IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2022-001081

First-tier Tribunal No: HU/17579/2019

THE IMMIGRATION ACTS

Decision & Reasons Issued:
On 25 June 2023

Before

UPPER TRIBUNAL JUDGE HANSON

Between

SB
(ANONYMITY ORDER MADE)

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellant: Ms E Harris instructed by Waterstone Legal.
For the Respondent: Ms Z Young, a Senior Home Office Presenting Officer.

Heard at Phoenix House (Bradford) on 7 June 2023

Order Regarding Anonymity

Pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008, the appellant is granted anonymity.

No-one shall publish or reveal any information, including the name or address of the appellant, likely to lead members of the public to identify the appellant. Failure to comply with this order could amount to a contempt of court.

DECISION AND REASONS

1. The appellant appeals with permission a decision of First-tier Tribunal Judge Saffer ('the Judge'), promulgated on 6 September 2021, in which the Judge dismissed his appeal against the refusal of his application for leave to remain in the United Kingdom on human rights grounds, relied upon as an exception to the order for his deportation from the UK.
2. The appellant is a citizen of Uganda born on 10 January 1966.

3. The Judge sets out the appellant's immigration history and a brief chronology, together with a summary of the evidence received, in the early part of the determination. At [25] the Judge sets out extracts from the Crown Court judge's sentencing remarks.
4. After setting out a very detailed summary of applicable legal provisions the Judge's findings actually commence at [122]. The findings can be summarised, inter alia, as follows:

    a. It was not accepted as reasonably likely the appellant is bisexual [122].
    b. The appellant's ailments did not come near the threshold to be finding either Article 3 or 8 claims made out, as identified in AM (Zimbabwe) [123].
    c. There is insufficient evidence to support the assertion of political instability in Uganda, that the crime rate is inherently problematic, or if it is that it was of such intensity that the appellant could not return. There is insufficient evidence to show the appellant will be detained at the airport or kept in a detention centre or that his return as a newcomer will be problematic [124].
    d. The appellant has been sentenced to a term of imprisonment of between 12 months and four years and it his deportation is conducive to the public order and in the public interest in light of the length of his sentence [125].
    e. Deportation is conducive to the public good as the appellant's offending has caused serious harm, he is a persistent offender, who has shown a disregard for the law [126].
    f. As found by the Sentencing Judge, blatant lies, dishonesty, and deception come to the appellant easily [130].
    g. The Judge found such dishonesty continued before him [131].
    h. The Judge found the appellant who had held himself out as a Pastor in the UK would do so in Uganda [133].
    i. The appellant's offending was serious, being a calculated course of conduct over a period of time, and were undermining immigration control by obtaining documents that enabled him to come and go freely and access benefits British people are entitled to. The Judge was satisfied there is public revulsion with such behaviour irrespective of what the appellant's witnesses may think [134].
    j. The appellant's claim he has been discriminated against as a British citizen would not be treated in that way was "unattractive and at worst nonsense" [135].
    k. The Judge is not satisfied with the appellant's contrition or rehabilitation. The appellant continually underplays what he did. The appellant was convicted of multiple offences. The appellant obtained benefits to which he was not entitled. The appellant fooled Immigration Officers and priests alike [136].
    l. The Judge has not satisfied the appellant as a low risk offender as there was no probation report stating such [137].
    m. The appellant's time in prison broke his social and cultural integration despite it only being 9 months in 25 years, even given the evidence from the lay witnesses of his life in the UK , as he had been lying the entire time he has been here [138].
    n. The Judge was not satisfied that the delay of five years between being convicted and the proceedings to deprive him of the fraudulently obtained British citizenship lessened the weight to be given to the points identified by the Judge [139].
    o. The appellant is in a genuine subsisting relationship with EN, HN and IS. His relationship with GC goes beyond the normal emotional ties that exist between adults [140].

