



**Upper Tribunal  
(Immigration and Asylum Chamber)      Appeal Number: HU/09912/2019**

**THE IMMIGRATION ACTS**

**Heard at Manchester CJC  
On the 9 February 2022**

**Decision & Reasons Promulgated  
On the 31 March 2022**

**Before**

**UPPER TRIBUNAL JUDGE HANSON**

**Between**

**KTY**

**(Anonymity direction made)**

**Appellant**

**and**

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

**Respondent**

**Representation:**

For the Appellant: Ms Miskiel instructed by Freemans Solicitors.

For the Respondent: Mr Tan, a Senior Home Office Presenting Officer.

**DECISION AND REASONS**

**Background**

1. On 1 March 2021 the Upper Tribunal set aside a decision of the First-tier Tribunal which dismissed KTY's appeal against the refusal of his human rights claim made in support of his argument he should not be deported from the United Kingdom as he is able to meet one of the exceptions to deportation provided in UK Borders Act 2007.

- 2.** KTY is a citizen of Ghana born on the 21 January 1985 who arrived in the United Kingdom on 19 March 2000, lawfully, to join his mother and was granted indefinite leave to enter.
- 3.** KTY is subject to an order for his deportation from the United Kingdom. His offending history set out by the First-tier Tribunal, which is not contested, is as follows:
  - a) 30 January 2002, having a bladed article in a public place for which he was sentenced to attendance for 24 hours at an Attendance Centre.
  - b) 18 August 2005, attempting/obtaining property by deception x 2 for which he was sentenced to a Community Punishment Order for 80 hours.
  - c) 29 September 2008, attempting/possession of controlled drug with intent to supply for which he was sentenced to 26 weeks imprisonment wholly suspended for 18 months and made subject to unpaid work requirement for 120 hours.
  - d) 12 March 2009, breach of suspended sentence order. No order made.
  - e) 29 May 2009, breach of suspended sentence order for which he was sentenced on 19 June 2009 to 4 months imprisonment, consecutive.
  - f) 19 June 2009, robbery for which he was sentenced to 6 years imprisonment, reduced on appeal to 4 years and 10 months, consecutive to the sentence of four months imprisonment mentioned above.
  - g) 30 November 2012, facilitate the acquisition/acquire/possess criminal property and conceal/disguise/convert/transfer/remove criminal property x 2 for which he was made subject to the community order for 12 months subject to curfew requirement for 4 months concurrent.
  - h) 30 November 2012, possess criminal property and conceal/disguise/convert/transfer/remove criminal property x 2 for which he was again made subject to a community order subject to curfew requirement for 4 months and activity requirement for 12 months, concurrent.
  - i) 20 January 2014, between 28 April 2013 and 9 July 2013, convicted after trial of conspiracy to commit 5 snatch robberies of cash boxes and two attempted robberies. He was sentenced to 10 years imprisonment.
- 4.** Following conviction on 19 June 2009 the Secretary of State served a decision to make an order for his deportation from the United Kingdom pursuant to section 32(5) UK Borders Act 2007, followed by a second deportation order made on 22 June 2011. The Judge noted that following conviction on 20 January 2014, on 30 January 2017 the Secretary of State issued KTY with a notice of intention to deport him in response to which he signed a disclaimer indicating he consented to be removed to Ghana; although before the First-tier Tribunal he withdrew any such consent indicating he had not read the document including the provision regarding the benefit of legal advice.

5. On 12 June 2018 the Secretary of State served the Deportation Order. KTY made representations based on asylum and human rights grounds. That application was refused on 15 May 2019 with the protection claim being certified pursuant to section 72 Nationality, Immigration and Asylum Act 2002.
6. The appellant contested the section 72 certificate before the Judge and in relation to that the Judge wrote:
  36. I have carefully considered the evidence presented to me and in particular the latest OASys report which assessed him as a medium risk. I have considered what the Appellant and other witnesses had stated on his behalf. I have most importantly taken note of what was stated before the panel at the hearing on 24 January 2012, which was no different from what he was claimed before me. Having considered all the evidence presented to me, I am not satisfied that the presumption in section 72 that the Appellant was still a danger to the community in the UK has not been rebutted. I therefore uphold the Respondent section 72 certificate. It is not open to the Appellant to argue asylum or humanitarian protection.
7. That is a preserved finding.
8. In relation to the Article 2 and 3 protection grounds, it was noted the appellant had been out of Ghana since aged 15 that he was now 35 but noted he was never harmed by anyone and did not come to anybody's adverse attention in the past whilst growing up in Ghana, that he visited the country in 2006 and confirmed he had no problems with anyone; and despite claiming that he feared for his safety on return was not able to say who he was in fear of or where they lived. The First-tier Judge noted KTY's mother visited Ghana every year but had no problems with anyone, before concluding that the protection claim was a total fabrication designed to simply obstruct his deportation from the United Kingdom. That too is a preserved finding.

### **The evidence**

9. KTY relies upon the connection he has with his children in the UK to argue that his deportation is disproportionate.
10. I have read all the witness statements but refer below in the main to the latest ones which summarise the past and current situation.
11. In his latest witness statement, dated 21 July 2021, KTY again refers to his children in the UK. Together with FS he has a daughter D, born 27 July 2005 a British citizen, in relation to whom he describes the confusion that his imprisonment and pending deportation has caused and the impact of the same upon the child. KTY has a further child from the same relationship a son IS, born on 2 May 2005 also a British Citizen. KTY claims that he and IS are inseparable. The child was born whilst he was in prison. The previous listing of this substantive hearing was adjourned as it came to light from the evidence that there had been a material change in KTY's circumstances in that he claimed to have become IS' primary carer. KTY claims in his statement that IS

- spend 3 to 4 days a week with him, sometimes more, and other times with his mother who has three children from her new relationship.
- 12.** KTY claims that he was deported from the United Kingdom it would have “a life changing and negative impact” upon IS. He refers to his being a great help to IS’ mother as a result of the physical practical and emotional support he provides to his son. KTY claims that if he is not in the UK he will be a grave lost both to IS and his mother FS both of whom need him in the UK. KTY claims it will be so right for him to be able to watch his son grow and to help him with his experiences and to prepare for the real-life challenges “facing young black kids in London”.
  - 13.** KTY also refers to another son K, born on the 6 April 2014 a British citizen, who is described as the third son from his previous relationships. KTY states that K’s mother FG was at that time recovering at home from surgery and that he was helping to look after K who he also claims is “a huge part of my life”. KTY claims that he says it is through him that the children maintain a family bond between them. KTY claims to co-parent with FG despite the fact their own relationship did not work out. At the date of drafting the statement K was seven years of age and understands the appellant “being around” and KTY claims he fears that if he is deported the impact upon K will be negative and the connection with his siblings will be broken which he states is not good for the child’s well-being. The appellant claims K will be a lone child in distress.
  - 14.** KTY stated his daughter D is emotionally unstable and that her school had previously referred her for counselling as a result of the reaction to his imprisonment. KTY claims D did not react to counselling well as she is a close child who does not say a great deal and that she keeps her feelings to herself. KTY claims he is doing everything he can to support her mother FS to bridge the gap between them.
  - 15.** KTY claims to have disassociated himself from the friends he had in the past who have been identified as those he was involved with when he undertook his criminal acts. KTY claims to volunteer with a local football club working with teenagers near to where he lives. KTY refers to qualifications obtained in prison and believes he will be able to obtain work with his mother who owns a cleaning company if he is permitted to do so.
  - 16.** KTY claims the support of those in his mosque has helped him, that he has found out about himself and the meaning of life and been able to discuss issues with his probation officer and to be drug free. KTY asks for the appeal to be allowed to give him a second chance to share life with his children.
  - 17.** D has filed an up-to-date witness statement of her own dated 21<sup>st</sup> July 2021. In it she confirmed she is a British citizen born on 27 July 2005 in London.
  - 18.** D confirmed she understands the reason her father is in the situation he is and that she feels shame for what her father did.
  - 19.** D states when her father went to prison, she was very confused, did not understand what was happening to him, and why he stopped

being in her life. She claims that when her father was released, she started suffering anxiety about what would happen to him and whether he would stay or have to leave in the future. That coincided with a time when D was having a difficult period with her mother at home, there was the COVID-19 lockdown, and her mental health was “bad”.

