").

12. In relation to the weight to be given to the public interest, the judge noted that (i) this was the appellant's first conviction; (ii) he was sentenced to 16 months imprisonment; and (iii) did not pose a risk of reoffending. The judge failed to explain how these factors might affect the weight to be given to the public interest when properly weighed against the cumulative effect of several other factors that she described as "compelling". Her findings relating to paragraph 398 and section 117C(6) seemed to proceed on the basis that the public interest was fixed and unmovable, and that it was for the appellant to reach a certain threshold. The statutory scheme must be read to be compliant with the relevant principles relating to Article 8. After all, that is the stated aim of the provisions. A proper balancing exercise should be carried out giving due weight to the public interest in deportation. This has always been the case, but the principle was recently restated by the Court of Appeal in *Akinyemi v SSHD* [2020] 1 WLR 1843 [50].

13. The respondent accepted that the decision involved the making of a material error of law. It was agreed that the decision should be remade in the Upper Tribunal. The following factual circumstances are not in dispute:

    (viii) The appellant's immigration history.
    (ix) The appellant is in a genuine relationship with a British partner and children.

(x) It would be 'unduly harsh' for the children to relocate to Jamaica.
(xi) The appellant's partner suffers from epilepsy.
(xii) The appellant's partner has some family members living nearby.
(xiii) That the oldest child needed help with emotional and behavioral issues when his father was in prison and is therefore likely to suffer similar issues if the appellant is deported.
(xiv) The finding that the appellant does not pose a risk of reoffending is preserved [104].

14. Although some time was spent discussing the scope of the preserved findings, much of the factual background is not in any serious dispute. The task of the Upper Tribunal will be to carry out an evaluative assessment, based on the evidence, with reference to the relevant legal framework.

DIRECTIONS

15. **The parties** shall have regard to the Presidential Guidance Note: No 1 2020: Arrangements During the Covid-19 Pandemic when complying with these directions.

16. **The appellant** shall file cross-referenced skeleton argument and a consolidated bundle of all the documents relied upon (including an electronic copy) by **11 August 2020**.

17. **The respondent** shall file a response to the further submissions within **three weeks** of receiving the appellant's submissions, identifying (i) whether any of the evidence given by the witnesses is disputed; and (ii) whether she wishes to cross-examine any of the witnesses. The respondent should also make submissions as to whether the case is still appropriate for remote hearing on not.

18. **The appellant** may file any further submissions relating to whether the case is still appropriate for a remote hearing within **seven days** of receiving the respondent's submissions.

19. The parties are at liberty to apply to amend these directions, giving reasons, if they face significant practical difficulties in complying.

20. Documents or submissions filed in response to these directions may be sent by, or attached to, an email to [email] using the Tribunal's reference number (found at the top of these directions) as the subject line. Attachments must not exceed 15 MB.

21. Service on the Secretary of State may be to [email] and to the original appellant, in the absence of any contrary instruction, by use of any address apparent from the service of these directions.

DECISION

The First-tier Tribunal decision involved the making of an error on a point of law

The decision will be remade at a resumed remote hearing in the Upper Tribunal

Signed *M. Canavan* Date 01 July 2020
Upper Tribunal Judge Canavan