IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2023-002373

First-tier Tribunal No: HU/01276/2021

THE IMMIGRATION ACTS

Decision & Reasons Issued:
On 14th of November 2023

Before

UPPER TRIBUNAL JUDGE McWILLIAM

Between

ADEDEJI OLADUNMOYE ATITEBI
(NO ANONYMITY ORDER MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellant: Ms U Miszkiel, Counsel instructed by Freemans Solicitors.
For the Respondent: Ms A Everett, Senior Presenting Officer

Heard at Field House on 31 October 2023

DECISION AND REASONS

1. The Appellant is a citizen of Nigeria. His date of birth is 21 September 1991. In a decision of 17 August 2023 Upper Tribunal Judge Keith granted the Appellant permission to appeal against the decision of the First-tier Tribunal (Judge Malik KC) dismissing his appeal against the decision of the SSHD on 13 February 2021 to refuse his application on human rights grounds. The SSHD made a decision to deport the Appellant because he is a foreign criminal.

2. There were six grounds of appeal. Judge Keith granted permission on grounds 2 and 6 only. The scope of the error of law hearing before me is limited to those grounds.

3. The Appellant joined his parents in the UK in 1999. He has a lengthy history of committing criminal offences which the judge set out at [4]. The trigger offence involved dishonesty. The Appellant was sentenced to four years'

imprisonment with a further fourteen months to run concurrently and a confiscation order (£9,295) following his conviction on 19 September 2019.

4. A notice of a decision to deport the Appellant was issued by the SSHD on 15 December 2014. However, the SSHD decided not to deport him following submissions from the Appellant on 12 February 2015. The Appellant continued to commit further offences. Following his latest conviction and sentence on 19 September 2019 the SSHD issued another notice of intention to deport him. Following consideration of the Appellant's submissions, on 13 February 2021 the SSHD refused his human rights claim. The Appellant appealed against the decision on the basis that it breached his rights under Article 8 of the ECHR. .

5. The Appellant's appeal came before the FTT. The parties were represented at the hearing. The judge heard evidence from the Appellant who adopted his witness statements as evidence-in-chief. The judge accepted the statements of evidence from the Appellant's family and church leader, Mr Banham and proceeded on the basis that those witness statements had been formally adopted. The judge set out the legislative framework at [20]–[25].

6. In respect of s117 (4) of the 2002 Act (Exception 1) the judge found that the Appellant had been lawfully resident in the United Kingdom for most of his life and therefore met the requirement in s.117C(4)(a). He found that the Appellant was socially and culturally integrated in the United Kingdom.

7. In relation s.117C(4)(c) the judge found that there would be no very significant obstacles to integration. He directed himself in relation to Kamara v Secretary of State for the Home Department [2016] EWCA Civ 813 and Sanambar v Secretary of State for the Home Department [2021] UKSC 30. He directed himself in respect of Parveen v Secretary of State for the Home Department [2018] EWCA Civ 932 and said that at [9] of that decision 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 judge directed himself that the test contemplates something which would prevent or seriously inhibit a person from integrating into the country of return. He said that there must be something more than obstacles.

8. The judge stated as follows:-

> "36. The Appellant left Nigeria as a child in 1999. I accept his evidence that he has no family in Nigeria. He has established his life in the United Kingdom. He has become accustomed to the freedoms that he enjoyed in this country as young person and they are unlikely to be radially (sic) available in Nigeria. He has no property or assets in Nigeria. There is nothing to indicate that his family in the United Kingdom have any meaningful contacts in that country.
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> 37. On the other hand, the Appellant is a resourceful individual. He studied in the United Kingdom and, as he stated in his evidence, completed B-Tech with merit and distinction. The sentencing remarks as to the index offences, as I note above, show that he conspired with several other individuals. He is a capable and intelligent person. 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 he had no familiarity at all. The Appellant spent his early childhood in Nigeria and, as he stated in

the evidence, visited that country in 2009, 2012 and 2016. He is not utterly isolated from the life in Nigeria. His parents have a much greater exposure to the culture in Nigeria, and they are in a position to assist and support him in understanding the local way of life.