p. The Judge was not satisfied it will be unduly harsh for AA, GS, EH, HN and IS to remain in the UK if the appellant is deported [141].
q. The appellant would be able to maintain contact with his family from Uganda as he will have access to modern means of communications and they can visit him [142].
r. It was not accepted the appellant takes care of RN and JS's children who live in Croydon and his claim to do so is a further gross exaggeration [143].
s. In attributing the children's success to him, the appellant is taking credit for the hard work they have put in themselves [144].
t. The relationship between the appellant and RM was formed the time his immigration status was precarious. The appellant has a genuine subsisting relationship with RM as they have lived together for 25 years [145].
u. It would not be unduly harsh for RM to live in Uganda or that there are any compelling circumstances over and above those described in paragraph EX.2 of Appendix FM [146].
v. It will not be unduly harsh for RM to remain in the UK whilst the appellant is deported as she can receive professional community support for her needs and help the children [147].
w. The appellant has not been lawfully resident in the UK for most his life. He is 55 and has been in UK for 20 years and was stripped of his fraudulently obtained British citizenship in 2017 [148].
x. The appellant is not socially and culturally integrated to the UK [149].
y. There will not be very significant obstacles to appellant's integration into Uganda where he lived for 30 years, speaks the language, understands the culture, can work, will not be socially isolated, and has contacts there [150].
z. Although the appellant may struggle to be readmitted to the UK if deported it does not mean he should not be deported or be treated in the same way as other deportees [151].
aa. There is no evidence the appellant is being "picked on" as he is Black. The appellant is subject to deportation proceedings due to the offences he committed and that his colour is irrelevant [142].
bb. Taking into account the children's best interests it would not be reasonable to expect them to leave the UK [153].
cc. Not is it accepted there are insurmountable obstacles to family life continue outside the UK as RM can visit the appellant as can the children, they can maintain indirect communication, no one will be destitute, state support is available if required in the UK, neither the appellant nor RM will be socially isolated, and that although there will be obstacles that will be difficult the obstacles for the appellant are not insurmountable and the difficulty is not unduly harsh [155].
dd. Maintenance of effective immigration control is in the public interest. That the appellant is not an economic burden on the state and speaks English are neutral factors [156].
ee. Little weight is attached on the appellant's private life established when he was using his unlawfully obtained British citizenship. The Judge gives weight to the relationship with RM which was established when the appellant was in the UK lawfully but that does not tip the balance in his favour [156].

5. The Judge draws together his individual findings at the end of the determination in the following terms:

> Razgar summary and proportionality balancing exercise
>
> 157. He has a family and private life here. There is a positive duty to promote it. Removing him would adversely impact on his private and family life.

Consequences of gravity may flow from the decision to remove him given that adverse impact.

158. The decision to remove him is in accordance with the law and pursuing the legitimate aim of preventing crime and disorder and undermining the integrity of immigration control, given the serious nature of the offences, the fact it was a course of conduct over a period of time, his continued minimalization of his behaviour, his lack of integration or rehabilitation, and his continued duplicity to the Church and lies in Court.

159. In relation to proportionality, the facts found in [127 – 139, 141 – 144, and 146 – 151] weigh against him.

160. On his side of the balancing exercise, he has been here for 25 years albeit almost all through criminality, his family who are victims of his behaviour will be distressed by his deportation, the quality of their family life will be weakened, and life for all of them will be more difficult.

161. Having considered all the various factors which I have set out in this Determination section, I am satisfied that the decision to deport the Appellant is proportionate to the identified aims for the reasons I have given which I will not simply repeat. His right to respect for his family and private life is very heavily outweighed in this case by the need to protect the public and deter others from committing a similar crime and retaining the integrity of immigration control. There are no compelling circumstances (let alone very compelling circumstances) over and above those described in the rules.

6. The Judge accordingly dismissed the appeal against the deportation order on all grounds.
7. The appellant sought permission to appeal which was refused by a different judge of the First-tier Tribunal and renewed to the Upper Tribunal. Permission to appeal was granted by Upper Tribunal Judge Sheridan on 9 August 2022, the operative part of the grant being in the following terms:

    1. In paragraph 141 the judge (Judge of the First-tier Tribunal Saffer) stated that the effect of the appellant's deportation on his children "does not go beyond what is necessarily involved for a child facing the deportation of a parent". The use of this language arguably indicates that the judge applied a "notional comparator", which arguably is inconsistent with HA (Iraq) [2022] UKSC 22.
    2. It is also arguable that it was procedurally unfair to reduce the weight attached to the psychological report because it was over a year old when the report was (arguably) prepared in a timely matter in accordance with case management directions.
    3. All grounds can be pursued.

8. In her Rule 24 response dated 13 September 2022 the Secretary of State's representative writes:

    2. The respondent opposes the appellant's appeal. In summary, the respondent will submit inter alia that the judge of the First-tier Tribunal directed himself appropriately.
    3. Whilst the FTTJ may have erred in applying a 'notional comparator' child in assessing undue harshness, the respondent will submit it will be for the appellant to demonstrate the materiality of this error given the high threshold 'undue harshness' connotes'. The SC in HA Iraq [2022] has affirmed the test laid down in MK Sierra Leone (at [41]) and the respondent submits the evidence before the FTT falls far short of demonstrating 'unduly severe' or 'unduly bleak' consequences for the appellant's wife or children should the appellant be deported.

