Upper Tribunal
(Immigration and Asylum Chamber) **Appeal Number: HU/16747/2019**

THE IMMIGRATION ACTS

Heard at	**Decisions & Reasons Promulgated**
George House, Edinburgh	
on 4 November 2021	**On 18 November 2021**

Before

UT JUDGE MACLEMAN

Between

N M

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

For the Appellant: *Mr S Winter, Advocate, instructed by Kothala & Co, Solicitors, Wembley*
For the Respondent: *Mr M Diwyncz, Senior Home Office Presenting Officer*

DETERMINATION AND REASONS

1. The appellant is a citizen of Zimbabwe, aged 35. He came to the UK at the age of 17 on a family reunion visa. From 2006 to 2019 he incurred numerous criminal convictions, culminating on 11 April 2019 at Oxford Crown Court with a sentence of 32 months imprisonment on 5 counts of possessing an imitation firearm with intent to cause fear of violence.

2. The SSHD made a deportation order against the appellant on 27 September 2019, and by a decision dated 30 September 2019 found that no exception to deportation applied, and that there were no very compelling circumstances over and above those exceptions. His claims on human rights grounds were accordingly refused.

3. FtT Judge Howard dismissed the appellant's appeal by a decision promulgated on 16 April 2020.

4. By a decision promulgated on 2 December 2020, which should be read as if incorporated herein, UT Judge Jackson set aside the decision of the FtT. At [34] Judge Jackson preserved certain findings of fact, and at [35] retained the appeal in the UT for remaking, as "only limited further findings of fact are required".

5. A transfer order has been made to enable decision-making to be completed by another UT Judge.

6. Mr Diwyncz accepted that although that stage had not been reached at the time of the respondent's decision, the appellant has now been lawfully resident in the UK for most of his life.

7. The respondent's position in the refusal letter is that the appellant is not socially and culturally integrated in the UK. That is based primarily on his criminal history. The FtT omitted to make any finding on that point, so it remained open. Mr Diwyncz did not concede that the appellant is socially and culturally integrated in the UK, but he had nothing to add.

8. Based on the findings the FtT did make, and on the appellant's circumstances in the UK from arrival up to the date of the hearing, I indicated at an early stage that I would hold that he is socially and culturally integrated in the UK. Only a relatively short part of his time here has been spent in custody. His adult life has transpired in such a way that it would be unrealistic to find that he is not integrated.

9. It was agreed also at that stage that the UT principally had to decide (i) whether it would be unduly harsh for the appellant's daughter to remain in the UK without him and (ii) whether there are very significant obstacles to the appellant's reintegration in Zimbabwe; and that success on either or both of those issues would lead to the appeal being allowed.

10. The appellant adopted his updating statement and was not cross-examined.

11. The appellant's father, mother and sister gave evidence, adopting their updating statements, and were briefly cross-examined. The respondent did not suggest that anything in their evidence should be taken at less than face value. I have no hesitation in finding all three to be honest and straightforward witnesses.

12. The following builds upon the findings of the FtT, as preserved by UT Judge Jackson.

13. Apart from one brief lapse, the appellant has succeeded in abstaining from alcohol since his last offences, including the period since his release from custody in March 2021. (Alcohol abuse has been at the heart of the appellant's problems.)

14. The appellant's sister continues to be the primary carer for his daughter, in a household in England with his sister's three daughters and her

husband. The appellant, his father and his mother live in Glasgow. The appellant has direct contact with his daughter every second weekend and during school holidays, and indirect contact while they are apart. Most recently, she spent the week of the October holidays with the appellant and his parents. When it was time to return, she was upset at leaving and wished she could remain with him. The appellant makes a significant emotional contribution to her care, and recently has been able to provide financial support, such as the cost of school unforms. His sister described this as "pretty much taking care of her", which might go rather far, but no doubt it plays a useful part.

15. The appellant's daughter is an unusually vulnerable child, due to well attested ongoing problems resulting from her origins. She is due to be further assessed for foetal alcohol syndrome, for autism, and by a child psychologist, through her school. She has had great good fortune in being cared for in the family of her aunt, but she has never had, and is never likely to have, any relationship with her mother. Her father has always been the only natural parent in her life. Although they have not lived as part of the same household, they have had a strong relationship since her birth. That benefit cannot be replicated, in any meaningful way, after deportation. She is aged only 6, so there remain many years of childhood during which it may be hoped that she will benefit from his emotional support. Professional assessments have consistently stated that the appellant's removal from her life would have an adverse impact. That gap cannot entirely be filled by the other family members who care for her.

16. I find in the above elements beyond what is inevitable in any deportation which separates parent and child, and which are not only harsh, but unduly so.

17. The FtT placed some significance on the appellant having connections to his sister's in-laws in Zimbabwe, from whom some help was to be anticipated. Even on the evidence as it then was, that seems to strain a remote connection. It no longer applies. The mother-in-law of the appellant's sister has moved to South Africa to care for her grandchildren there, after the death of her daughter.

18. The appellant's father works as a taxi-driver, part-time at present due to a degree of ill-health. His mother works as a staff nurse. They have a mortgage and other usual financial commitments. His sister is an immunologist. Her employment is also affected at present by some ill-health. Her husband works in IT. Their financial resources are required for family and household commitments.

19. The witnesses said they would be unable to contribute to the appellant's maintenance in Zimbabwe. The FtT found that there might be available "some little money", but it would be unrealistic to expect that to amount to more than a little.

20. As summarised by UT Judge Jackson at [33 – 34], the circumstances include no accommodation; no relatives; no real prospects of employment; and no prospects of improvement in that situation, given learning difficulties and absence of formal qualifications. There is to be added to that the absence of any prospect of substantial support either from relatives in the UK or from remote connections in Zimbabwe.

21. The appellant has not lived in Zimbabwe for a long time, or as an adult. He has his vulnerabilities, a degree of intellectual impairment and a tendency to alcohol abuse. He is much less likely to cope with these in Zimbabwe than he is here, where he has some outside assistance and, more importantly, excellent family support.

22. Mr Winter referred to the circumstances leading to the appellant's mother and sister being granted asylum; to the screening of returning passengers; and to the evidence of the appellant suffering from "flashbacks" to events in Zimbabwe. He submitted that although the appellant could not establish a protection claim, this was a background which might add to the difficulty of reintegration. Although short of decisive, those are additional points which were worth founding upon.

23. Taking all the above together, and recognising that the test is high, I find that matters confronting the appellant in Zimbabwe amount to very significant obstacles to his reintegration.

24. The appellant's case succeeds in terms of the exceptions to deportation on both family and private life.

25. On the alternative of "very compelling circumstances" over and above the exceptions, Mr Winter submitted that there was some mitigation for the index offence (committed under rather bizarre circumstances); no further offending; evidence of rehabilitation and of addressing mental health and alcohol issues; absence of similar facilities in Zimbabwe; and more than the normal emotional ties with his parents and siblings in the UK.

26. Those are all tenable points, but not of the necessary force. If the case fell short of the exceptions, I do not consider there is anything which reaches the level of very compelling circumstances.

27. I am obliged to Mr Winter and to Mr Diwnycz for their assistance in resolving the case.

28. The appeal, as originally brought to the FtT, is allowed.

29. An anonymity direction remains in place. 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. Failure to comply with this direction could lead to contempt of court proceedings.

8 November 2021
UT Judge Macleman

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.