- 20.** D claims that when her father went to prison, she was often angry and upset at school, easily offended and only partly wanting to talk to anybody. She described losing happiness in a relationship she had with the father which was something she was not prepared for; and so blamed herself. D claims counselling did not work for her and she needed her father as she felt secure around him.
- 21.** D visited her father in prison although thought initially he was away for work too. D describes what she states was her “worst nightmare” when KTY went to prison for the second time which she claims devastated her completely. She was in “complete confusion”.
- 22.** D states she is at the crucial stage of her development and needs her father to help her into adulthood which cannot be replaced, claims her life is already spiralling downward, and that has she started developing a relationship with her father and gradually started to trust him again, as a result of their past separation due to imprisonment. D describes herself struggling to deal with the impact of the past and being at breaking point, being very stressed because of father’s hearing is approaching, and that if her father is taken away from her that would turn her life completely upside down and for the worst.
- 23.** In FS’ latest witness statement of 21 July 2021 she claims that she would “be at the receiving end” of everything if KTY was deported.
- 24.** FS confirms that she is the mother of D and IS and claims to have co-parented with KTY in the past and since his release from prison. It is claimed that IS is so attached to his father that he will be confused and bewildered if he was suddenly not around him. FS confirms IS spend three or four days a week with his father and that they have a special bond and close relationship. It is stated KTY is not just a person who provides practical help to IS but also mental and developmental help and is said to be the primary carer of IS, in that they do their schoolwork together, KTY takes him to play, engages him in extracurricular activities, and that they spend a lot of time together. KTY collects IS from school.
- 25.** FS states IS is in the infant stages of development and that it would be devastating for him if the appellant is suddenly no longer in his life. FS confirms she is in different relationship from which she has other three children, meaning that she has five children in total including D and IS and claims that without KTY she would find it difficult coping with all the children. It is stated D has a lot of emotional and adolescent difficulties, is facing teenage challenges, and that having KTY around makes a big difference and eases the burden upon her.
- 26.** It is said D did not cope well with her father being away, that the child is deeply acutely aware of the deportation which causes her torment. It is stated that since KTY was released from prison D’s behaviour

improved at home and at school and that FS is worried that if KTY is deported it will be traumatising for D and too much for her to bear. FS states D feels very insecure, has low confidence which for D can be challenging, and that she has “ups and downs” like any mother will have with teenage children. It is said KTY provides support and a sense of direction that D requires.

- 27.** There is confirmation that IS “basically now lives with” KTY spending three or four days a week with him. FS also expresses the opinion that if KTY was deported it would have negative and unintended consequences for the child who is happy and enjoys being in his father’s company and does not want to see his father being taken away.
- 28.** FS also expresses concern about bad influences on IS if his father is not in the UK referring again to there being an issue with “young black boys in London” and that losing KTY may result in negative attitudes in him.
- 29.** FS confirms that the family going to Ghana is not an option for D and IS as she does not have the means to pay for their travel, they cannot travel on their own due to their ages, there are three other children in her family she is responsible for, and because she believes that the environment in Ghana is not safe for her let alone the children. FS states will not allow the children to go to Ghana at any time.
- 30.** A further statement has been provided by a witness referred to as FG, a British citizen born on 4 August 1989 who is the mother of K, KTY’s third child. Reliance is placed on all the other witness statements together with the latest statement dated the 21 July 2021.
- 31.** FG confirms her continued support for KTY’s appeal against deportation claiming that he and K have a very close relationship which took time to build up as the child was born whilst K was imprisoned. K was born on 6 April 2014.
- 32.** FG states that the relationship between K and his father gradually developed after KTY’s release in 2018. K has become accustomed to having his father around and KTY provides assistance in helping to look after K. As with the other mothers of his children, FG estate she does not want her child to grow up without a father figure as having two parents will benefit K.
- 33.** At [7] of the statement there is an expression of concern for K if KTY is deported by reference to there being negative influences “in London for young black boys”. It is suggested KTY is the best person to be able to protect K from negative influences especially as a person who has come to realise that crime does not pay. There is reference to KTY undertaking work mentoring and with a local football club.
- 34.** FG states her own parents are not a replacement for KTY.
- 35.** In relation to the impact of deportation it is written that *“I would not like to be blighted if his father is suddenly taken away from him. I am a single mother. If KTY is deported from the United Kingdom, it would have a devastating impact upon me. K would be so knocked down that I fear for his emotional and mental stability. As a child, K is so afraid of losing KTY that he also thinks that I might disappear from his*

*life someday as well. Through KTY's active involvement in his life, he is reassured that he will be in his life for ever. K is too young to disclose everything to. He is however aware about the chance that KTY might not be around him. This is a torment for him. He is also a torment for me because what effects K also affects me to a greater extent".*

- 36.** FG also states going to Ghana is not an option repeating the claim made by other witnesses that it is not a safe environment, that she will not be able to afford the cost of the child going to Ghana, and that she could not imagine parting for even a day from K.
- 37.** FG also writes at [13] of the latest witness statement that if KTY is deported it would cut off K's relationship with his father which will be upsetting for the child and negatively impact on the child's emotional stability and welfare. The child would lose a key part of developmental support and it is stated will break the sibling links K has with his other siblings. It is stated KTY is the bridge between the children and the union of the family will be broken permanently if he is not in the UK; although FG states she would try to do her best to link K up with his other siblings although this would not be as much as would happen if KTY was able to remain in the UK.
- 38.** I have also seen a letter dated 21 July 2020 written by the appellant's mother AB who also gave oral evidence. She was born in Ghana and is in her late 50s.
- 39.** AB confirms that when she left Ghana she left her two sons in the care of her own mother. She came to the UK in 1992 to work. She formed a relationship with a new partner who was supportive of both KTY and his brother coming to the UK which they did. The statement describes KTY facing a strange new environment in the UK when not being used to her. She states KTY kept up his distance from her and it took time to develop trust between them. AB state she was not aware that her son had turned his attention to outsiders and that he was under pressure to fit in and belong with his new friends.
- 40.** AB confirms KTY lives with her as does IS, with K and D also visiting regularly. She stated the grandchildren are fond of each other as well as their father. AB stated KTY is a good and committed father with a new sense of responsibility, who is ashamed of his behaviour, and who has the support of the probation service, his mosque, his ex-partners and children, which are described as being a positive influence on him.
- 41.** AB's opinion on the impact of deportation is set out at [14] of the statement which accords with the views expressed by other family members.
- 42.** KTY also relies on a psychological assessment report written by Ana Reis, a Registered Clinical Psychologist, dated 19 July 2021 who was instructed to undertake an assessment to assess KTY's risk of reoffending. It is a detailed report which has been read and considered as part of the evidence.
- 43.** In relation to the risk assessment it is stated that although KTY presents to the public and children as being at low risk he needs professional support to make solid changes in his life, needs to know

more about himself, to work on his childhood traumas, and to work on relationships and build up his self-esteem. It is recommended KTY is referred to his local NHS psychotherapy department. At [7.10] it is stated “We only know clients are successful when they are in therapy, however, there are good indicators such as his ability to think psychologically, KTY also seems mature is in a good ‘place’ emotionally to do therapy. He seems prepared for intensive therapy as intensive therapy is hard and painful at times. Having in his mind his ability to think psychologically, motivation and maturity which are key when understanding psychotherapy, it is possible to conclude that KTY has high chances of therapeutic success”.