4. For similar reasons, the respondent submits there is no material error in relation to ground 5. If there is no material error in relation to the finding it would not be unduly harsh for the appellant's wife to remain in the UK without the appellant, then any error in relation to her having to relocate to Uganda is not material.
5. Finally, contrary to ground 4 the FTTJ in facts considers a holistic proportionality exercise in substance at [157-161] and expressly concludes there are no "compelling circumstance [let alone very compelling circumstances over and above those described in the rules)" which is compliant with the Tribunal's duty under 117C(6) of the 2002 Act.

Discussion and analysis

9. To put matters into context the following brief chronology can be extracted from the revised grounds of appeal prepared by Ms Harris on which permission was granted:

10 January 1966 – A was born in Uganda

1996 – A arrived in the UK with a valid student visa

27 July 1996 – A married RM, a British citizen

2 March 1997 – AA born (a child of RM but not A)

18 March 2002 – GS was born

10 February 2004 – EN was born

16 July 2008 – HN was born

5 April 2011 – IS was born

14 May 2002 - A granted ILR

16 August 2003 – A granted British citizenship

21 January 2011 – A sentenced to 18 months imprisonment following convictions for:

Making a false sworn statement on 1 September 1998

Obtaining leave to enter/remain by deception on 26 June 2001

Obtaining leave to enter/remain by deception on 15 May 2002

Possessing a false identity document on 13 July 2009

11 January 2016 – R commenced proceedings to deprive A of his British citizenship

18 January 2017 – A was deprived of his British citizenship

6 March 2018 – R gave notice of her intention to deport A

9 March 2018 – A initially raised asylum and human rights

16 August 2019 – A withdrew his asylum claim

9 October 2019 – R refused A's human rights claim

10. Ground 1 asserts the Judge erred in the assessment of the psychological evidence. Specific challenge is made to the Judge's findings at [141] and [147] and it submitted that the findings disregard the expert evidence with no rational reason given for doing so. There is a comment that the reports were not significantly out of date by the date of the hearing and that the reports not only set out the psychological problems suffered by the children and the appellant's wife at the date of the report, but the likely impact on the children of a permanent future separation from their father. The grounds assert the Judge "significantly and unlawfully" minimise its recognised serious psychological

disorders by referring to them only as “upset”, fails to engage with the expert’s assessment of the importance of treatment for the children even if their father remains in the UK, and that deportation would increase the severity of the risk of suicide for the children, which goes beyond mere upset. The Grounds also assert the Judge referring to the upset the children will feel if their father is deported being ameliorated by knowing the father is not at risk in Uganda demonstrates a failure to have read or understood the causes of their mental health condition/symptoms which are related to separation anxiety and not concerned with their father’s well-being.

11. The Judge was clearly aware of the medical evidence and took the same into account. The Judge summarises the evidence between [56 -63] in the following terms:

Medical evidence

56. Sarah Kasule, a Specialist Psychological Therapist, reported (27 July 2020) that HN said she feels upset every time she thinks about the Appellant being deported. HN said she fears being separated from him and this was affecting her education as she does not want to do schoolwork as it distracts her from thinking about him. Her social life has been affected as she does not want her friends to know he could be deported as she fears she may accidentally talk about it and is therefore better off alone. She repeatedly asks whether he will be deported and gets upset. When she is upset she withdraws and comforts eat. She described having little interest or pleasure in carrying out activities, having sleeping difficulties, getting nightmares, getting easily agitated and upset, feeling lethargic, feeling not good enough, and having poor attention and concentration nearly every day. She said that sometimes she feels life is not worth living.
57. In Ms Kasule’s opinion HN suffers from major depression and Separation Anxiety Disorder for which she will require long-term therapy. If the Appellant is deported the family will be destabilised and this will impact on her mental health, educational attainment, and social and physical well-being. It would be unduly harsh for her to be separated from the Appellant given the long-term effects that would have on her. It may increase her risk of hopelessness and increase the severity of her suicide risk.
58. Ms Kasule, reported (27 July 2020) that EN was not fully aware what was happening when her parents were jailed, recalls missing them a lot, and feeling sad, fearful and confused most of the time. She was scared they would never come home. She recalled having sleepless nights but when she did sleep would have recurring nightmares. She said that as the Appellant was the only breadwinner, they lived in poverty over the years. It has been a struggle meeting their daily needs. The poverty will worsen if he is deported as RM is unable to work. He is involved in her education and attends school functions and meetings and helps with homework. She worries that if he is deported they will be separated. She gets upset, feels sad, and struggles to sleep most nights. She is worried that her education and mental health will deteriorate. She described feeling depressed, having little interest in activities, comfort eating, having sleeping difficulties, speaking too quickly, feeling lethargic, feeling not good enough, and having difficulty with concentration and memory most or nearly every day. She sometimes feels life is not worth living.
59. In Ms Kasule’s opinion EN suffers from major depression and Generalised Anxiety Disorder for which she will require long-term therapy. If the Appellant is deported the family will be destabilised and this will impact on her mental health, educational attainment, and social and physical well-being. It would be unduly harsh for her to be separated from the Appellant given the long-term effects that would have on her. It may increase her risk of hopelessness and increase the severity of her suicide risk.
60. Ms Kasule, reported (27 July 2020) that RM is receiving linguistic and culturally sensitive psychological support. She is experiencing psychological distress aggravated by ongoing immigration issues. The Appellant is the sole provider in the

