Upper Tribunal
(Immigration and Asylum Chamber) **Appeal Number: PA/04079/2019**

THE IMMIGRATION ACTS

Heard at Manchester (Remote)
On 20 July 2021

Decision & Reasons Promulgated
On 12 August 2021

Before

UPPER TRIBUNAL JUDGE HANSON

Between

IR
(Anonymity direction made)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellant: Mr Hodson instructed by Elder Rahimi Solicitors.
For the Respondent: Mr Tan a Senior Home Office Presenting Officer.

DECISION AND REASONS

1. The appellant, a citizen of Iraq born on 10 August 1987 appeals a decision of the Secretary of State, who refused his application for leave to remain in the United Kingdom on protection and human rights grounds, as an exception to the order for his deportation from the United Kingdom.

2. On 24th July 2017 at Leicester Crown Court the appellant was convicted on two counts of conceal/disguise/convert/transfer/remove criminal property;

acquire/use/possess criminal property and two counts of knowingly concerned in the fraudulent evasion of a prohibition/provision re: counterfeit goods for which, on the same occasion, he was sentenced to 41 months imprisonment on three counts to be served concurrently, and 15 months imprisonment for two counts to run concurrently. A total of three years and five months imprisonment.

3. The appellant was also advised that section 72 of the Nationality, Immigration and Asylum Act 2002 applied.

4. The judge of the First-tier Tribunal records at [8] of that determination, promulgated on 20 January 2020, that the asylum claim was not being proceeded with and that the only issue was the appellant's human rights claim.

5. The First-tier Tribunal Judge found that family life existed between the appellant, his wife and three children. The three children were found to be qualifying children as they are British citizens and found that the appellant's deportation would result in unduly harsh consequences for the children, and that pursuant to section 117C(3) of the 2002 Act the public interest did not require the appellant's deportation.

6. The Secretary of State was granted permission to appeal. In a decision dated 6 July 2020, decided pursuant to rule 34 of the Upper Tribunal's procedure rules, Upper Tribunal Judge Pickup set that decision aside on the basis it was found the First-tier Tribunal had failed to apply the correct test and maintain a balanced approach to resolving the issue of 'unduly harsh' such that the decision is fatally undermined and cannot stand.

7. The matter was relisted before Judge Pickup on 16 April 2021, who adjourned the hearing and recused himself, the explanation for which course of action is set out at [10 – 12] of the adjournment notice in the following terms:

> 10. At the outset of the hearing before me, Mr Hodson indicated that the challenge to the error of law decision remained. The respondent does not accept that there was an error of law in the decision of the First-tier Tribunal, and he intended to invite the Upper Tribunal to revisit the error of law decision in making error of law decisions on the papers without an oral hearing. Mr McVeety also indicated that he had instructions from the Home Office to raise this as a preliminary issue. Mr Hodson made application that I should recuse myself from the matter in order that the application to reopen the error of law decision could be made before a different judge.
>
> 11. The parties were reminded that the jurisdiction to depart from or vary the error of law decision is to be exercised only in very exceptional cases. However, having considered the submissions of Mr Hodson and noting that it was unopposed by Mr McVeety, I considered that it is arguable. There are such very exceptional circumstances that I should accede to the application to adjourn this matter to enable the respondent to make submissions to a different Upper Tribunal Judge that the error of law decision issued on 7.7.20 should be remade in an oral hearing following the opportunity for both parties to make written and oral submissions on the error of law issue. Whilst there is no requirement that the application to revisit the error of law decision must be decided by a different judge, I consider that it would be consistent with the Tribunal's overriding objectives to deal with cases fairly and justly to enable such a course of action.
>
> 12. The remaking of the decision in the appeal should proceed immediately thereafter. I have issued directions below to enable the further management of this case.

8. Directions were given by Judge Pickup, the third of which is in the following terms: *"Any application to reopen or remake the error of law decision must be supported by written submissions to be lodged and served no later than seven days before the next hearing"*.
9. The issue of the scope of the hearing was raised with the parties at the outset, during which Mr Hodson stated he was not aware if the direction had been complied with and any application made. A reading of the file indicates it has not. Further discussion resulted in a pragmatic approach being taken that Judge Pickup's error of law finding would stand with the Upper Tribunal going on to rehear the appeal with a view to substituting a decision to either allow or dismiss the appeal.