- 44.** It was not made out before me that KTY has yet successfully entered or undergone the type of therapy suggested by the Clinical Psychologist. In relation to children under the heading “children’s best interests” there is an assessment of the impact and consequences of deportation on each of the children and the impact of separation on the children, leading to Anna Reis’ conclusions in section 10 which are in the following terms:

#### 10 CONCLUSIONS

- 10.1 KTY has not raised his children from the beginning of their lives but based on previous reports (e.g. Independent Social Work report) and in my meetings with the children, their mothers and Teachers is that KTY has been very much involved in his children’s lives.
- 10.2 Children secure attachment is key in children’s development (Bowlby, 2005). It is so difficult for clients (children or adults) to attach helpfully to an absent parent and in my opinion, the children, the mothers and KTY should be very proud of the hard work that they have done. Lack of love caused by parent’s absence is a common reality and it is known to cause profound emotional scars on an individual. In my opinion, parents have done what is most difficult in life which is to bond and repair a relationship. It takes a long-term psychological work to provide the children with emotional stability, for them to learn to trust and to repair what a parental relationship has caused to a child’s mental health. The work that these parents and the children have done is invaluable and precious.
- 10.3 As cited in *Every Child Matters* (2003) professionals have to pay more attention to the critical relationships between children and their families and recognise the vital role played by fathers as well as mothers. A child needs both a mother and a father. No one can replace a father, especially one who is present. Due to potential harmful effects on the children in the long term which includes emotional and personality difficulties, low self-esteem, impact on their learning and career prospects, on their ability to attach and build a relationship with others, the separation will be considered cruel and emotionally harmful.
- 10.4 It is possible to understand that the children and their mothers are anxious about the possibility of KTY’s deportation. It is true that they were ‘surviving’ without KTY before but the children were missing a father figure in their feelings were being repressed. At the moment, FS and FG rely on KTY and they are expecting and preparing for the worst



if KTY is deported to Ghana. These mothers more than anyone know better their children as they have raised them on their own and they understand the impact of KTY's deportation on the children.

10.5 Based on my experience of assessing clients at risk of extradition or deportation is that this is quite an anxious provoking situation, especially if it is prolonged in time. The suspense in individuals' life, the fact that they cannot work, the feelings of anxiety and fear of extradition or deportation (every time the individual presents to the police or emigration officers) for a long period of time could it deteriorate individual's mental well-being and therefore impact negatively on the children. The unknown can make individuals feel anxious, especially those who find it difficult to manage emotions as they need a stable routine and need to know what is coming, but also to children, like D, IS and K who has lost his dad once. I conclude that children sense more than we think and adults transmit more emotions than they think, children are therefore affected by this situation and this is sometimes minimised by authorities.

10.6 These children and their mothers have plans and children have their own plans with their father. They want to experience what they could not experience when KTY was imprisoned. Separating from their father is not on children's plan and the children need to be involved when making plans, otherwise they will feel anxious and sense that it is not their plan. They would likely feel that they do not have control on their lives.

**45.** KTY also relies upon a report written by an Independent Social Worker Christine Brown who has produced a detailed addendum report of some 49 pages, including appendices, dated 20 July 2021 which is the third occasion that she has reported in relation to KTY, his children, and associated family members. All the reports have been read and considered.

**46.** A full copy of the 2021 report is available for anybody considering this issue further to read, if required, but specific paragraphs worthy of note are:

4.9. Since his release from custody in 2018, it is my opinion, that in the time since, the children's dependency upon KTY has grown increasingly. For D she was never in any doubt of her need for her father in her life, but since 2018 both IS and K have grown older. IS sees his younger siblings interact with their father, but knows his stepfather is not his father, but that now he can show and display his father to his peers, in the same manner as his younger siblings. This is important for his sense of self and self esteem, knowing that he is an important factor in his father's life. The same for K, who had a longer journey in building a relationship with his father, but who now enjoys a stable and positive relationship with his father. All three children, whilst knowing of their father's position, simply hope that their current security and happiness will continue. When doubt has been shown by the children both IS and K have demonstrated their unease by changes in their behavioural patterns, more withdrawn, or challenging behaviours, a disconnection with the world around them. It is, however, now three years since their father's return home and all three children are now used to the security and settlement that their father's presence brings to them.

4.10. Whilst IS and K know something of their father's proposed deportation, neither child fully understands the implications and ramifications of this or how this will impact upon them. At this time, both children consider this is something to be resolved by adults and that in time everything will continue to be fine in their lives. Neither child knows the enormity of impact upon their lives that could and, in my opinion, likely would impact on all areas and aspects of their lives, from their relationships with one another, their relationships with their mothers and other family members and also their relationships within the school, with their individual teaching teams and the formation of peer relationships. Evidence of the impact of separation and proposed further long-term separation can be seen in D's distress over the course of the past several years, her withdrawal from the outside world, her poor behaviour within school on occasion and her apparent inability to form relationships with her peers. D continues to have no discernible friendship group, or interests outside of the home. External agencies support in the form of CAMHS has been mooted for a number of years but has never materialised and less likely to do so now in the aftermath of the COVID pandemic, when such services are stretched to capacity. In the event, D and her mother both know the root cause of D's self presentation and low mood and that it is entwined with her very real fear that she will lose her father from her life, which no amount of therapeutic intervention will eradicate, or resolve and merely see D moving forward for a potential life in which she has to seek third-party support for the continued aftermath of the loss of her father.

...

4.14. In my opinion, KTY's removal from the family stage would impact on children and adults alike. KTY is the facilitator and the 'emotional glue' that holds the varying aspects of family life and those involved together. Without this, this blended family unit would cease to exist in its current form, leaving K marginalised from his siblings and IS resentful at having to return home to his mother and continue to observe his siblings intermediate and close bond to their father, he too feeling marginalised and resentful, with consequences for his relationship with his mother and his stepfather and very possibly his own settlement in his educational setting. This has already been evidenced in D's long-term settlement letter father's imprisonment and the imposing of a deportation order upon him, with all the consequences upon her that has been documented in this and my two previous reports.

4.15. There is no feasible means that the children will be able to maintain contact with their father, if deported. Visits would be occasional, if at all and in my experience, as stated in the preceding sections, cause distress, as opposed to any happiness on the part of the child, or children, who have to face the leaving of their loved one, usually a great distance from their home and the time spent with the loved one superficial, in the sense that it is not family life, it does not replicate ongoing and mutually engaging family life, that including all the simple day-to-day events that create a cohesive and functioning family unit, the hug before school, the attendance at a school play, a haircut at the weekend cheering on from the side lines at football training, showing off and a displaying of a parent at activities, with a

parent to their peers, that to a child demonstrates that they are loved and valued.

...

