IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER **Case No: UI-2021-001318**
First-tier Tribunal No: HU/50177/2021; IA/00621/2021

THE IMMIGRATION ACTS

Decision & Reasons Issued:
On the 29 April 2023

Before

UPPER TRIBUNAL JUDGE BRUCE
DEPUTY UPPER TRIBUNAL JUDGE MALIK KC

Between

MENTOR MARKU
(ANONYMITY DIRECTION NOT MADE)

Appellant

and

SECRETARY OF STATE
FOR THE HOME DEPARTMENT

Respondent

Representation
For the Appellant: Mr Peter Blackwood, Counsel, instructed by Qualified Legal Solicitors
For the Respondent: Mr David Clarke, Senior Presenting Officer

Heard at Field House on 13 February 2023

DECISION AND REASONS

Introduction

1. This is remaking of the decision in the Appellant's appeal from the Secretary of State's decision of 22 January 2021. By that decision, the Secretary of State refused the Appellant's human rights claim based on Article 8 of the European Convention on Human Rights and his associated application to revoke the deportation order made against him.

Factual background

2. The Appellant, who says that his real name is Mentor Serban, is a citizen of Albania and was born on 7 May 1981.

3. The Appellant arrived in the United Kingdom clandestinely on 19 October 2000 at Dover port and made an asylum claims with false details. He stated that his name was Lumni Halili and he was born on 1 January 1984. He pretended to be a citizen of Kosovo and claimed to be at risk of persecution by the Serbian authorities. The Secretary of State refused the protection claim on 11 May 2021 but granted him exceptional leave to remain in the United Kingdom until 1 January 2002. He made another asylum claim with false details on 6 December 2000. He stated that his name was Mentor Marku and he was born on 1 December 1984. He again pretended to be a citizen of Kosovo and claimed to be at risk of persecution by the Serbian authorities. The Secretary of State recognised him as a refugee and granted him indefinite leave to remain in the United Kingdom on 13 June 2002.

4. The Appellant was convicted on 6 May 2009 of wounding with intent to do grievous bodily harm. He was sentenced to four years imprisonment on 29 May 2009. According to the sentencing remarks, the offence took place on 14 December 2007 at a party. He wounded the victim with a glass after consuming alcohol. The victim sustained serious, complex and deep wounds to his face leaving him with permanent scarring and damaged muscle and nerve tissues.

5. The Secretary of State issued a notice of liability to deportation to the Appellant in the light of his offending on 27 October 2009. The Secretary of State issued a notice of intention to revoke his refugee status and indefinite leave to remain on 31 March 2011. The Secretary of State issued a notice of intention to cease his refugee status on 23 September 2011. The Secretary of State made a decision to revoke his refugee status on 4 February 2013 and signed the deportation order on 28 May 2013.

6. The Appellant appealed against the Secretary of State’s decision to the First-tier Tribunal on 19 June 2013. The First-tier appeal allowed his appeal by a decision promulgation on 15 November 2013. The Upper Tribunal, however, set aside that decision on 30 January 2014 and remitted the appeal for a fresh hearing. The First-tier Tribunal, following a fresh hearing, dismissed his appeal on all grounds on 23 January 2015. He had continued to maintain before the First-tier Tribunal that he was a citizen of Kosovo born on 1 December 1984 and was at risk of persecution. The appeal rights were exhausted on 17 June 2015 with the refusal by the Upper Tribunal of his application for permission to appeal. He, however, continued to reside in the United Kingdom and failed to report to the Secretary of State.

7. The Appellant next came to the Secretary of State’s attention on 23 October 2018 in connection with a routine traffic stop. He was taken into immigration detention. He made written submissions relying on his private and family life on 21 November 2018 but shortly thereafter agreed to

leave the United Kingdom disclosing his true Albanian identity. He left the United Kingdom to Albania voluntarily on 28 December 2018 but returned clandestinely in breach of the deportation order. He was arrested on 17 April 2020 with two different identity documents, one in the name of Mentor Marku with the date of birth of 1 December 1984 and another in name of Mentor Serban with the date of birth of 7 May 1981. The Secretary of State issued a notice of removal to him on 18 April 2020.

8. The Appellant made written submissions to the Secretary of State on 17 September 2020 raising a human rights claim based on Article 8. The Secretary of State refused that claim and his associated application to revoke the deportation order on 22 January 2021. The Appellant appealed against the Secretary of State's decision to the First-tier Tribunal on the same day contending that his removal from the United Kingdom would be incompatible with Article 8.

9. The First-tier Tribunal heard the Appellant's appeal from the Secretary of State's decision on 3 September 2021. The Appellant relied on the relationship with his three British citizen children, namely, C1, born on 7 March 2005, C2, born on 27 February 2013 and C3, born on 12 April 2016. He stated that C1 lived with her mother, KL, and C2 and C3 lived with their mother, DS. He stated that he was no longer in a relationship with either KL or DL but helped them as to the upbringing of the children. He also referred to a fourth child in the evidence but made it clear that he had no parental relationship with that child. The First-tier Tribunal promulgated its decision on 21 October 2021. The First-tier Tribunal, in short, held that the impact of his deportation from the United Kingdom on the children would amount to very compelling circumstances. The First-tier Tribunal, on that basis, allowed the appeal and concluded that the Secretary of State's decision was incompatible with Article 8.