The appellants case

10. In his latest witness statement dated 8 April 2021, the appellant confirms he remains living in the family home in Nottingham with his wife, LR, their daughter, DK born on 5 April 2019 and his wife's other two children LH aged 11 and ZS, aged 17.
11. The appellant refers to the family spending time together during the Covid lockdown and his wife having been furloughed and spending much of her time with DK, although he states he does his bit too.
12. LH starts her Secondary School in September 2021 and ZS, who is older, is more independent, having a part-time job as a carer, finishing her A-levels in 2021 and commencing an undergraduate course of study at Derby University in September 2021 to which she will travel from the family home in Nottingham.
13. In 2020 LR took DK to Iraq to enable the appellant's mother to meet her new grand daughter for the first time. The appellant records that LR would call him constantly saying she did not know what she was supposed to do or how she should behave in certain circumstances and did not understand the language of the family. The appellant claims that the trip underlined to LR that she could never live in Iraq long-term as the cultural differences were just too great especially for LH who would be faced with having to cope with a change of education, language and culture at her age, which the appellant fully accepts is the right decision for the family.
14. The appellant recognises that the issue is that if he is deported to Iraq the family will be split. The appellant in his statement recognises that the relevant question is whether deporting him to Iraq would result in unduly harsh consequences on LR, DK and LH. The appellant's case is that such consequences will arise.
15. The appellant also notes that since his appeal before the First-tier Tribunal he has paid off the full amount of the Confiscation Order of £19,186.14; ordered following his conviction for money laundering by 15 October 2019, with the assistance of an uncle and friend who he claims lent him the outstanding amount of £11,312.32 which included £829.82 interest. The appellant states those friends would also be ready and able to offer him paid employment should he be allowed to remain with permission to work, which will enable

him to remain with and support his family, emotionally and financially, and to make a positive and law-abiding contribution to the future.

16. Mr Hodson relies upon his skeleton argument dated 14 April 2021, which sets out the factual background to the appeal, the immigration decision and grounds of appeal, the relevant legal framework and at [4] his submissions in support of the appellant's appeal which are in the following terms:

> 4. SUBMISSIONS
>
> 4.1 The first issue to be decided is whether the appellant is liable to deportation under the Immigration Act 1971 as subject to the provisions of the UK Borders Act 2007. The appellant is not a British citizen. He has been convicted to a period of imprisonment meeting Condition 1 of s.32(2) of the 2007 Act and hence his deportation is thereby said by the Secretary of State to be conducive to the public good in accordance with s.32(4) of the 2007 Act. It is therefore accepted that the appellant is at least liable to deportation under section 3 (5) (a) of the Immigration Act 1971.
>
> 4.2 The next issue is whether the appellant's removal would breach the Refugee Convention or the European Convention on Human Rights. A person may not be removed if to do so would breach the UK obligations under either of these Conventions. It is submitted that the appellant's removal to Iraq would indeed breach the Human Rights Convention.
>
> 4.3 As regards the Refugee Convention and Article 3 ECHR, with respect to the asylum claim that the appellant had previously made this has been the subject of a determination by the Judge of the Asylum and Immigration Tribunal promulgated on 20 June 2008 [see determination at RB/D1 -D8]. The appellant is not seeking to produce fresh evidence in support of his previous claim for asylum nor has he put forward evidence in support of any other claim founded on a different factual basis.
>
> 4.4 It will be noted by the Upper Tribunal that it was made clear at the hearing before the First-tier Tribunal that the asylum claim was not being pursued [FTT Determination paras. 6 & 8]. As a result, the issue of whether the respondents section 72 certification of that claim did not require to be considered [FTT Determination ibid]. As regards the appeal before the Upper Tribunal.
>
> 4.5 In the alternative, it is submitted that the removal of the appellant from the UK would breach his private and family life is established under Article 8 ECHR.
>
> 4.6 In accordance with Binaku (s.11 TCEA: s, 117C NIAA; para, 399D) [2021] UKUT 00034 (IAC) , as quoted above, the Upper Tribunal is bound to take a structured approach to whether the public interest requires the appellant's deportation so as to override his right to a private and family life under Article 8, where this approach *"in the context of deportation begins and ends with Part 5A of the 2002 Act"* (headnote 9). The appellant meets the definition of a 'foreign criminal' under Section 117D and as such his deportation is in the public interest for the purposes of Section 117C(1).
>
> 4.7 With reference to Section 117C (2) of the 2002 Act, it is accepted that the appellant's offences were serious, and this gives proportionately greater weight to the public interest in his deportation.
>
> 4.8 More exactly, the appellant was sentenced to 3 years and 5 months' imprisonment for his offences, which were nonetheless the first he had committed and been convicted of. Moreover, he had not been sentenced to a period of imprisonment of four years or more,

and therefore the public interest in his deportation is subject to both exceptions set out under Sections 117C (4) and (5).