4.17. It continues after three years to be my firm opinion that it is not in the children's best interests to have their father deported from the United Kingdom. The harshness in doing so would dismantle the children's present functioning and productive lives. Their relationships with all their parents are positive ones - D's relationship with her mother improved by her father's presence and IS, now highly dependent upon his father for his daily needs. The dismantling of the family is the antithesis of good childcare practices. In respect of D, IS and K the three children are a result of good parenting, provided to them by their father and their mothers.

**47.** Christine Brown in her report sets out the Children Act 1989 definition of 'significant harm' which is a provision that is not applicable to immigration appeals per se. This is recognised at 4.20 of the report where Christine Brown writes:

4.20. Whilst this is not a matter in the Family Court, the potential for risk of significant harm to the children must be a serious consideration when deciding the outcome of KTY appeal hearing upon his children. In this instance there is already evidence of a deeply wounded child, D, who has lost much of her later childhood to anxiety and low mood, due to the circumstances of her father and her response to this highlights the danger in reproducing such circumstances in their lives of IS and K who, at this juncture, have been protected from experiencing the same negative childhood trajectory, as their sister has done to her detriment.

**48.** Although not specifically set out or referred to above in full, KTY can be assured that both the written and oral evidence has been properly considered in relation to this matter.

## **Discussion**

**49.** KTY was convicted and sentenced to a period of 10 years imprisonment meaning he falls within the higher category of those subject to a deportation order. KTY satisfies the definition of 'foreign criminal' found in s117D of the Nationality, Immigration Asylum Act 2002.

**50.** Section 117 A-C of the 2002 Act, in full, reads:

### **117A Application of this Part**

- (1) This Part applies where a court or tribunal is required to determine whether a decision made under the Immigration Acts—
  - (a) breaches a person's right to respect for private and family life under Article 8, and
  - (b) as a result would be unlawful under section 6 of the Human Rights Act 1998.
- (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 and family life is justified under Article 8(2).

**117B Article 8: public interest considerations applicable in all cases**

- (1) The maintenance of effective immigration controls is in the public interest.
- (2) It is in the public interest, and in particular in the interests of the economic well-being of the United Kingdom, that persons who seek to enter or remain in the United Kingdom are able to speak English, because persons who can speak English—
- (a) are less of a burden on taxpayers, and
  - (b) are better able to integrate into society.
- (3) It is in the public interest, and in particular in the interests of the economic well-being of the United Kingdom, that persons who seek to enter or remain in the United Kingdom are financially independent, because such persons—
- (a) are not a burden on taxpayers, and
  - (b) are better able to integrate into society.
- (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.
- (6) In the case of a person who is not liable to deportation, the public interest does not require the person's removal where—
- (a) the person has a genuine and subsisting parental relationship with a qualifying child, and
  - (b) it would not be reasonable to expect the child to leave the United Kingdom.

**117C Article 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.
- 51.** The starting point in an appeal of this nature when considering whether circumstances exist over and above those to be found in Exception 1 and Exception 2 (section 117C(6)) is to start with an analysis of whether those exceptions can be met.
- 52.** In relation to Exception 1, KTY entered the UK aged 15. He was granted Indefinite Leave to Enter on 19 March 2000 but served with the first deportation order on 22 June 2011. An appeal against the earlier decision to deport appears to have been withdrawn resulting in a further deportation decision being issued on 21 November 2011. In *R (on the application of George) v Secretary of State for the Home Department* [2014] UKSC 28 it was held that on a true interpretation of section 5(1) and (2) of the Immigration Act 1971, a person's indefinite leave to remain in the United Kingdom, invalidated by the making of a deportation order, was not revived upon the revocation of that order. Even if the original deportation order was invalid ab initio the remaking of that order effectively invalidated KTY's indefinite leave to remain meaning he had only been lawfully in the United Kingdom for 11 years 8 meaning at the most, and so had not been lawfully resident in the United Kingdom for most of his life. This is fatal to any claim to be able to rely on Exception 1.
- 53.** For the sake of completeness, I accept that the appellant is socially and culturally integrated into the United Kingdom but do not find, although it will be problematic and difficult for the appellant to re-establish his life in Ghana, that the evidence supports the claim that he will face very significant obstacles to his integration into that country. In *Kamara* [2016] EWCA Civ 813 it was held that the concept of integration into a country was a broad one. It was not confined to the mere ability to find a job or sustain life whilst living in the other country. It would usually be sufficient for a court or tribunal to direct itself in the terms Parliament had chosen to use. The idea of

“integration” called for a broad evaluative judgment to be made as to whether the individual would be enough of an insider in terms of understanding how life in the society in that other country was 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-to-day 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.

- 54.** KTY lived in Ghana until he was aged 15 was therefore familiar with the cultural, social and linguistic aspects of living in Ghana. KTY himself is an individual for whom it has not been shown he suffers health or other aspects that would prevent his reintegration. It was not made out KTY lacks the skills or qualifications or work experience or anything that will prevent him from being able to find employment in Ghana from which he will be able to develop a private life in addition to providing for his material needs. In the OASys report under the heading of education, training and employability issues, it is written:

*KTY has gained further qualifications whilst in custody, including business, ICT, BICS. He also reports to have a BA Hons in Electronics and has been asked to provide copies of this by a previous offender manager.*

- 55.** It has not been made out KTY would not be able to function on a day-to-day basis within Ghana or that he had established obstacles that could be classed as being insurmountable to his re-integration exist. AB in her witness statement speaks of a risk of harm to KTY from various sources but the claim to face a real risk has been dismissed as not being credible. It is clear KTY has the support of his family in the UK and that his mother was able to visit Ghana in the past without experiencing any difficulties. It is not made out any support that can be made available will be denied to KTY to assist in his re-establishing himself.
- 56.** In relation to Exception 2, it is not made out KTY has a genuine and subsisting relationship with a qualifying partner. It was not disputed KTY has a genuine and subsisting parental relationship with a qualifying child, in this case D, IS and K, leaving the question whether the effect of his deportation upon the children would be unduly harsh.
- 57.** A comment made by Christine Brown that if KTY is deported the children may not be thought of as remaining an important factor in their father’s life is without merit. KTY’s connection with his children as genuine as evidenced in the report of Christine Brown when examining the specific elements, and it is not made out that the children will not remain an important factor in their father’s life even if he is deported.
- 58.** The criticism by Christine Brown of the effect of delaying a decision being made upon the children and adults, based upon the uncertainty of KTY’s situation is not disputed, but such delay has arisen as a result of the appeal process and KTY challenging the deportation decision, as he has a lawful right to do. One issue which has also caused delay in

this appeal is the impact of the COVID 19 pandemic and delays in the listing of appeals which is beyond anybody's control.

59. I accept it is no longer correct to say as in *SSHD v PG (Jamaica)* [2019] EWCA Civ 1213 that the 'commonplace' distress caused by separation from a parent or partner is insufficient to meet the test, as I accept it could be. The focus should be on the emotional impact on this child as per *HA(Iraq)* [2020] EWCA Civ 1176 [Underhill LJ 44-56, Peter Jackson LJ 157-159].
60. It is not disputed that the impact of deporting KYT upon the children will be harsh and I have considered whether the higher threshold of undue harshness is reached in this matter by undertaking such evaluation only with reference to the children.
61. It is not suggested this is a case in which the children can be expected to leave the UK to go to living Ghana with KTY but one in which the children will remain in the UK with their mothers. This is therefore a family splitting case.
62. The MK (Sierra Leone) formulation "it is an elevated threshold denoting something severe or bleak" was approved in *KO (Nigeria)* but I note that in *HA (Iraq) v Secretary of State for the Home Department (Rev 1)* [2020] EWCA Civ 1176 the court caution 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]. In this case the appellant is not a medium category offender but in the higher category.
63. In *HA (Iraq)* it was held that in evaluating undue harshness for a child decision makers should take into account the *Zoumbas* principles, see *Zoumbas v Secretary of State the Home Department* [2013] UKSC 74 at [55, 84, 114, 153], the best interests of the child [55], emotional as well as physical harm [159], relationships with other family members in the UK [120] and where applicable "the very significant and weighty" benefits of British citizenship [112-116 cf. *Patel (British citizen child - deportation)* [2020] UKUT 45 (IAC)]. The focus must be wide - look not only at the particular relationship between parent and child but the domino effect that could ensue should that parent be removed, ie on the needs and responsibilities of other family members etc.
64. Whilst it is noted that the Secretary of State has applied for permission to Supreme Court in *HA (Iraq)*, and a hearing has been listed for May 2022, I was not referred to any order of the Supreme Court staying the decision of the Court of Appeal pending the outcome of their deliberations.