10. The First-tier Tribunal granted the Secretary of State permission to appeal to the Upper Tribunal on 26 November 2021. The Upper Tribunal heard the Secretary of State's appeal on 16 May 2022. By a decision promulgated on 21 July 2022, the Upper Tribunal held that the First-tier Tribunal had erred in law in making its decision. The Upper Tribunal accordingly set aside the First-tier Tribunal's decision and retained the underlying appeal for remaking of the decision. The Upper Tribunal preserved the findings made by the First-tier Tribunal as to the Appellant's family life with the children and gave case management directions for filing of further evidence and listing of the appeal for a resumed hearing.

Resumed hearing

11. We are grateful to Mr Peter Blackwood, who appeared for the Appellant, and Mr David Clarke, who appeared for the Secretary of State, for their assistance and able submissions at the resumed hearing.

12. We commenced the resumed hearing by inviting Mr Blackwood to make submissions as to whether we should proceed with the resumed hearing or

remit the underlying appeal to the First-tier Tribunal for a fresh hearing. The reason for this invitation was the Court of Appeal's recent judgment in *AEB v Secretary of State for the Home Department* [2022] EWCA Civ 1512 [2023] 4 WLR 12. The Court of Appeal in that judgment, which has now been considered by the Upper Tribunal in *Begum (Remaking or remittal) Bangladesh* [2023] UKUT 46 (IAC), gave guidance as to the question of whether an appeal, following the decision to set aside the First-tier Tribunal's decision, should be retained or remitted. Although, as we note above, the Upper Tribunal had previously decided to retain the underlying appeal for remaking of the decision, we were prepared to the consider the question afresh in the light of latest case-law. Mr Blackwood, however, made it clear that his preference was for the appeal to be retained at the Upper Tribunal. He accordingly invited us to proceed with the resumed hearing. We accepted that invitation with no objection from Mr Clarke. We agreed with Mr Blackwood that in all the circumstances, having regard to the potential loss of the two-tier decision making process, it was in accordance with the overriding objective and the practice statements issued by the Senior President of Tribunals to proceed with the resumed hearing.

13. The documents before us included all the evidence that was adduced by their parties at the First-tier Tribunal, namely, the Appellant's skeleton argument, appeal bundle, supplementary bundle and further submissions and the Secretary of State's bundle and review. The Appellant provided a further bundle for the resumed hearing and written submissions drafted Mr Blackwood.

14. Mr Blackwood called the Appellant to give oral evidence. The Appellant adopted his witness statements of 8 June 2021 and 16 September 2022 in examination-in-chief. Mr Blackwood asked a few supplementary questions with no objection from Mr Clarke who then cross-examined the Appellant. There was no re-examination. Mr Blackwood next called DS to give oral evidence. DS adopted her statements of 20 August 2020 and 16 September 2022 in examination-in-chief. Mr Blackwood asked a few supplementary questions with no objection from Mr Clarke who then cross-examined DS too. There was no re-examination.

15. We heard detailed closing submissions from Mr Clarke and Mr Blackwood respectively and reserved our decision at the conclusion of the resumed hearing.

Grounds of appeal

16. The sole ground of appeal advanced by Mr Blackwood is that the Secretary of State's decision is unlawful under section 6 of the Human Rights Act 1998 as being incompatible with Article 8.

Burden and standard of proof

17. It is for the Appellant to show that he meets any exceptions to deportation from the United Kingdom as set out in the primary legislation or the Immigration Rules. The standard of proof is the balance of probabilities. So far as Article 8 is concerned, if it is engaged, the Secretary of State bears the burden of showing that the interference with the protected right is proportionate.

Legislative framework

18. Section 32 of the UK Borders Act 2007 ("the 2007 Act") concerns automatic deportation of certain foreign criminals and, so far as relevant, provides:

> "(1) In this section 'foreign criminal' means a person –
>
> (a) who is not a British Citizen,
>
> (b) who is convicted in the United Kingdom of an offence, and
>
> (c) to whom Condition 1 or 2 applies.
>
> (2) Condition 1 is that the person is sentenced to a period of imprisonment of at least 12 months. …
>
> (4) For the purpose of section 3(5)(a) of the Immigration Act 1971 (c. 77), the deportation of a foreign criminal is conducive to the public good.
>
> (5) The Secretary of State must make a deportation order in respect of a foreign criminal (subject to s.33).
>
> (6) The Secretary of State may not revoke a deportation order made in accordance with subsection (5) unless—
>
> (a) he thinks that an exception under section 33 applies,
>
> (b) the application for revocation is made while the foreign criminal is outside the United Kingdom, or
>
> (c) section 34(4) applies."

19. Section 33 of the 2007 Act concerns exceptions to automatic deportation and, so far as relevant, provides:

> "(1) Sections 32(4) and (5) –
>
> (a) do not apply where an exception in this section applies (subject to subsection (7) below), …
>
> (2) Exception 1 is where removal of a foreign criminal in pursuance of the deportation order would breach –

> (a) a person's Convention rights, or
>
> (b) the United Kingdom's obligations under the Refugee Convention. …"

20. As is well known, "Convention rights" include the right protected under Article 8, which provides:

> "1. Everyone has the right to respect for his private and family life, his home and his correspondence.
>
> 2. There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others."