household. Since her release from prison the children have been struggling to cope both mentally and physically. RM is worried that his deportation will destabilise the family. Ms Kasule's opinion is that she is suffering from depressive disorder and Generalised Anxiety Disorder.

61. Ms Kasule, reported (27 July 2020) that the Appellant is receiving linguistic and culturally sensitive psychological support. He reported sleeping difficulties, worrying, getting panic attacks, constantly feeling on edge depressed and anxious, and having poor concentration and memory difficulties. Her opinion is that he is suffering from depressive disorder and Generalised Anxiety Disorder. He has been advised to avoid being lonely or isolated as this may make his mental health condition worse. He has also been made aware of the importance of consistency and engagement in therapeutic treatment.
62. Dr Jenny Welch, Consultant Paediatric Haematologist, wrote (21 February 2013) that GS has sickle cell. The complications of an increased risk of strokes, pulmonary hypertension, gall stones, bed wetting, skin ulcers, and retinopathy can be managed but not generally cured. There is a lifelong risk of serious life threatening infections.
63. I have seen correspondence concerning the Appellant's diabetic eye screening appointments and regarding his vulnerability to Covid.

12. If a decision is going to be attacked on the basis of a Judges specific finding in a paragraph of the determination it is important that the relevant part of the determination is set out in full. The Judge is criticised in the grounds for commenting upon the date of the reports. [141] and [147] read:

> 141. I am not satisfied that it would be unduly harsh for AA, GS, EH, HN, and IS to remain here without him for the following inter-related reasons. It does not go beyond what is necessarily involved for a child facing the deportation of a parent. The psychological reports are all over a year old and there is no indication the problems remain. If they do, the issues can be treated. The children have professional support available and are surrounded by RM and the community. AA who is a nurse, and GS, are close by and can visit to support EH, HN, and IS. There is no up to date evidence regarding GS's sickle cell as the report was from 2013. He is plainly thriving and the Appellant's presence will not materially impact on any support that may be required. I do not accept that the Appellant is more important to them than RM as the evidence is that he sleeps and does community work during the day and works at night. That means that the parent who is primarily there for the children, irrespective of him doing the school run and engaging with the school, is RM. She is therefore the primary carer. I accept they have some emotional dependence on him and they will be very upset by the deportation. That upset however can be ameliorated by the profession, community, and family assistance to which I have already referred, and I do not accept it has been established it is greater than other families in this situation. It will also be ameliorated by the realisation that he will not be as isolated or at risk as claimed given the findings I have made and set out shortly regarding having contacts and support available in Uganda and the means to support himself and in relation to the situation in Uganda.
> …
>
> 147. I do not accept it would be unduly harsh for RM to remain here while he is deported as she can receive such professional and community support as she needs to help with her upset and the children. Her concerns will be ameliorated by the realisation that he will not be as isolated as claimed given the findings I have made regarding having

> contacts and support available in Uganda and the means to support himself. They will be able to maintain contact through modern means of communication. She can visit him.