- 65.** In *Zoumbas* at [10] Lord Hodge, who delivered the lead judgement to which the other Justices agreed, said:
10. In their written case counsel for Mr Zoumbas set out legal principles which were relevant in this case and which they derived from three decisions of this court, namely *ZH (Tanzania)* (above), *H v Lord Advocate* 2012 SC (UKSC) 308 and *H(H) v Deputy Prosecutor of the Italian Republic* [2013] 1 AC 338. Those principles are not in doubt and Ms Drummond on behalf of the Secretary of State did not challenge them. We paraphrase them as follows:
- (1) The best interests of a child are an integral part of the proportionality assessment under article 8 ECHR;
  - (2) In making that assessment, the best interests of a child must be a primary consideration, although not always the only primary consideration; and the child's best interests do not of themselves have the status of the paramount consideration;
  - (3) Although the best interests of a child can be outweighed by the cumulative effect of other considerations, no other consideration can be treated as inherently more significant;
  - (4) While different judges might approach the question of the best interests of a child in different ways, it is important to ask oneself the right questions in an orderly manner in order to avoid the risk that the best interests of a child might be undervalued when other important considerations were in play;
  - (5) It is important to have a clear idea of a child's circumstances and of what is in a child's best interests before one asks oneself whether those interests are outweighed by the force of other considerations;
  - (6) To that end there is no substitute for a careful examination of all relevant factors when the interests of a child are involved in an article 8 assessment; and
  - (7) A child must not be blamed for matters for which he or she is not responsible, such as the conduct of a parent.
- 66.** In this case, when taking into account the witness statements and all other evidence of the family members, the psychologists report, reports of Christine Brown, and the other evidence relied upon by KTY relating to the children, it has been possible to obtain a very clear idea of the children's circumstances and what is in their best interests. It is unarguable that the best interests of the children in this case, as in many deportation cases when a subsisting and genuine relationship exists with the parent who is the subject of a deportation order, is for them to be able to carry on living in the UK with both their parents and the status quo being preserved.
- 67.** Mr Tan on behalf of the Secretary of State in his submissions referred to the findings of the First-tier Tribunal that had not been challenged or set aside on appeal in relation to the family dynamics that existed at the date that decision was promulgated, namely 10 February 2020, in which the FTT Judge wrote:



25. FBS, the appellant's first ex-partner, gave oral evidence which may be summarised as follows. She confirmed her name and address and stated that she was born on 15 February 1987. She confirmed that the contents of her witness statements of 10 April 2018 and 21 January 2020 were correct and she adopted the same as her evidence. She stated in cross examination that she was the main carer of her two children. She was responsible for the children financially and emotionally when the appellant was in prison. There were periods when the appellant was away from the children even before he went to prison. He was visiting the children but did not have any involvement in their development. There were no developmental issues relating to the children as regards the Appellant.
26. AB, the appellant's mother, gave oral evidence which may be summarised as follows. She confirmed her name and address and stated that she was born on 01 July 1963. Her witness statements of 23 March 2018 and 10 December 2019 were correct and she adopted the same as her evidence. She stated in cross examination that she last visited Ghana on 2 January 2020. She was there for 3 weeks. She stayed in a hotel in Wejia. She had no extended family in Ghana. She had no cousins, uncles, aunts or other relatives there. She had a sister and a brother in the UK. She also had a few cousins here in the UK although she was not in contact with them. None of the family members in the UK had any property in Ghana. They did not have a family home there. They all stayed in a hotel whenever they visited Ghana. She normally visited Ghana once every year. The appellant could not settle in Ghana. She equally could not go and settle in Ghana with him. She was living in the UK. The appellant could not settle in Ghana because he had not lived there since she first came to the UK. His life would be in danger if he went back. He would not commit any further offences. He had matured more. She as a parent had given him advice. She was helping look after her grandchildren. She normally picked up the older ones on Friday and they spent the weekend with her. She was supporting her grandchildren financially as well. Her family in the UK also supported the children. The appellant was living with her. She supported him financially. She herself came to the UK in 1992.
27. FG, the appellant's second ex-partner, gave oral evidence which may be summarised as follows. She confirmed her name and address and stated that she was born on 4 August 1989. The contents of her three witness statements of 10 April 2018, 20 January 2020 and 30 January 2020 were correct and she adopted the same as her evidence. She stated in cross examination that she was the main carer of her child, both financially and emotionally. She was asked why the child's birth certificate did not show the name of the father. She stated that the appellant was in prison at that time and therefore could not accompany her to register the birth. For that reason his name was not mentioned on the birth certificate.
- 68.** It is clear from the evidence given by the mothers of the children that it is they who have been responsible for bringing up the children and ensuring their physical and emotional development were met at that time. The one change that has occurred is that reflected in the statements in relation to IS who indicated a wish to be able to spend

more time with KTY as a result of which he is now splitting his time between KTY and his mother. In his recent witness statement KTY writes:

4. IS remains living with me and I am his primary carer. I take him to school. He goes to visit his mother after school on Saturday at 11:30 AM and then he returns home to me on Monday evening or Tuesday morning or Tuesday afternoon. I always have him back home with me on a Tuesday.

- 69.** It is not made out KTY makes all decisions in relation to IS and I find what is being described is a shared parenting arrangement. Some may question the wisdom of agreeing to what appears to have been the child's request to be able to go and spend extra time with his father when his father is the subject of an order of his deportation from the United Kingdom and the appeal process against that decision has not been exhausted, and a return the previous arrangements may have to occur, even if it was thought this arrangement may strengthen KTY's case in resisting deportation.
- 70.** Regarding the issues affecting the children identified by Christine Brown in her report, it has not been made out those issues could not be adequately managed to minimise any impact upon the children by their mothers, who will remain in the UK, their schools, or other support services such as child and adolescent services. There is specific reference to CAMHS who have not yet been engaged with this family unit in terms of their ability to assist D in particular.
- 71.** The children also have the benefit of devoted and caring mothers in the UK. Whilst arrangements have been made to ease the burden on some it is not made out that there has been any failing by any of the mothers to meet the needs of the children sufficient to warrant their living with the appellant for their personal safety or because their needs are not being met. It was not made out that even if it may be problematic or require adjustments within the households of the mothers, that the care and love the children receive from that source will not continue.
- 72.** An issue has been raised at this stage the proceedings related to FS who is the mother of IS. In her witness statement of 1 February 2022 she confirms the arrangements for IS as set out by KTY. She refers to the family that she has with her husband which are their twins born on 12 February 2015. There is also reference to an award of Personal Independent Payment, PIP, following her succeeding on appeal before the Social Entitlement Chamber. The issue arose following an application for PIP as a result of FS suffering from fibromyalgia, lumbar spondylosis, asthma as well as Vitamin D deficiency. She describes having pain and discomfort daily and good days and bad days. The statement refers to it being accepted by the Social Entitlement Chamber that FS was significantly limited due to her medical condition of, in particularly her fibromyalgia, when preparing food, washing and bathing, managing her toilet needs, dressing and undressing.
- 73.** The comment in the statement is that IS living with his father assists FS as she is unable to do the things that KTY can do, by reference to

activities such as playing football and other out-of-school activities such as Thai boxing and going to the community centre. That comment is accepted but the statement also refers to the fact that FS' husband cooks for her almost every day and cooks the main meals, and also to refers to the fact that D helps by bringing food when her husband is not around and that her husband and D helps FS in getting in and out of the bath and with her toileting needs.