21. Section 117A of the Nationality, Immigration and Asylum Act 2002 ("the 2002 Act") requires judicial decision-makers to "have regard" "in all cases, to the considerations listed in section 117B" and "in cases concerning the deportation of foreign criminals, to the considerations listed in section 117C" "in considering the public interest question". The "public interest question" is, in turn, defined in section 117A(3) of the 2002 Act as being "the question of whether an interference with a person's right to respect for private and family life is justified under Article 8(2)".

22. Section 117C of the 2002 Act, so far as relevant, provides:

> "(1) The deportation of foreign criminals is in the public interest.
>
> (2) The more serious the offence committed by a foreign criminal, the greater is the public interest in deportation of the criminal.
>
> (3) In the case of a foreign criminal ("C") who has not been sentenced to a period of imprisonment of four years or more, the public interest requires C's deportation unless Exception 1 or Exception 2 applies.
>
> (4) Exception 1 applies where,
>
> > (a) C has been lawfully resident in the United Kingdom for most of C's life,
> >
> > (b) C is socially and culturally integrated in the United Kingdom, and
> >
> > (c) there would be very significant obstacles to C's integration into the country to which C is proposed to be deported.
>
> (5) Exception 2 applies where C has a genuine and subsisting relationship with a qualifying partner, or a genuine and subsisting

parental relationship with a qualifying child, and the effect of C's deportation on the partner or child would be unduly harsh.

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

23. Paragraphs 390 and 390A of the Immigration Rules concern revocation of a deportation order and provide:

> "An application for revocation of a deportation order will be considered in the light of all the circumstances including the following:
>
> (i) the grounds on which the order was made;
>
> (ii) any representations made in support of revocation;
>
> (iii) the interests of the community, including the maintenance of an effective immigration control;
>
> (iv) the interests of the applicant, including any compassionate circumstances.
>
> Where paragraph 398 applies the Secretary of State will consider whether paragraph 399 or 399A applies and, if it does not, it will only be in exceptional circumstances that the public interest in maintaining the deportation order will be outweighed by other factors."

24. Paragraph 391 of the Immigration Rules concerns those who have been deported from the United Kingdom and provides:

> "In the case of a person who has been deported following conviction for a criminal offence, the continuation of a deportation order against that person will be the proper course:
>
> (a) in the case of a conviction for an offence for which the person was sentenced to a period of imprisonment of less than 4 years, unless 10 years have elapsed since the making of the deportation order when, if an application for revocation is received, consideration will be given on a case by case basis to whether the deportation order should be maintained, or
>
> (b) in the case of a conviction for an offence for which the person was sentenced to a period of imprisonment of at least 4 years, at any time,
>
> Unless, in either case, the continuation would be contrary to the Human Rights Convention or the Convention and Protocol Relating to

> the Status of Refugees, or there are other exceptional circumstances that mean the continuation is outweighed by compelling factors.

25. Paragraph 391A of the Immigration Rules concerns certain other cases and provide:

> "In other cases, revocation of the order will not normally be authorised unless the situation has been materially altered, either by a change of circumstances since the order was made, or by fresh information coming to light which was not before the appellate authorities or the Secretary of State. The passage of time since the person was deported may also in itself amount to such a change of circumstances as to warrant revocation of the order."

26. Paragraph 392 of the Immigration Rules concerns the effect of a decision to revoke the deportation order and provides:

> "Revocation of a deportation order does not entitle the person concerned to re-enter the United Kingdom; it renders him eligible to apply for admission under the Immigration Rules. Application for revocation of the order may be made to the Entry Clearance Officer or direct to the Home Office."

27. Paragraphs 398, 399 and 399A of the Immigration Rules, so far as relevant, must be read to mirror the language and scheme of section 117C of the 2002 Act. As the Upper Tribunal held in *Binaku (s.11 TCEA; s.117C NIAA; para. 399D)* [2021] UKUT 00034 (IAC), at (6), it is the structured approach set out in section 117C of the 2002 Act which governs the task to be undertaken in an appeal of this nature.

Findings

> *(i) Exception 1 (private life) in section 117C(4) of the 2002 Act*
>
> > *(a) The first limb: residence in the United Kingdom*

28. The first limb in section 117C(4)(a) of the 2002 Act raises the issue as to whether the Appellant has been lawfully resident in the United Kingdom for most of his life.

29. In *Secretary of State for the Home Department v SC (Jamaica)* [2017] EWCA Civ 2112 [2018] 1 WLR 4004, at [53], the Court of Appeal held that the phrase most of his life in this provision means more than half of a person's life. The Court of Appeal, at [56], held that the word lawfully in this provision means permitted by law. It is not limited to residence pursuant to leave to enter or remain but can also include time spent on temporary admission in the United Kingdom. This interpretation was not disturbed by the Supreme Court on appeal in *SC (Jamaica) v Secretary of State for the Home Department* [2022] UKSC 15 [2023] 1 All ER 193.