38. The Appellant will find it difficult to obtain employment or set up business immediately on return to Nigeria. The Appellant's bundle contains several reports as to the economy of Nigeria including *A third of Nigerians are unemployed: Here's why* (2021), *United Nations Nigeria: common country analysis* (2022), *Unemployment and a Nation's 40% of hopelessness* (2022) and *Understanding the Nigerian economy: Critical issues for the attention of an incoming administration* (2023). I take account of these reports and accept that there is increased poverty and unemployment in Nigeria, and this will present a challenge to the Appellant in finding employment or establishing business. The official language in Nigeria is English and, therefore, he will not face a serious linguistic barrier. Ultimately, and despite these challenges, he will be able to establish himself in Nigeria within a reasonable period of time.

39. Ms Miszkiel placed particular reliance on the security situation in Nigeria. The Appellant has adduced several reports in relation to the security situation including *Insecurity in Oyo state: What is Seyi Makinde doing with his security?* (2021), CPIN *Islamist extremist groups in North East Nigeria* (2021), *Inside Story: How gunmen attacked Igangan, killed many* (2021), *Insecurity: Fulani herders have invaded our land* (2022), *Report of the Special Rapporteur on extrajudicial, summary or arbitrary executions* (2021), *Nigeria security situation* (2022), *How Fulani teenagers kidnapped me on Lagos-Ibadan expressway, collected N2Million Ransom* (2022), *Owo Massacre: Tales of sorry, tears and blood on Pentecost Day* (2022), *Nigeria church attack: What, where and why?* (2022), *Australian Department of Foreign Affairs and Trade Report: Nigeria* (2023), *Foreign and Commonwealth Travel Advice: Nigeria* (2023). I have carefully considered these reports. I accept that there is a high risk of terrorist attacks across Nigeria. There are a number of other security related issues, particularly extremism, kidnappings for ransom, intercommunal and religiously motivated violence, human trafficking, electoral violence, extreme poverty, violent civil unrest, human rights abuses and general crime.

40. The security situation will be another challenge for the Appellant. He may well be perceived as a British citizen and considered to be (as Ms Miszkiel puts it) westernised with family in the United Kingdom. This will bring a security challenge in the context kidnappings (sic) for ransom. It is tolerably clear that certain parts of Nigeria are comparatively more hostile and dangerous. As CPIN *International relocation* (2021) provides, at section 2.3, Nigeria is a large country, covering an area of over 900,000 sq km (almost four times the size of the United Kingdom) comprised of 36 states, and has several large and multicultural cities. Its population is estimated to be over 200 million. There are no legal barriers to freedom of movement as such. As detailed in CPIN *Actors of protection* (2021), at section 3, Nigeria has a functional law enforcement and judicial system. There will be no need

for the Appellant to travel to the North East where the risk from Islamist extremist groups is more acute, or even to Oyo state. He can return to a large urban centre like Lagos and Abuja without undue difficulty. In my judgment, utilising his skills and strengths, he will be able to keep himself safe in Nigeria. The security situation in that country, on the facts of this case, does not present a very significant obstacle to integration.

41. Looking at all these matters in the round, I exercise a broad evaluative judgment. I find that the Appellant will be enough of insider in terms of how life is carried on in Nigeria. 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 Nigeria 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 inhibit him from integration into Nigeria".

9. The judge went on to consider s.117C(5) (Exception 2). He concluded that the Appellant and his partner are in a genuine and subsisting relationship (the Appellant's partner is a British citizen and therefore a qualifying partner). The judge concluded that the elevated threshold was not met in respect unduly harsh. The reasons for this were as follows:-

"48. 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.

49. There is no question of the partner's relocation to Nigeria in order to continue family life with the Appellant in that country. The question here is whether her separation from the Appellant in the event of his deportation would be unduly harsh.

50. There is, as I noted above, no challenge to the evidence set out in the partner's witness statement, and I accept that evidence. I also accept the evidence given by the Appellant as to his relationship. The

Appellant and his partner grew up together and spent time with each other as close friends. They, as I note above, have been in a relationship for seven years. The Appellant's imprisonment had an adverse effect on the partner and they remained in constant contact. The Appellant's partner visited him regularly in prison and they plan to live together in future. They love each other and the Appellant's presence fills his partner with joy and happiness. She felt devastated when the Appellant was sent to prison. She also enjoys a cordial relationship with the Appellant's family in the United Kingdom. She is sorry for the victims of the crimes committed by the Appellant and feels that there will be no life without him in the United Kingdom.