- 74.** The statement refers to the fact that D is much happier since the COVID restrictions were lifted and she can now see KTY as often as she likes. She has not self harmed recently and she has a good relationship with her. There is mention of D becoming upset when talking about the deportation and worry about how she would react mentally if KTY was to be deported. FS sums up her position at [26] in the following terms:

26 If KTY were to be deported, it will cause a lot of problems for me as I am getting the full support from KTY for IS. KTY is doing the things I cannot do with IS. KTY takes him to activities outside the school which I cannot do. The situation is already difficult for me due to my health issues and my limitations. If KTY is taken away it will break IS and it will leave me to pick up the pieces. It will affect IS more than me if KTY is deported.

- 75.** It is not disputed that having a disability of the nature of that described by FS can have a great impact upon an individual's health and lifestyle. The observation, recorded in the medical records, that on 13 May 2021 FS took an intentional drug overdose as a result of the effect of the situation in which she found herself, is understandable. There is however no evidence of a suicide risk or threat of a repeat of such conduct if IS has to return to live with her full-time. It is not disputed that the evidence provided in relation to the appeal to the Social Entitlement Chamber supports what is said about FS' limitations. What is clear from the statement, although there is reference to the impact upon IS of KTY's deportation, is that it focuses primarily upon the difficulties that FS herself will face. Her personal needs appear on the evidence to be adequately met by those which FS is able to undertake herself, combined with the assistance that she receives from her husband and D. Whilst it is accepted that D will be greatly upset if KTY is deported it is not made out that when considering the available care within this family unit as a whole that IS's needs will not be met. They are indeed being met during the time that IS is with his mother within her family and there was no evidence they were not being met prior to the time that he indicated a wish to spend more time with his father, KTY. It is not made out that facilities would not be available to take IS to outside activities even if FS herself is unable to do so. It is not made out that if the nature of those activities was curtailed or limited it would have an unduly harsh effect upon IS. Many children find themselves in the situation of both IS and D of having a disabled parent. Insufficient evidence was provided to warrant a finding that that on its own is determinative but it has been taken into account as a relevant factor. Such families have to adapt to

enable them to cope with the realities of the situation in which they face and the evidence from FS already refers to steps that have been taken to meet her needs within the family with no evidence that further adjustment could not be made to meet the needs of IS if he was spending the extra few days within his mother's family rather than it being split between his mother's and father's family.

- 76.** Indeed it was not made out that the mothers of any of the children would not be able to assist the children in readjusting if KTY is deported.
- 77.** Comments have been made as noted in the evidence above, regarding difficulties facing black boys growing up in London. Such observations are generalised and it has not been made out that they must apply to all such children or young people. What is important in relation to this family unit is that there is an awareness of the difficulties faced by some young people within the community. It has not been shown when taking into account such awareness, combined with the abilities of the mothers', that deportation will result in a situation in which the children will inevitably be led into situations of crime, drugs or other issues that may negatively impact upon their futures.
- 78.** Comment is also made upon the mixed relationships within the family with KTY fathering the children with different mothers, and their not being able to see each other and preserve the family bond, but if the interaction between the various family units is of such importance to the children's welfare it is not made out there is any reason why this cannot be facilitated by the mothers' if this is what the children wish. It was not made out that there are any insurmountable obstacles to the same occurring.
- 79.** The comment by Christine Brown that if KTY is deported there will be no contact between him and the children is factually incorrect. Contact can continue albeit by indirect means. It is accepted that face-to-face contact on a daily basis or otherwise will not occur unless the children visit the appellant in his home country.
- 80.** In relation to D, there is specific evidence of difficulties she has faced in the past which have been highlighted particularly during the time KTY was imprisoned. In his oral evidence KTY referred to their relationship improving but the threat of his deportation clearly hangs in the air. D is no longer a child having been born on 27 July 2005 and will therefore be 17 years of age this year. D is clearly a young person on the threshold of being a young adult. D is clearly intelligent and has a focus on her future through her college course. It is appreciated that as individuals the children will have different personality traits and the fact D may prefer her own company and not mix with her peers, implying perhaps an introvert perspective on life, is who she is. It is accepted D having demonstrated impact as a consequence of her father being imprisoned is likely to be affected by his deportation as reflected in the evidence. The report of the psychologist and Christine Brown also make reference to this point but as identified in

the evidence not all the assistance that could be available to D has been used to help her in the past.

- 81.** The psychologist comments in the report about the lack of understanding in the minds of some of the children regarding deportation and what is occurring, but D clearly demonstrates a greater understanding, perhaps reflecting her greater maturity. The comment the children are unable to plan their lives and feel others are planning their lives for them may be factually correct, but that is the nature of parenting with younger children and in this case the decision of the State that has arisen solely as a result of KTY's offending. Those decisions have been made and it is the consequences of such decisions which are being examined in this appeal.
- 82.** Having undertaken the necessary holistic assessment, and whilst I accept there are a number of factors supporting KTY's claim that his deportation from the United Kingdom will be difficult for the children, I do not agree it has been established it will be unduly harsh. I accept it will be harsh and for some children it may be harsher than it will be for the others, but I do not accept that KTY has established that the elevated threshold of such consequences being unduly harsh on the children has been made out.
- 83.** Accordingly KTY cannot demonstrate he is able to satisfy the conditions set out in Exception 2 of section 117C(6).
- 84.** As noted above, as KTY was sentenced to 10 years imprisonment, even if he had satisfied the requirements of the exceptions to deportation, he would still have been required to demonstrate compelling circumstances over and above those in the exceptions sufficient to outweigh the public interest in his deportation. This requires him to show circumstances that are more compelling than the existing exceptions - see *Akinyemi v The Secretary of State for the Home Department* [2017] EWCA Civ 236 at [14]
- 85.** In this respect I remind myself that when approaching the statutory test of 'very compelling reasons' a tribunal had an obligation to be more than usually clear as to why such a conclusion was justified -see *OH (Algeria) v The Secretary of State for the Home Department* [2019] EWCA Civ 1763.
- 86.** I also remind myself that the public interest not a monolith and must be approached flexibly, recognising that there will be cases (albeit unusual) where the person's circumstances outweigh the strong public interest in removal: *Akinyemi v The Secretary of State for the Home Department* [2019] EWCA Civ 2098.
- 87.** Undertaking the necessary holistic exercise there is on the side of the Secretary of State the statutory provision that the deportation of foreign criminals is in the public interest and the more serious the offence committed by a foreign criminal, the greater is the public interest in deportation of the criminal.
- 88.** A lot of the matters relied upon in support of the arguments that KTY's circumstances are sufficient to outweigh the public interest are those that have been considered when looking at whether he can satisfy either Exception 1 or Exception 2.