30. Mr Blackwood made no attempt to argue that the Appellant has been lawfully resident in the United Kingdom for more than half of his life. Even if one ignores the fact that he obtained his refugee status and indefinite leave to remain by providing false details, his residence after 17 June 2015, when his earlier appeal rights were exhausted, was not permitted by law. In any event, his clandestine re-entry to the United Kingdom in breach of the deportation order following his departure to Albania on 28 December 2018, and subsequent residence, was not permitted by law.

31. Accordingly, we find that the Appellant has not been lawfully resident in the United Kingdom for most of his life. He does meet the requirement in section 117C(4)(a) of the 2002 Act.

(b) The second limb: social and cultural integration in the United Kingdom

32. The second limb in section 117C(4)(b) of the 2002 Act raises the issue as to whether the Appellant is socially and culturally integrated in the United Kingdom.

33. In *Binbuga v Secretary of State for the Home Department* [2019] EWCA Civ 551 [2019] Imm AR 1026, at [56], the Court of Appeal held that social integration in this provision refers to the extent to which a person has become incorporated within the lawful social structure of the United Kingdom. The Court of Appeal, at [57], added that, similarly, cultural integration refers to the acceptance and assumption by a person of the culture of the United Kingdom, its core values, ideas, customs and social behaviour. This includes acceptance of the principle of the rule of law.

34. In *SC (Jamaica)*, at [77], the Supreme Court approved the formulation in *CI (Nigeria) v Secretary of State for the Home Department* [2019] EWCA Civ 2027 [2020] Imm AR 503 and held that the decision-maker should simply ask whether, having regard to their upbringing, education, employment history, history of criminal offending and imprisonment, relationships with family and friends, lifestyle and any other relevant factors, the individual was at the time of the hearing socially and culturally integrated in the United Kingdom.

35. The crime committed by the Appellant, making of the asylum claims with false details and clandestine re-entry to the United Kingdom in breach of the deportation order demonstrate disdain for the rule of law. It undermines his claim to have been socially and culturally integrated in the United Kingdom. On the other hand, he arrived in the United Kingdom as young adult in 2000 and remained here for a substantial period of time. He worked in this country and completed several courses. He formed relationships and established a life here. He speaks English and has developed deep roots in the United Kingdom. In our judgment, having regard to all these matters, he is a person who is socially and culturally integrated in the United Kingdom. He meets the requirement in section 117C(4)(b) of the 2002 Act.

(c) The third limb: very significant obstacles to integration into Albania

36. The third limb in section 117C(4)(c) of the 2002 Act raises the issue as to whether there would be very significant obstacles to the Appellant's integration into Albania.

37. In *Kamara v Secretary of State for the Home Department* [2016] EWCA Civ 813 [2016] 4 WLR 152, at [14], the Court of Appeal held that the idea of "integration" calls for a broad evaluative judgment to be made as to whether the individual will be enough of an insider in terms of understanding how life in the society in that other country is carried on and a capacity to participate in it, so as to have a reasonable opportunity to be accepted there, to be able to operate on a day-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. The Supreme Court approved this approach in *Sanambar v Secretary of State for the Home Department* [2021] UKSC 30 [2021] 4 All ER 873, at [55], and in *SC (Jamaica)*, at [52].

38. In *Parveen v Secretary of State for the Home Department* [2018] EWCA Civ 932, at [9], the Court of Appeal noted that the phrase "very significant" connotes an elevated threshold and that the test will not be met by mere inconvenience or upheaval. The test contemplates something which would prevent or seriously inhibit a person from integrating into the country of return. There must be something more than obstacles.

39. The Appellant, as we note above, left Albania as a young adult in 2000. He has lived in the United Kingdom ever since save as to the period between his departure on 28 December 2018 and re-entry in breach of the deportation order. He has established a life in the United Kingdom. He has developed a variety of relationships and connections. He has become accustomed to the freedoms that he enjoyed in this country as young adult and they are unlikely to be readily available in Albania.

40. On the other hand, the Appellant has family in Albania. He stated in his oral evidence that his father resides in Albania and he is in contact with him. He stayed with his father in Albania following his departure from the United Kingdom on 28 December 2018. In his first witness statement, he referred to his brother too but stated that he is not prepared to provide any support. The Appellant is a resourceful individual. His evidence is that he worked in the United Kingdom in construction industry and completed various courses. On his account, as set out in his first witness statement, he is a practical person who managed to turn his life around after the prison sentence. He is a capable and intelligent. In his evidence, he presented himself as someone who is able to think and articulate himself in a proper manner. This is not a case of an individual returning to a country with which they had no familiarity at all. The Appellant spent his childhood in Albania and lived in that country, though for a short time, as an adult too. He is not utterly isolated from the life in Albania. He may find

it challenging to obtain employment or set up business immediately on return to Albania. However, he will not face a serious linguistic, cultural or security barrier. He has mental and physical capacity to secure an income. Ultimately, and despite some challenges, he will be able to establish himself in Albania within a reasonable period of time.