4.9 With reference to Section 117C(4), it is conceded that the appellant has not lived in the UK for more than half his life so that Exception 1 under Section 117 C (4) does not apply.

4.10 however, the appellant is married to [LR], a British citizen, who is such a 'qualifying partner' for the purposes of Exception 2 under Section 117C(5).

4.11 it is further submitted that the appellant is in a genuine and subsisting parental relationship with his stepdaughter's – [L] and [Z] (the British children of [LR] by previous relationships) - as well as with his own daughter – [DK] - all of whom are 'qualifying children' for the purposes of Exception 2 under Section 117 C (5).

4.12 Indeed, reliance is placed on the findings made by FTT Hollingworth in this respect , which include findings as regards the particularly close bond between the appellant and [L] [FTT determination para. 9].

4.13 the issue to be decided is whether the effect of the appellant's deportation would be unduly harsh on his wife and/or the children so that Exception 2 does apply in this case. This in turn breaks down into whether it would be unduly harsh on them to accompany the appellant to Iraq. Alternatively, whether it would be unduly harsh on them to remain in the UK without the appellant following his deportation to Iraq alone.

4.14 the respondent's position on the issue of undue harshness is somewhat peculiar, and is premised in the first instance on the unsustainable proposition that the appellant does not have (and did not have) a genuine and subsisting relationship with [L] and [Z] (see Notice of Decision served 12 April 2019 paras. 81-85 at [RB/W17]). The respondent then argues that "in the absence of evidence of a genuine and subsisting parental relationship with your stepchildren, and given that they are British citizens who are likely to have developed ties to the United Kingdom and would be engaged in full-time education here, it is considered unduly harsh to expect them to live in Iraq" (Notice of Decision, par.84 at [RB/W17]).

4.15 the respondent proceeds to consider the alternative whereby the appellant does have a genuine and subsisting parental relationship with [Z] and [L]. The respondent opines "we consider that, if their mother and you were to deem it to be in their best interests to continue family life in Iraq, then it is considered that they would be able to adapt to a life there" (ibid). Even when this statement was made, [Z] was 15 years old, was about to sit her GCSEs. It is difficult to imagine an age when it will be harder for a child to adapt to a completely different culture, language and educational system.

4.16 unsurprisingly, neither the children's mother nor the appellant deem it to be in [Z] and [L] best interest to move to live in Iraq should the appellant be deported there. On the contrary, both LR and the appellant had made it abundantly clear that this would not be acceptable for these children and would certainly be entirely contrary to their best interests. The Upper Tribunal is directed to the appellant's Appeal Statement dated 22 July 2019 [AMB/P1-P8] at his most recent Supplementary Appeal Statement dated 8 April 2021 [ASB/A1-S5] together with the Witness Statement of LR dated 8 April 2021 [ASB/S6-S9].

4.17 the Upper Tribunal is also directed to the handwritten letter from Z dated 22 July 2019 [AMB/P16-P18] in which she makes her position quite clear regarding the respondent's suggestion that she (and L) could reasonably be expected to adapt and accompany the appellant to Iraq.

4.18 The Upper Tribunal is, in summary, invited to follow the Judge of the First-tier Tribunal in finding that it would be contrary to the best interests of the children to attempt to continue their private and family life in Iraq and that it will be unduly harsh on them, and indeed on the appellant's wife, to expect them to do so.

4.19 It is submitted that the real issue in this appeal, as in others like it, is whether it would be unduly harsh on the appellant's British wife, and in particular on his British stepchildren and British child (D K, now two years old) for them to remain in the UK without the appellant while he is deported to Iraq where he will have to remain for ten years or more.

4.20 In assessing whether it would be unduly harsh on the children, including D, to remain in the UK while the appellant is deported to Iraq, the Upper Tribunal must consider the matter of undue harshness, and the consequence for the children, from the perspective of the children themselves, and without regard to the seriousness of the appellant's offence or other related matters – KO (Nigeria) & Ors (Appellants) v SSHD (Respondents) [2018] UKSC 53 and RA (s.117C; "unduly harsh"; offence; seriousness) Iraq [2019] UKUT 00123 (IAC). The Upper Tribunal is therefore asked to give its most careful and anxious scrutiny to the evidence from Z and L themselves, most recently in their letters dated 8 April 2021 [ASB/S12 & S14].