- 89.** In relation to the children, it has not been found to be unduly harsh for KTY to be deported and for them to remain in the UK with their mother, and although it is in the children's best interests of KTY to remain in the United Kingdom, and whilst the best interests are a primary consideration, they are not the paramount consideration. I have not considered any other aspect is inherently more significant than the best interests of the children but find the best interests of the children are not the determinative factor in this appeal.
- 90.** I have taken into account the time the KTY has been in the United Kingdom, the impact of his removal on both him and the family who shall remain here, including his children, his mother, and other family members, and the difficulties KTY will understandably face if deported to Ghana. Whilst I accept the KTY will find it difficult, perhaps even very difficult, he has not established that any problems he will experience are insurmountable. KTY lives with his mother who assists him financially at present and it was not made out that sufficient resources could not be made available to enable him to re-establish himself on return to Ghana whilst he secures employment, even if in the informal economy.
- 91.** There is no relationship with the mothers' of his children that forms family life although through the children they an element of each other's private lives albeit to a lesser degree. I accept the relationship with the children as one of family life recognised by article 8 ECHR and that any disruption with the relationship will be sufficient to engage article 8. The issue in the case, as in many cases, is the proportionality of the deportation decision that creates such a situation.
- 92.** This is not a case in which the children will not have support. The care and support and parenting they have received from their mothers' and their new family units is commendable. Whilst I accept that KTY desire to do his best for his children is commendable, and that the children have benefited from his input personally and as a sibling group as a whole, is not made out that his role with the children so fundamental to their well-being and identity that his removal would result in unduly harsh consequences for them. I do not underestimate that for D and IS in particular it will be very difficult, an issue I have commented upon above.
- 93.** It was not made out that there is anything, including the ties KTY has with his mother and his children in the UK, that meets the required threshold. I make a finding there was no evidence that the children will not be able to continue to see their grandmother as they would have done whilst KTY was in prison if he is deported, which will maintain the relationship between the paternal side of the family.
- 94.** I set out the comments of the Sentencing Judge above and I have also had sight of an updated OASys report dated 22 March 2021.
- 95.** KTY was sentenced on 20 January 2014 for an offence committed on 19 April 2013. Although he has been released into the community he remains on Licence until 12 November 2023, so it is not surprising there is no evidence of reoffending. The earliest release date recorded in the report is 19 November 2018. The likelihood of serious

reoffending over the next two years in the report is recorded as being “low” which cannot be disputed as at the date of the report this time scale still falls within the KTY’s licence period.

- 96.** The report at section 2.8 entitled “Why did it happen – evidence of motivation and triggers” reads: *“All offences were pre-planned and committed as part of a joint enterprise. KTY did not consider the consequences of his actions. His triggers are associations with pro-criminal peers (at times he has behaved as the lead) and financial motivation. There are levels of preplanning and specific targeting in his offending. The index offence bears strong similarities with his previous offending behaviour. KTY’s triggers are peer influence, thinking skills and financial motivation. There is a persistent pattern of offending behaviour, taking place with others as a means of making easy money. KTY’s offending also involves levels of preplanning and specific targeting, a fact that demonstrates well-established pro-criminal attitudes. KTY previously appeared to find it difficult to comply with his licence with the measures placed upon him. Despite the work that he has completed with probation, he continued to reoffend. His persistent offending evidences an escalation of behaviour likely to lead to serious harm, should there be any resistance displayed by a victim of his robberies. However, since his release, KTY has demonstrated a deeper understanding of his behaviour. He has been able to identify associations with negative peers and going to places which cause him trouble as a priority area linked to his repeated offending behaviour.”*

- 97.** The pattern of offending behaviour referred to in the report is set out in section 2.12 in the following terms:

*KTY has 7 convictions for 9 offences.*

*His first conviction was for having a bladed article in 2002. He claimed that, after having himself been the victim of a robbery, he found himself in possession of the attackers rucksack which contained the blade.*

*KTY has further convictions in 2005 for obtaining property by deception in which he bought a fake credit card from a friend and was arrested when he attempted to purchase a computer.*

*He also has a conviction for possession of cannabis with intent to supply, whereby KTY passed cannabis to his co-defendant whilst in the dock. It is also of note that along with the drugs he also passed him a phone SIM card. Both were seized by security who held onto the items and notified the police. KTY informed his previous Offender Manager that he previously consumed cannabis on a daily basis and that due to the stressful nature of the trial he would regularly smoke a joint on his way home from the Court. He mentioned that having had these drugs on him, he was asked by his co-defendant if he had any drugs on him and without thinking passed him the drugs that he had. There is no evidence that he was in any way coerced into passing the drugs and denies that this was in any way pre-planned and maintains that he had not had contact with his co-defendant since the last hearing. A previous assessor is of the view that this version of events is highly improbable and seems particularly far-fetched as both items are of*

*significant value within the prison environment and it is likely that he bought the items with the intention of passing them to his co-defendant.*

*He received a Suspended Sentence Order with 120 hours unpaid work, however he breached this for not attending. The breach was withdrawn as he was remanded for a new robbery offence.*

*KTY was also convicted of an offence of robbery, committed on 12 January 2009. The prosecution papers state that an employee of Group 4 security was robbed of the cashbox from him whilst delivering/picking this up from Willesden Green underground station. The co-defendants came up behind the man from behind, grabbed the box and ran to a waiting car, which was parked on a nearby street. The person waiting in this car was KTY. This was a joint enterprise offence. KTY breached his licence on two occasions for similar behaviour.*

*KTY has a history of acquisitive offending and therefore there is an established pattern of similar offending. However this offence is not an escalation in seriousness given the similarities of his previous robbery offences.*

- 98.** The author of the report assesses the appellant as posing a medium risk of harm as offending does not involve any direct violence but finds that as he has continued to commit robberies, which are contact offences, his risk could easily increase to high risk of serious harm in the event that any of his victims shows any resistance. The author of the report continues, page 11, by stating *“This having been said, during his sentence period up to the present date, KTY has demonstrated a high degree of commitment towards maintaining a prosocial lifestyle. In doing so he has engaged very well with various programmes and one-to-one offence focused work in custody and in the community and no concerns have been raised with respect to reoffending. This is evidenced by lack of any contact with the Police since his release from custody in November 2018. Nevertheless, on the basis of the serious nature of the index offences (which should also be viewed in the context of previous similar offending), I assess that offence analysis issues are linked to risk of offending and harm”.*
- 99.** The author of report notes KTY was denying any issues with finances yet clearly committed offences which suggest otherwise in that the offences arose from his desire to make easy money. KTY resorted to quick short-term solutions due to his financial situation. KTY is currently unable to work and dependent upon his mother and that given the nature of the index offence and his reoffending whilst on licence, it is written that this area continues to be linked to risk of reoffending and harm.
- 100.** The author of the report records that since release KTY claims to have broken all contact with past criminal peers and that there was no evidence to suggest otherwise. It records, as demonstrated in the evidence, that he has become more proactive in his children’s lives, and recently secured a role as a volunteer at a football club in south-east London where he coaches teenagers in football skills and works as a volunteer mentors to young people at the club at risk of offending. The author writes that such actions appear to show KTY



does not support pro-criminal views and is trying hard to live a prosocial lifestyle. Notwithstanding, the author concludes that owing to the nature of the index offence and previous offending history, it was assessed that lifestyle/associates is an area that remains linked to offending and harm.