41. Looking at all these matters in the round, we exercise a broad evaluative judgment. We find that the Appellant will be enough of insider in terms of how life is carried on in Albania. He has the capacity to participate in that life and a reasonable opportunity to be accepted there. He will be able to operate on a day-to-day basis in Albania and to build up within a reasonable time a variety of human relationships to give substance to his private and family life. There is nothing that would prevent or seriously inhabit him from integration into Albania.

42. Accordingly, we find that there would be no very significant obstacles to the Appellant's integration into Nigeria. He does not meet the requirement in section 117C(4)(c) of the 2002 Act.

(d) Conclusion as to Exception 1

43. In the circumstances, we find that Exception 1 in section 117C(4) of the 2002 Act does not apply in this case.

(ii) Exception 2 (family life) in section 117C(5) of the 2002 Act

(a) The first limb: relationship with partner or child

44. The first limb in section 117C(5) of the 2002 Act raises the issue as to whether the Appellant has a genuine and subsisting relationship with a qualifying partner, or a genuine and subsisting parental relationship with a qualifying child

45. In *Buci (Part 5A: "partner")* [2020] UKUT 87 (IAC), at (2), the Upper Tribunal held that a partner, for the purpose of this provision, is a person to whom one has a genuine emotional attachment of the same basic kind as one sees between spouses and civil partners, albeit not necessarily characterised by present cohabitation. A partner is not the same as a friend. The Appellant does not claim to have any such relationship or emotional attachment with anyone in the United Kingdom. He has a friendly relationship with his former partners, KL and DS, but it is not a relationship that can fall within the ambit of section 117C(5) of the 2002 Act.

46. In *Secretary of State for the Home Department v AB (Jamaica)* [2019] EWCA Civ 661 [2019] 1 WLR 4541, at [109], the Court of Appeal noted that in order to demonstrate a genuine and substantial parental relationship for the purpose of this provision, it is not necessary for the parent to have parental responsibility. The Court of Appeal added that where a parent is seeing their children in an unsupervised setting on a regular basis, there is likely to be a genuine and substantial parental relationship. The Appellant

does not reside with any of his children. We, however, accept that he spends time with C1, C2 and C3 regularly and helps with their upbringing. In our judgment, the Appellant has a genuine and subsisting parental relationship with these children under section 117C(5) of the 2002 Act.

47. Mr Blackwood's written submissions noted that the Appellant is father to "several" British citizen children but he relied only on his relationship with C1, C2 and C3. The Appellant's first witness statement referred to a total of four children. There is no suggestion that the Appellant has a genuine and subsisting parental relationship with any child apart from C1, C2 and C3.

(b) The second limb: unduly harsh

48. The second limb in Section 117C(5) of the 2002 Act raises the issue as to whether the effect of the Appellant's deportation on C1, C2 and C3 would be unduly harsh.

49. In *HA (Iraq) v Secretary of State for the Home Department* [2022] UKSC 22 [2022] 1 WLR 3784, the Supreme Court gave guidance as to the test of undue harshness in section 117C(5) of the 2002 Act. The Supreme Court, at [41], held that when considering whether the effect of deportation would be unduly harsh, the decision-maker should adopt the self-direction identified in *MK (section 55 – Tribunal options) Sierra Leone* [2015] UKUT 223 (IAC) [2015] INLR 563. Unduly harsh does not equate with uncomfortable, inconvenient, undesirable or merely difficult. Rather, it poses a considerably more elevated threshold. Harsh, in this context, denotes something severe, or bleak. It is the antithesis of pleasant or comfortable. Furthermore, the addition of the adverb unduly raises an already elevated standard still higher. The Supreme Court, at [44], added that having given this self-direction, and recognised that it involves an appropriately elevated standard, it is for the decision-maker to make an informed assessment of the effect of deportation on the qualifying child or partner and to make an evaluative judgment as to whether that elevated standard has been met on the facts and circumstances of the case before them. The Supreme Court, at [19], reinforced the principle that the seriousness of the person's offending is not a factor to be balanced in applying the unduly harsh test. The Supreme Court, at [31]-[40], also made it clear that there is no notional comparator which provides the baseline against which undue harshness is to be evaluated.

50. There is no suggestion of the children's relocation to Albania in order to continue family life with the Appellant in that country. The question here is whether their separation from the Appellant in the event of his deportation would be unduly harsh.

51. C1, as we note above, is the daughter of the Appellant and KL, and was born in 2005. She has a history of engagement with social services and Child and Adolescent Mental Health Services. The evidence as to the circumstances of C1 is largely set out in Summary of Royal Borough of

Greenwich Children's Social Care involvement with the Family, the London Borough of Bexley report and three reports prepared by Social Worker, Angeline Seymour. We also have detailed written and oral evidence from the Appellant and DS in respect of C1. There is further written evidence from C1, her maternal grandfather and KL. C1's first engagement with social services was in 2006. She witnessed domestic abuse perpetrated on her mother and was the subject of child protection and child in need plans in 2015. She alleged abuse and assaults by her mother and began running away from home in 2019. There was an investigation in 2020 leading to her being removed from the family home. She has engaged in unsafe sexual activity and used drugs from a young age. She has a history of previous self-harm including overdosing and cutting. She has been diagnosed with severe depression and was admitted to hospital in 2022. She had suicidal ideation and it was unsafe to discharge her for that reason. She reported her mother to police in same year for domestic abuse. Her relationship with her mother has now broken down. They both stated that she would not return to the family home. She now resides with her maternal grandparents. She has expressed concerns for her mental health in the event of the Appellant's deportation, including suicidal ideation and risk to her own life. She is clearly someone who has a history of serious and adverse childhood experiences. Exposure to such experiences can lead to increased mental health difficulties, violence, becoming a victim of violence and high-risk activities. These effects can continue through the life course.