4.21 It is hoped that L will be permitted to give oral evidence at the hearing before the Upper Tribunal in accordance with her express wishes in her latest letter (supra). In that way, the Upper Tribunal can afford her a full and fair opportunity to articulate her feelings about the appellant and her fears for a future family life without him. It is submitted that, when assessing the best interests of children in matters which intimately affect them, every effort should be made to allow their voice to be heard.

4.22 Notwithstanding the admittedly high threshold that has to be met to show undue harshness in such cases, it is submitted that this threshold is met in this instance , and there certainly is not only one possible answer to the question as there was in SSHD v PG (Jamaica) [2019] EWCA Civ 1213. On the contrary, it is submitted that the instant case can be clearly distinguished on the facts from that of PG (Jamaica).

4.23 Additionally, it is acknowledged that the Upper Tribunal in the reported decision of Imran (Section 117 C (5); children, unduly harsh) [2020] UKUT 00083 (IAC held that "*to bring a case within Exception 2 in s.117C(5) of the Nationality, Immigration and Asylum Act 2002, the 'unduly harsh' test will not be satisfied, in a case where a child has two parents, by either or both of the following, without more: (i). Evidence of the particular importance of one parent in the lives of the children; and (ii) evidence of the emotional dependence of the children that parents have the emotional harm that would be likely to flow from separation*" (Imran, headnote 1).

4.24 It is to be noted, however, that the panel in Imran also held that consideration as to what constitutes 'without more' is fact sensitive (headnote 2).

4.25 It is submitted that there is more than simple emotional dependence and harm involved in this case, although there is certainly that as well. In conducting a fact sensitive assessment of this matter, the Upper Tribunal will be directed to a number of personal documents in the appellant's Main and Supplementary Bundles and oral submissions.

4.26 Among the matters which show that the consequences of the appellant's deportation arguably go beyond the 'commonplace' of emotional fallout is the effect that the stress associated with the appellant's imprisonment has had on his wife in the past. It is submitted that she will most certainly suffer much greater stress and likely ill health from his actual deportation..

4.27 The Upper Tribunal is directed to the correspondence from Elder Rahimi Solicitors to the Home Office between April and June 2016. Regarding the miscarriage suffered by LR [AMB/P22-P27]. The Upper Tribunal is further referred to the 'Statement of Fitness to Work' issued for LR from 2016 and 2017. It is submitted that it is clear from these that the appellant's wife cannot be expected to be unaffected in terms of her health and capacity to work and support her children were the appellant to be deported to Iraq.

4.28 in addition, the Upper Tribunal is reminded of the age range of children that the appellant's wife would have to care for alone, in circumstances in which she would have to cope with the stress of her husband's deportation. Whilst the older child, Z, may be about to start university, she will remain living at home while she does so (see off a place of University of Derby at [ASB/S13]). More significantly, the middle child L will be starting her Secondary School in September (see email correspondence from Nottingham County Council at [ASB/S15-S18]).

4.29 It is submitted that this is a particularly crucial stage in the life of L and that she is, as such, especially vulnerable to the adverse consequences on the family's stability resulting from the appellant's deportation. The Upper Tribunal is urged to take a realistic view of those consequences in circumstances in which the youngest child, D, is only just starting preschool (see email correspondence [ASB/S19-S20]). In particular, the Upper Tribunal is urged to consider with special care and anxious scrutiny the mutual effect on the child L and the mother where the latter has to cope with caring for a two year old while guiding her 11 year old daughter through the early years of Secondary schooling in what is manifestly a vital period of her upbringing.

4.30 As regards Section 117C(6), it is submitted that the Upper Tribunal must consider whether there are any factors over and above Exception 2, which are such as to amount to very compelling circumstances.

4.31 It is submitted that the Tribunal must take the best interests of the children as being of paramount consideration in this appeal. It is submitted that the best interests of the children are strongly against the deportation of the appellant and this is a factor that is not confined to Exception 2 and the unduly harsh test.

4.32 it is submitted that the cumulative effect of the interference with the appellant's family and private life entailed by his removal and hence long-term exclusion from the UK is unnecessary in a democratic society under Article 8 (2) ECHR being disproportionate to the otherwise legitimate aim of the prevention of disorder or crime.