- 101.** KTY claims he is reformed and that he will not commit further offences. His mother refers to what she sees as a more mature attitude. In relation to thinking/behavioural issues contributing to risk of reoffending and harm the author of the OASys report writes:

*KTY presents with appropriate interpersonal skills and his educational achievements indicates that he can work well towards goals. His previous caution for Common Assault and police callout does indicate an episode of controlling behaviour through the context of domestic violence and the index offence indicates that he is willing to become involved in risky and potentially violent behaviour, however, given the length of time since this offence and no reports of any further concerns in this area, I assess risk in relation to domestic abuse to be historical.*

*His offending history suggests that, in the past at least, he has not fully understood the seriousness of his offending and his minimised problems in his relationships and it is evident that he has not been fully aware of problems in his life for the full consequences of his actions. However, he has completed work around relationships and is now better equipped to deal with difficulties within his relationships, as evidenced by no further involvement with his family by social services.*

*His problem solving skills have been, at least historically speaking, a concern as, in terms of financial issues, he has demonstrated he is willing to resort to short-term criminal activity rather than look at long-term solutions (work) or live within his means. His reoffending whilst on licence indicates that despite engaging with supervision he did not improve his problem solving skills to a degree that this had some lasting impact. He completed SSP during his last period in the community whilst on licence, and he continued to reoffend, which suggests support moral reasoning.*

*It is my view that KTY is fully aware of the consequences should he reoffend or breach his licence conditions again. He is making realistic plans and setting achievable goals to lead a prosocial life.*

*KTY has completed ENGAGE which is a structured supervised approach, consisting of 12 one-to-one sessions of sequence exercises, which engages participants and forms the basis of offence and life focused discussions. KTY has responded extremely well to this. He was able to link negative peer association to his offending and outlined the importance of socialising with people who live a prosocial life. Although KTY linked negative peer association to his offending he is aware that he is ultimately responsible for the choices that he makes in life recognises that associates play an important part of this.*

*KTY has made very good progress with regards to his thinking and behaviour and has successfully improved his problem solving skills which is demonstrated through the completion of the ENGAGE exercises. There have been no concerns since his release date (19/11/2018)*

*Nevertheless, it remains that shortfalls in his thinking were a direct consequence of his actions and risk of serious harm in relation to the index*

*offence. Therefore I assess that he requires more time in the community to enable the reframed behaviour to be tested and maintained.*

- 102.** The author of the report also identified that attitudes within KTY remain an area linked to offending.
- 103.** In relation to the assessment of risk of serious harm the author of report identifies that members of the public at risk from KTY specifically include security guards involved in the transportation of cash, members of the public whilst using vending machines, future partners if/when involved in a misunderstanding. In relation to children, it is said to be future children in the context of any future relationship with a future partner. There was no third-party evidence to indicate that any known adults may be at risk and no third-party evidence to indicate that members of the staff, specifically police, probation or any other staff working within the criminal justice system may be at risk from KTY.
- 104.** The nature of the risk to security guards or members of the public whilst using vending machines is identified that whilst using vending machines and at train stations there is a risk of physical assault and threats of physical assault which may have a psychological impact in that it may cause the victim to experience a significant level of fear for their safety and having been a victim of robbery, may also cause the victim to experience a level of psychological distress from which recovery may be difficult. The nature of the risk to future partners is physical assault and subsequent psychological distress as a result of being a victim of domestic abuse. The risk to children is an intentional injury and emotional abuse from witnessing domestic violence.
- 105.** Circumstances likely to increase such risks are identified as lack of financial support, re-establishing associations with pro-criminal peers, being in conflict with any future partners, lack of purposeful activity, and not taking time to consider the consequences of his actions. The author identifies factors likely to reduce risk between gaining and sustaining employment as that would provide a legitimate income as well as a purposeful use of KTY's time, associations with prosocial peers, maintaining good relationships with family/children/ partners, continued practice of Islam and associations with peers from local mosque, continued positive engagement in offence focused work around developing a prosocial lifestyle and appropriate decision-making and problem-solving. The evidence shows that some of those factors likely to reduce risk are being practised by KTY.
- 106.** The risk assessment within the community to children and the public is assessed as being medium with known adults, staff and prisoners as being low. Medium risk of serious harm indicates there are identifiable indicators of risk of serious harm in which the offender has the potential to cause serious harm but is unlikely to do so unless there is a change in circumstances, for example, failure to take medication, loss of accommodation, relationship breakdown or drug or alcohol misuse.
- 107.** I accept there is merit in KTY's argument that the dynamic risk factors are relatively stable as long as he receives support from family

members and is motivated to change his lifestyle, method of thinking, and be a good role model for his children. The assessment of risk of harm to members of the public is however something arrived at having factored into the assessment all the positive aspects that KTY has been able to demonstrate. Although the report is dated March 2021 and KTY has continued within the community as he did at the date of the assessment, this appears to be a realistic assessment of the risk he continues to pose of reoffending.

- 108.** At this stage KTY needs to establish that there are very compelling circumstances. The use of the word “very” imports a very high threshold. “compelling” means circumstances which have a powerful, irresistible and convincing effect – see *Secretary of State for the Home Department v Garzon* [2018] EWCA Civ 1225.
- 109.** I also note that it was found the public interest “almost always” outweighs countervailing considerations of private or family life in a case involving a ‘serious offender’ in *Hesham Ali* at [46] and *KE (Nigeria)* at [34], but even though it is an extremely demanding test there is still the requirement to undertake a wide-ranging exercise assessing the merits of the competing arguments to ensure that Part 5A produces a result compatible with Article 8, which is exercise that has been undertaken in relation to this appeal.
- 110.** KTY has not demonstrated an ability to meet both s117C Exceptions which I have taken into account in conjunction with the other factors collectively.
- 111.** It is settled law that the seriousness of the offence is relevant to whether there are very compelling circumstances – see *MS (Philippines)* at [49-52], *Secretary of State for the Home Department v PF (Nigeria)* [2019] EWCA Civ 1139. The index offence is serious and it is not made out the sentence imposed upon KTY was unduly lenient at the bottom of the range which clearly demonstrates the serious nature of the offending, even having taken into account all the mitigation that would have been put forward on KTY’s behalf.
- 112.** Whilst it is noted KTY has attempted to demonstrate evidence of rehabilitation, rehabilitation cannot in itself constitute a very compelling circumstance and the cases in which it could make a significant contribution are likely to be rare. Though I have treated the same as a relevant factor in attracting some weight to the case it is not made out that there was any particular element of the rehabilitation that would warrant it being given great weight in the proportionality assessment.
- 113.** I have taken into account KTY’s evidence of his work within the community including helping young teenagers with their footballing skills, but contributing to the community adds nothing to the existing (limited) weight to be attached to rehabilitation – see *Jallow v*

Secretary of State for the Home Department [2021] EWCA Civ 788 (24 May 2021).

**114.** While KTY's argument regarding the serious adverse impact his deportation is likely to have on his children, particularly as his eldest child D who has already shown deterioration in her behaviour and emotional and psychological problems when he was absent in prison, is noted; as is the length of his residence in the UK, the close ties he enjoys with other British family members including in particular his mother, having very carefully weighed up those matters relied upon by the KTY and having carefully weighed up those matters relied upon by the respondent in opposing the appeal, I find it has not been made out to the required standard that there are very compelling circumstances, over and above those described in Exceptions 1 and 2. I find the Secretary of State has made out that any interference in any of KTY's protected right arising from his deportation from the UK is proportionate.

**Decision**

**115. I dismiss the appeal.**

Anonymity.

**116.** 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 14 March 2022