52. The Appellant resides in Birmingham and C1 resides in London with her maternal grandparents. C1 started working a few months ago at a hotel in Canary Wharf and lived there occasionally. We accept that the Appellant and C1 are, and have always been, in contact with each other over telephone and text messages. They visit each other occasionally and C1 has resided with the Appellant at times too. The fact, however, is that they are living independent lives in different cities. C1, at the date of the resumed hearing, was just a few weeks away from her eighteenth birthday. She has her own circle of friends. Although the Appellant has a genuine and subsisting parental relationship with C1, it is remarkable that she did not tell him about the domestic violence incidents. The Appellant was informed about it by social services. When it was put to the Appellant in cross-examination as to why C1 would go to her teacher with issues relating to domestic violence incidents instead of sharing it him, he stated that he did not know. He also stated that C1 never told him anything and it is ultimately up to her. In our judgment, the Appellant does not provide any instrumental or irreplaceable support to C1. She has other ways to deal with her challenges.

53. We accept that both the Appellant and C1 wish to remain in regular face-to-face contact with each other. C1 wants the Appellant to remain in the United Kingdom and feel that his deportation would affect her mental health. As Angeline Seymour stated in her third report, C1 will feel sadness at the loss of her father and it will have adverse effect on her and her emotional wellbeing. However, looking at all the evidence in the round, we

find that there is no real risk of serious deterioration of C1's mental health because of the Appellant's deportation from the United Kingdom. C1, as we note above, has a history of self-harm. We do not accept, as Mr Blackwood suggested, that C1 is likely to self-harm or attempt suicide on the Appellant's deportation from the United Kingdom. We were taken to a text message by C1 suggesting that she would kill herself if the Appellant were not allowed to reside in the United Kingdom. In our judgment, this text message is an expression by a teenage child of her desire that her father should stay in the United Kingdom. We cannot be satisfied, on the evidence before us, that it is a true statement of intent. C1 has extensive engagement with social services and health services. There is no evidence from them suggesting that the Appellant will be at risk of suicide or self-harm in the event of the Appellant's deportation from the United Kingdom. We find that there is no real risk of suicide or self-harm in this case. C1 will continue to receive support in the Appellant's absence from the United Kingdom as to her mental health.

54. C2 and C3, as we note above, are children of the Appellant and DS, and were born in 2013 and 2016 respectively. We have benefit of the evidence from Angeline Seymour as to the circumstances of C2 and C3 in addition to the detailed written and oral evidence from the Appellant and DS. We also have written evidence from C2. C2 and C3 reside with DS but the Appellant has a healthy and loving relationship with them. We accept the evidence that the Appellant plays a role as to their upbringing. He visits them regularly and helps with their homework and schooling. He takes them to routine appointments and assists DS with other tasks about them. It is plain that C2 and C3 also enjoy the Appellant's company and will feel sad by his departure from the United Kingdom. DS will continue to look after them. She works in a nursery for three days a week and may have to make certain adjustments in the event of the Appellant's deportation. She presented herself in the evidence as a resilient individual and a caring mother. She will find a way, without enduring difficulty, to secure an income and look after C2 and C3 without the Appellant. C2 and C3 will adjust in a life without the Appellant's physical presence with care and support of DS.

55. It is uncontroversial that all children should, where possible, be brought up with a close relationship with both parents and all children deprived of a parent's company during their formative years will be at risk of suffering harm. Our task is to decide whether the effect of the Appellant's deportation on C1, C2 and C3 would not merely be harsh, but unduly harsh. Taking into account all these considerations and evidence cumulatively, we find that this case does not meet the *MK* standard, as approved by the Supreme Court in *HA (Iraq)*. The Appellant and the children, as we note above, are not living together. The separation from Appellant will no doubt be uncomfortable, inconvenient, undesirable and difficult for C1, C2 and C3. We find that the consequences for them would not be anything more than that and will not be severe or bleak. The elevated threshold in section 117C(5) of the 2002 Act is not met. The

effect of the Appellant's deportation on the children would not be unduly harsh.

(c) Conclusion as to Exception 2

56. In the circumstances, we find that Exception 2 in section 117C(5) of the 2002 Act does not apply in this case.

(iii) Very compelling circumstances test in section 117C(6) of the 2002 Act

(a) Applicable principles

57. The Appellant, as we note above, has received a sentence of at least four years imprisonment. Accordingly, on section 117C(6) of the 2002 Act, the public interest requires his deportation unless there are very compelling circumstances, over and above those described in Exceptions 1 and 2. We have found above that Exceptions 1 and 2 do not apply in this case.