13. I do not accept the submission that the Judge erred in law by giving no weight to the medical evidence. The observation by the Judge in relation to the date of the reports is factually correct. Hence there was no more recent evidence. The Judge does not, however, stop there and specifically states that if the situation is as set out in the reports those are matters that can be treated. The Judge does not undermine, devalue, or fail to make findings in relation to this evidence. The Judge identifies that professional support will be available for any needs occasioned by the appellant's deportation which will result in the consequences for those affected not being unduly harsh. Alleging the Judges use of the term "upset" indicates the recommendations are being devalued and not given proper weight is without merit. The term upset can refer to unhappiness, disappointment, worry, or something greater. The term is specifically used in the summary of the medical evidence as noted above. The Judge does not disagree with the diagnosis of the author of the report, a Specialist Psychological Therapist, including the use of the term 'distress'.
14. The Judge accepts that the cause of the distress of the children will be the appellant's deportation but finds that sufficient resources are available to assist the children with being able to cope with their experiences, including with their mother's support. It was not made out that the psychological intervention recommended by the author of the report to meet developmental needs as well as the consequences of the appellant's deportation would not be available or sufficient. The Judge does not claim that deporting the appellant will not have the destabilising effect referred to in the reports.
15. The accusation that the Judge's finding that professional and community support will ameliorate the impact on the children of deportation is unsupported by the expert evidence is without merit such as to establish legal error. It is not clear that the expert was asked to address the specific issue. It was for the appellant to produce what evidence was required to establish his claims, and the Judge could only address the material that was made available. There was nothing before the Judge to show the consequences of the appellant's deportation upon the children will be so severe that no form of psychological or other medical intervention was able to assist to enable the children to understand the appellant's removal, cope and readjust, or for their mother.
16. I accept there may be some merit in the suggestion the Judge employed a comparator at [141] when stating that the effect on the children did not go beyond what is necessarily involved a child facing the deportation of a parent. It is settled law that a comparator is not permitted but that does not undermine the remaining findings made by the Judge in relation to the impact upon the children of the appellant's deportation and availability of support at home and within the community. Issues considered include what was written about the potential increased risk of suicide. No material legal error is made out in relation to Ground 1.
17. Ground 2 asserts procedural unfairness regarding the assessment of the expert evidence arguing procedural unfairness inherent in the Judges approached the expert evidence when considered against the case management chronology. I find this ground has no arguable merit in establishing legal error. It is accepted that the report was produced in accordance with directions given that the case management hearing and that the appellant could not be responsible for the delay in any hearing being listed. The reason no legal error is made out is that the Judge, as well as noting the date of the report, proceeded to analyse the

issue and its relationship to the assessment of undue harshness as if they conditions outlined in the medical report were ongoing. The Judge therefore considered the position at the date of the hearing, taking the medical reports into account as noted in the determination. No material legal error is made out in relation to Ground 2.

18. As a result of a drafting error there are two Ground 3's, which for the sake of clarity I shall referred to as Ground 3 (i), Ground 3(ii) and by reference to the headed topic.
19. Ground 3(i) is headed Applicable test for "undue harsh"- asserting the Judge wrongly assessed the impact of the children on a comparative basis. It is accepted that approach was rejected in HJ (Iraq) [2020] EWCA Civ 1176. I have commented upon that aspect at [16] above.
20. I do not accept the pleading at [25] of the Grounds that the Judge failed to assess the merits of the appeal and whether deportation would be unduly harsh without applying the particular factual circumstances of the case before him. No material legal error is made out in relation to Ground 3 (i).
21. Ground 3(ii) is headed "Irrelevant considerations". It is not disputed by the Judge that the appellant is a medium offender for the purpose of deportation, having been sentenced to between 12 months and four years imprisonment, as specifically noted by the Judge in the decision. The grounds assert that at [126 – 139] the Judge considered a wide range of factors which are said to have clearly influenced his overall assessment. The grounds argue that paragraph 398(c) of the Immigration Rules was not relevant due to the fact the appellant is a medium offender. The Grounds also assert that the Judge separately sought to assess the seriousness of the offence and considered extraneous irrelevant factors including of a political nature which is said to have no place in decision-making.
22. In the case of a foreign criminal who has been sentenced to less than four years deportation will not be appropriate if a person has a genuine and subsisting relationship with a qualified partner or a genuine and subsisting parental relationship with a qualified child and the effect of deportation on the partner or the child will be unduly harsh. The Judge does not accept on the evidence that this test had been satisfied. That is commonly referred to as Exception 1. Exception 2 is that a person has been lawfully resident in the UK for most of their life, they are socially and culturally integrated in the UK, and there will be very significant obstacles to their integration in the country of return. The Judge does not find this test is satisfied on the evidence.
23. Paragraph 398 of the Immigration Rules sets out the issues to be considered in the case of a foreign criminal who has been sentenced to a period of imprisonment of at least four years or in the case of a foreign criminal who otherwise does not meet the exceptions to deportation, in which the public interest requires deportation unless there are very compelling circumstances over and above the circumstances described in paragraphs 399 and 399A.