4.33 therefore, it is submitted that, while the appellant is liable to deportation and the decision is in pursuit of a legitimate aim for the purposes of Article 8 (1), nonetheless, the decision not only in to fears with the family life of the appellant, his wife, his stepdaughters and his natural daughter. But the degree and seriousness of the interference with that shared with long-term future family life is on balance, disproportionate to the legitimate aim in issue.

17. Only the appellant and his wife attended the hearing and were cross-examined by Mr Tan and re-examined by Mr Hodson, after which the advocates made their submissions to the Tribunal.

Discussion

18. The skeleton argument of Mr Hodson clearly sets out the legal structure to be considered in this appeal, where the main issue is the question of whether the effect of deporting the appellant from the United Kingdom will be unduly

harsh upon his wife, his child, and stepchildren, all of whom form a functioning family unit in the United Kingdom.

19. I agree with the submission of Mr Hodson that the appellant cannot satisfy the requirement of Exception 1 of Section 117 C of the 2002 Act on the basis of his private life, period of lawful residence, and in the absence of there being very significant obstacles to his reintegration into Iraq, where he clearly has family members as demonstrated by his wife's recent visit to enable the appellant's mother to see her granddaughter.

20. Although the appellant claims that his situation is difficult and that his wife would struggle to be able to care for two children of school age, the older child being much older, independent, now attending university, although living at home, it was not shown Z would not be able to render some assistance. The prospect facing LR is also a situation faced by many single mothers in the United Kingdom with children of similar ages.

21. The witness statement of LR confirms that she has been furloughed from her work at the Metropolitan Housing Association since the beginning of March 2020, but hopes to return to work from July 2021, indicating no bar on her behalf to her being able to work per se. Many single parents work with their income being topped up by Tax Credits with the use of after-care clubs or other childcare arrangements as required. If this was needed in this case, there is no evidence that it will be unduly harsh upon the family members remaining in the United Kingdom.

22. It is not suggested the children will not be able to continue living with their mother as they do at present. It is not disputed that the best interests of the children are to be able to continue living together within the current family unit but that is not the determinative issue in this appeal, although a factor that has been given considerable weight. If the appellant is deported, I find it is in the best interests of the children to remain with their mother.

23. It is not made out that the appellant's deportation will interfere with L's ability to continue to see her natural father or unduly impact upon Z's ability to attend her university course and to achieve the best grades she can. There is no evidence to the contrary.

24. It is also not made out that Z would not be able to see her natural father on a regular basis and the statement of LR refers to Z staying with her father twice a week as it is easier to get to college from his home and given the hours she is studying and working.

25. Whilst LR, as with the appellant, asserts in the statement that the decision to deport the appellant was wrong as it would be too harsh on her daughters, such a statement is not supported by any third-party reports, such as from social worker, etc, as noted by Mr Tan.

26. In relation to LR some of her evidence is out of date with regard to her medical needs, her oral evidence being that she is not on any medication as she would prefer to handle issues herself, which is admirable and demonstrates a willing strength of mind to enable her to overcome such issues.

27. The letter from Z dated 8 April 2021, referred to in the skeleton argument, is in the following terms:

I feel it would be very harsh on my family if [] was to be deported because this would effect my mum and myself and my sisters as he does a lot for the family. It would be extremely hard for my mum if [] was sent back to Kurdistan. As she would be alone. As I work part time and will be going to university in September, so I won't be there to help her as she would be very stressed, as she also has to go back to work in July. It would also be extremely hard for L and D as D would grow up without her dad and L has a very close relationship with []. We all love [] very much and would be heartbroken if he was sent back to Kurdistan.
Kind regards
ZS
08/04/2021

28. Mr Hodson's skeleton argument urges the Upper Tribunal to consider all the evidence with the required degree of anxious scrutiny and that has been done, even if the same is not set out verbatim or specifically referred to in the decision.
29. Whilst LR is returning to work, it is not made out that it will be unduly harsh upon her or the children if she has to give up such work and become dependent on benefits to enable her to be a full-time mother for the children if their needs require such action.
30. The appellant's evidence is that he has friends and family in the United Kingdom who have helped in the past and I do not find credible his claim that if he was returned to Iraq and his UK-based family needed help that such support could not be available from those sources if required as he originally claimed, but I also note he later on stated that if the need arose he believed some assistance could be provided. The evidence did not support the claim that the family will be abandoned in the United Kingdom if the appellant is deported. It is also noted from the evidence that LR was able to work previously for 22 hours a week, part time, and it has not been shown she could not do so again giving her time to meet the needs of the children, or that her own mother, who is now retired and lives in Nottingham (with no evidence that she would not be willing) being available to help if needed.
31. As noted by Mr Tan, the family dynamics continued in terms of the availability of housing and adequate financial and emotional resources whilst the appellant was in prison and that there were sufficient funds to pay for the trip to Iraq, indicating a good income source even though the appellant is prevented from working.
32. Section 117C Nationality, Immigration and Asylum Act 2002 reads:

117CArticle 8: additional considerations in cases involving foreign criminals

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

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

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

(4) Exception 1 applies where—

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

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

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

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

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

(7) The considerations in subsections (1) to (6) are to be taken into account where a court or tribunal is considering a decision to deport a foreign criminal only to the extent that the reason for the decision was the offence or offences for which the criminal has been convicted.]

33. The difficulty for the appellant is the paucity of evidence to support the contention that the consequences of his deportation outlined in the witness statements and oral evidence are sufficient to satisfy the threshold of being unduly harsh, either on their own for each individual person or cumulatively as a family unit. There is insufficient evidence to support the claim that the emotional impact upon the children or their mother of the appellant's deportation, even if it reminds some of the trauma of previous breakdowns, will result in unduly harsh consequences.

34. The finding of Judge Pickup that the First-tier Tribunal Judge erred in law in appearing to find that the failure of the two previous relationships rendered the maintenance of stability of the current relationship so important or significant that the separation of the appellant from the children would have an effect far greater than the likely and commonplace consequences to be expected from the deportation of foreign criminal with a genuine and subsisting relationship, resulting in unduly harsh consequences, clearly warranted that decision being set aside as a decision that is not legally correct on the evidence. The finding of the First-tier Judge was not a finding within the range of those reasonably available to him on the evidence when applying the required legal test correctly.

35. I have evaluated the assessment of the impact of the appellants removal upon the children by reference to the children themselves.

36. I have noted the guidance provided by the Court of Appeal in HA (Iraq) v Secretary of State for the Home Department (Rev 1) [2020] EWCA Civ 1176 where they cautioned against conflating "undue harshness" with the far higher test of "very compelling circumstances". The underlying concept is of an

"enhanced degree of harshness sufficient to outweigh the public interest in the medium offender category" [44-56].

37. I have also when evaluating undue harshness for any of the children taken into account the Zoumbas principles, the best interests of the child, emotional as well as physical harm, relationships with other family members in the UK and where applicable "the very significant and weighty" benefits of British citizenship.

38. I have also considered not only the particular relationship between the appellant, his daughter and stepchildren, but also the domino effect that could ensue should he be removed, ie on the needs and responsibilities of other family members etc. I do not find it has been established on the evidence that the consequences, although harsh and will require readjustment within the family unit, has been shown to be unduly harsh.

39. I do not find it has established on the available evidence that the consequences for any family member of the appellants deportation from the United Kingdom, whilst having a harsh effect upon the family members, crosses the threshold of being unduly harsh to enable him to succeed under Part 5A or the Immigration Rules.

40. I also find when considering whether there are compelling circumstances sufficient to outweigh the strong public interest in the deportation of the appellant in pursuit of the legitimate aim of the prevention of crime and disorder, especially in light of the commission of the serious money laundering offence for which he received a custodial sentence, that the Secretary of State has discharged the burden of proof upon her to the required standard to show that any interference in a protected right caused by the appellant's removal from the United Kingdom is proportionate.

41. I have factored into the balancing exercise in addition to the points relied upon by the appellant in his argument pursuant to section 117C, the observations regarding lack of offending and rehabilitation, which is one of a number of factors.

42. If one reads the appellant's evidence, it is clearly a plea from the family members to allow the appellant to remain in the United Kingdom as they do not want the family to be disrupted, want to preserve the status quo, and will be distressed if he is deported. I find, however, that significant weight is to be given to the public interest, especially in the absence of no form of independent social worker's report or evidence from social services or a child psychologist as to the fragility of the children or any unduly harsh impact upon them as a result of the appellant's removal.

43. I find the appellant has failed to establish that he is able to benefit from any of the exceptions under Part 5A or the Immigration Rules and that is deportation from the United Kingdom is proportionate.

Decision

44. I substitute a decision to dismiss the appeal.

Anonymity.

45. The First-tier Tribunal made an order pursuant to rule 45(4)(i) of the Asylum and Immigration Tribunal (Procedure) Rules 2005.

I make such order pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008.

Signed…….
Upper Tribunal Judge Hanson

Dated 6 August 2021