58. In *HA (Iraq)*, the Supreme Court gave guidance as to the very compelling circumstances test in section 117C(6) of the 2002 Act. The Supreme Court, at [49], referred to *Hesham Ali v Secretary of State for the Home Department* [2016] UKSC 60 [2016] 1 WLR 4799 and noted that great weight should generally be given to the public interest in the deportation of qualifying offenders, but it can be outweighed, applying a proportionality test, by very compelling circumstances: in other words, by a very strong claim indeed. The countervailing considerations must be very compelling in order to outweigh the general public interest in the deportation of such offenders, as assessed by Parliament and the Secretary of State.

59. The Supreme Court, at [50], referred to *NA (Pakistan) v Secretary of State for the Home Department* [2016] EWCA Civ 662 [2017] WLR 207 and noted that if a serious offender could point to factors identified in the descriptions of Exceptions 1 and 2 of an especially compelling kind in support of an Article 8 claim, going well beyond what would be necessary to make out a bare case of the kind described in Exceptions 1 and 2, they could in principle constitute very compelling circumstances, over and above those described in Exceptions 1 and 2, whether taken by themselves or in conjunction with other factors relevant to application of Article 8. The Supreme Court further noted that although there is no exceptionality requirement, it inexorably follows from the statutory scheme that the cases in which circumstances are sufficiently compelling to outweigh the high public interest in deportation will be rare. The commonplace incidents of family life, such as ageing parents in poor health or the natural love between parents and children, will not be sufficient.

60. The Supreme Court, at [51], held that when considering whether there are very compelling circumstances, over and above those described in Exceptions 1 and 2, all the relevant circumstances of the case will be

considered and weighed against the very strong public interest in deportation. The Supreme Court referred to *Boultif v Switzerland* [2001] ECHR 497 (2001) 33 EHRR 50, *Üner v The Netherlands* [2007] INLR 273 (2007) 45 EHRR 14 and *Unuane v United Kingdom* [2020] ECHR 832 (2021) 72 EHRR 24 and stated that the relevant factors include the nature and seriousness of the offence committed by the applicant, the length of the applicant's stay in the country from which he or she is to be expelled, the time elapsed since the offence was committed and the applicant's conduct during that period, the nationalities of the various persons concerned, the applicant's family situation, such as the length of the marriage, and other factors expressing the effectiveness of a couple's family life, whether the spouse knew about the offence at the time when he or she entered into a family relationship, whether there are children of the marriage, and if so, their age, the seriousness of the difficulties which the spouse is likely to encounter in the country to which the applicant is to be expelled, the best interests and well-being of the children, in particular the seriousness of the difficulties which any children of the applicant are likely to encounter in the country to which the applicant is to be expelled, and the solidity of social, cultural and family ties with the host country and with the country of destination. This is entirely consistent with *Maslov v Austria* [2008] ECHR 546 [2009] INLR 47.

61. The Supreme Court, at [53], [58] and [119], clarified that rehabilitation is a relevant factor in the assessment of whether there are very compelling circumstances, over and above those described in Exceptions 1 and 2. The weight to be given to it is a matter for the fact-finding tribunal. In a case where the only evidence of rehabilitation is the fact that no further offences have been committed then, in general, that is likely to be of little or no material weight in the proportionality balance. If, on the other hand, there is evidence of positive rehabilitation which reduces the risk of further offending then that may have some weight as it bears on one element of the public interest in deportation, namely the protection of the public from further offending.

62. The Supreme Court, at [60], held that seriousness of the offence is a matter which the decision-maker is required to take into account when carrying out a proportionality assessment for the purposes of the very compelling circumstances test. The length of the sentence, the Supreme Court added, at [67], will be the surest guide to the seriousness of the offence. The Supreme Court further noted, at [70], that whilst care must be taken to avoid double counting, in principle, the nature of the offending in addition to the sentence can be a relevant consideration.

(b) Proportionality assessment

63. For the reasons set out above, we find that the Appellant has established private life in the United Kingdom and family life with C1, C2 and C3. Accordingly, his deportation from the United Kingdom will be an interference with the right to respect for private and family life. It will have consequences of such gravity as to engage the operation of Article 8. The

ultimate question in this case is whether the interference caused by the Secretary of State's decision to the private and family life, using the test in section 117C(6) of the 2002 Act, is proportionate.

64. We commence our assessment as to the question of proportionality by considering the best interests of C1, C2 and C3. It is as much as their relationship as the Appellant's which is in jeopardy. The right of the children to respect for their private and family life is equally engaged. We apply the principles set out in *Zoumbas v Secretary of State for the Home Department* [2013] UKSC 74 [2013] 1 WLR 369, at [10]. We treat the best interests of the children as a primary consideration and an integral part of our assessment. Although it can be outweighed by the cumulative effect of other considerations, we proceed on the basis that no other consideration can be treated as inherently more significant. The children cannot be blamed for the conduct of their parents. As noted in *KO (Nigeria) v Secretary of State for the Home Department* [2018] UKSC 53 [2019] 1 All ER 675, at [19], by reference to earlier case-law, the assessment of the best interests of the children must be made on the basis that the facts are as they are in the real world. In the real world, the children will continue to reside in the United Kingdom following the Appellant's deportation. We accept with little hesitation that it is in the best interest of C1, C2 and C3 to reside in the United Kingdom and to have regular face-to-face contact with the Appellant.