24 As the Judge does not find the circumstances in paragraph 399 and 399A had been made out, the Judge was required to consider whether there were very compelling circumstances over and above those described in these provisions as part of the holistic assessment required to ensure that the decision was compatible with Article 8 ECHR.

25. The Judge took into account the nature of the offending, that it caused serious harm as that term is defined in law, and that the appellant is a persistent offender. The issues considered by the Judge between [126 – 139] are not irrelevant considerations when considering the 'over and above' test.
26. In relation to the allegation the Judge considered political issues, this is a specific reference to the finding at [134] in which the Judge does not make a political statement but rather records the factual aspect, clearly within the public domain,

of the 2016 EU referendum and view of the public towards immigration and foreign criminals. I find no legal error made out in relation to Ground 3(ii).

27. Ground 4 – failure to make relevant findings. The ground asserts that having determined that the appellant did not meet the exception to deportation, notwithstanding the Judge only referred the immigration rules and not the exception set out in section 117C(5), the Judge failed to consider whether this the appellant nonetheless satisfied the rules by considering whether there are very compelling circumstances over and above those described in paragraph 399 and 399A.
28. I find this an irrational and disingenuous ground of challenge. It must be remembered that Ground 3(ii) criticised the Judge for specifically considering the question of whether there were circumstances over and above those described in the exceptions by reference to paragraph 398, which I have dealt with above. It has not been made out that the wording of the relevant provision of section 117 C of the Nationality, Immigration Asylum Act 2002 differs in any material way from the wording of the provision specifically considered by the Judge. The Judge specifically considered whether there were very compelling circumstances over and above those described in the earlier provisions of the Immigration Rules but found there were not on the evidence for which adequate reasons have been given. No legal error material to the decision has been made out in relation to Ground 4.
29. Ground 5 – Unduly harsh for wife to live in Uganda. This ground is a specific challenge to the finding of the Judge at [146] which are said to be “irrational and devoid of reality” in light of the findings already made by the Judge that it will be unduly harsh for the children to live in Uganda and that they will remain in the UK with the appellant’s wife.
30. In [146] the Judge appears to be analysing the question of whether it would be unduly harsh for RM to live in Uganda as a single person without taking into account the additional aspect of the children. The findings made in that context are well within the range of those available to the Judge on the evidence. The difficulty with the ground as pleaded is that it fails to acknowledge the finding at [147] that it would not be unduly harsh for RM to remain in the UK whilst the appellant is deported so she can receive such professional and community support she needs to help with her upset and with the children. The Judge’s finding is clearly that it is not unduly harsh for the children to remain in the United Kingdom with their mother, RM, if the appellant is deported. No material legal error is made out in relation to Ground 5.
31. I find no merit in any suggestion the Judge applied the wrong legal test or failed to consider the evidence with the required degree of anxious scrutiny. This is a detailed determination in which the Judge sets out a number of findings in headed paragraphs supported by adequate reasons. It must be remembered that in HA (Iraq) the Supreme Court gave authoritative guidance on the approach to the question posed by section 117C(5) 2002 Act. In summary, first, when considering whether the effect of deportation would be unduly harsh, the decision-maker should adopt the following self-direction, namely, that the concept:

    "'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."

    I find that was the test clearly applied by the Judge.

32. I do not accept that the Judge, a specialist judge in this jurisdiction, overlooked relevant factors in reaching his decision. The task before the Judge was to decide whether the effect of the appellant's deportation on his wife and children would be unduly harsh in light of all the evidence. The context in which that case was advanced by the appellant was clearly considered by the Judge, including the medical evidence. Suggesting that because of the terms of the medical evidence the appeal should have been allowed is no more than disagreement with the Judge's assessment that that was not the case. The findings have been made having considered all the evidence in the round. That includes question of the degree of emotional dependence that it is noted the children have upon the appellant.
33. Having given careful consideration to this matter I conclude that the appellant has failed to establish arguable legal error material to the decision to dismiss the appeal sufficient to warrant the Upper Tribunal interfering any further in relation to this matter.

Notice of Decision

34. The First-tier Tribunal has not been shown to have materially erred in law. The determination shall stand.

C J Hanson

Judge of the Upper Tribunal
Immigration and Asylum Chamber

15 June 2023