65. We have found above that the Appellant arrived in the United Kingdom as young adult from Albania in 2000 and resided ever since save as to the period between his departure on 28 December 2018 and re-entry in breach of the deportation order. He is socially and culturally integrated in the United Kingdom and has established deep relations and connections. He is likely to face certain challenges on return to Albania. His former partners, KL and DS, his children, C1, C2 and C3, and C1's material grandparents, all want him to stay in the United Kingdom. We have outlined the reasons behind these findings in the earlier part of this decision and count them in the Appellant's favour in our assessment.

66. The fact that the Appellant has not committed further crimes since his prison sentence is not a certain indicator that there is low risk of reoffending and harm. We have evidence from Dr Daniel Logan Grant, Independent Social Worker, that the Appellant has made good progress during his time in prison and on licence. He was considered to present a medium risk at the time of his release. Dr Grant, however, considers that he currently presents a low risk of reoffending and harm. In his evidence, the Appellant accepted responsibility for his crime and expressed regret and remorse. He has taken steps to address his criminality and is committed to avoid further offending. We are prepared to accept, with some reluctance, that the Appellant is at low risk of reoffending and harm. We attach weight to this finding in our assessment as it bears on one element of the public interest in deportation, namely, protection of the public from further offending.

67. There is, however, another element of the public interest in deportation, namely, deterrence to non-British citizens who are already here and those minded to come so as to ensure that they clearly understand that, whatever the circumstances, one of the consequences of serious crime may well be deportation. The Appellant's offending, though it took place over 15 years ago, involved a serious crime. We avoid double-counting in our assessment and use the sentence imposed as the guide. The Appellant, for the purpose of the statutory scheme, is a serious offender. Further, as we note above, he obtained his refugee status and indefinite leave to remain by providing false details and contained to advance the fraudulent claim of being a citizen of Kosovo for many years. He re-entered the United Kingdom clandestinely in breach of the deportation order. His actions demonstrate an appalling and flagrant disregard of the law. There is a very strong public interest in his deportation.

68. We have found above that there would be no very significant obstacles to the Appellant's integration into Albania and the effect of the deportation on C1, C2 and C3 would not be unduly harsh. We adopt the findings that we have made above in relation to those matters in proportionality balance. Ultimately, Parliament has decided that serious offenders like the Appellant should be deported from the United Kingdom unless there are very compelling circumstances, over and above those described in Exceptions 1 and 2. Taking into account all the evidence cumulatively, in our judgment, the countervailing considerations are not sufficiently compelling to outweigh the general public interest in the Appellant's deportation. There are no very compelling circumstances, over and above those described in Exceptions 1 and 2. We conclude that the Appellant's deportation is justified and proportionate. It is not incompatible with Article 8.

(c) Conclusion as to very compelling circumstances

69. Accordingly, we find that the very compelling circumstances test in section 117C(6) of the 2002 Act is not met.

(iv) Revocation of the deportation order

70. In our judgment, it is entirely appropriate to maintain the deportation order issued against the Appellant. We arrive at this conclusion by treating the best interests of C1, C2 and C3 as a primary consideration and in the light of all the circumstances including the grounds on which the deportation order was made, the representations made by the Appellant in support revocation, the interest of the community, including the maintenance of an effective immigration control and the interests of the Appellant, including compassionate circumstances put forward by him. The passage of time since Appellant's conviction and the deportation order and the fresh information that was not available previously do not justify revocation of the deportation order. The public interest in maintaining the deportation order is not outweighed by other factors in this case. The

Secretary of State's refusal to revoke the deportation order is justified and proportionate.

(v) Policy guidance

71. Mr Blackwood, in his written submissions, referred to the Secretary of State's guidance, entitled *Criminality: Article 8 ECHR cases*, which provides that where there is an Article 8 barrier to deportation, a foreign criminal can be granted leave to remain for a period of up to 30 months, subject to appropriate conditions. Mr Blackwood submitted that the Secretary of State's decision disclosed no consideration of granting limited leave to remain to the Appellant. Given that there is no Article 8 barrier in this case, the policy guidance provides no assistance to the Appellant.

Conclusion

72. For all these reasons, we remake the decision in the Appellant's appeal by dismissing it.

Anonymity

73. In our judgment, having regard to the Presidential Guidance Note No 2 of 2022, *Anonymity Orders and Hearing in Private*, and the overriding objective, an anonymity order is not justified in the circumstances of this case. We therefore make no order under Rule 14(1) of the Tribunal Procedure (Upper Tribunal) Rules 2008.

Notice of decision

74. The appeal is dismissed.

Zane Malik KC
Deputy Judge of the Upper Tribunal
Immigration and Asylum Chamber
Date: 22 March 2023

Fee award

75. We make no fee award in the light of our decision to dismiss the appeal.

Zane Malik KC
Deputy Judge of the Upper Tribunal
Immigration and Asylum Chamber
Date: 22 March 2023