51. In my judgment, both the Appellant and her partner are honest in their feelings. The partner will feel devastated on the Appellant's return to Nigeria. Given that there is no question of her relocation to Nigeria, the separation will effectively end this committed relationship. Their desire to live together as a couple in the United Kingdom is perfectly understandable. There is, however, nothing that even comes close to meeting the *MK* standard approved by the Supreme Court in *HA (Iraq)*. The Appellant and her partner, as I note above, are not living together. The separation from the Appellant will be uncomfortable, inconvenient, undesirable and difficult for his partner. I find that the consequences for her would not be anything more than that and will not be severe or bleak. The partner, within a reasonable time and with assistance of her family and friends, will overcome her emotions. Ultimately, and without undue difficulty, she will adjust into a life without the Appellant's presence in the United Kingdom. The elevated threshold in section 117C(5) of the 2002 Act is not met".

10. The judge having found that the Appellant could not meet Exceptions 1 or 2 then went on to consider the very compelling circumstances test in s.117C(6). The judge took into account that the Appellant received a sentence of at least four years and that the public interest requires his deportation unless there are very compelling circumstances over and above those described in Exceptions 1 and 2.

11. The judge at [54] directed himself in relation to HA (Iraq) v SSHD [2022] UKSC 22, where the Supreme Court gave guidance as to the very compelling circumstances test. The judge stated that the Supreme Court, at [49], referred to Hesham Ali v Secretary of State for the Home Department [2016] UKSC and noted that great weight should generally be given to the public interest in the deportation of qualifying offenders but that it can be outweighed applying a proportionality test by very compelling circumstances. The judge stated that "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".

12. The judge noted that the Supreme Court said that although there is no exceptionality requirement, it inexorably follows from the statutory scheme that the cases in which the circumstances are sufficiently compelling to outweigh the high public interest in deportation will be rare and that 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.

13. The judge noted what the Supreme Court said at [51], namely 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 interest in deportation. The judge noted that the Supreme Court referred to Boultif v Switzerland [2001] ECHR 497 and Üner v The Netherlands [2007] INLR and Unuane v United Kingdom [2020] ECHR, 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 the 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 wellbeing 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 the country of destination.

14. The judge made observations about what the Supreme Court stated in relation to rehabilitation and that it is a relevant factor in the assessment of whether there are very compelling circumstances and that the weight to be given to it is a matter for the Tribunal.

15. The judge was satisfied that the Appellant has established private life in the UK and family life with his partner. He also found that the Appellant has established a family life with his parents and brothers too, having considered Kugathas v Secretary of State for the Home Department [2003] EWCA Civ 31.

16. The judge went on to consider proportionality and stated as follows:-

> "63. I have found above that the Appellant arrived in the United Kingdom in 1999 as a child and proceed on the basis that he has been lawfully resident here for most of his life. He lived in Nigeria only for 7 or 8 years. He is socially and culturally integrated in the United Kingdom. He was brought up in this country and received education here. He has no family, property or assets in Nigeria and will face a variety of different challenges on return, including challenges relating to employment and security. He is in a genuine and subsisting relationship with his partner for seven years. The relationship started before the Appellant's latest conviction and sentence. His deportation from the United Kingdom is likely bring the relationship to an end as the partner is not expected to relocate to Nigeria. The separation will result in emotional challenges and difficulties for both the Appellant and his partner. It is as much as the partner's relationship as the Appellant's which is in jeopardy. Her right to respect for her private and family like (sic) is equally engaged. I have outlined the reasons behind these findings in the earlier part of this decision and count them in the Appellant's favour in my assessment.
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> 64. There is, as I note above, no challenge to the evidence set out in the witness statements made by the Appellant's parents, brothers, Church

leader and friend, and I accept that evidence. These witness statements explain in detail the family's background, domestic circumstance and likely impact of the Appellant's deportation from the United Kingdom. It is a close family unit. They live together. The family visited and supported the Appellant during his time in prison. They all love him and want him to stay in this country. They feel that the Appellant will face serious difficulties in Nigeria. The Appellant's mother has health issues and he has supported her. She believes that he is a gentle, humble and kind person and is now on the right path. The Appellant's father has a special relationship with him. He too has health issues and the Appellant is a source of support. He believes that the Appellant is a reformed and remorseful person. His elder brother believes that the Appellant has shown a great attitude towards a better life and has a bright future. His younger brother believes that the Appellant is a quiet person and can be misunderstood. The Appellant has been his best friend and companion. He is of the view that the Appellant will not commit any further crimes and will become a better role model. The Church leader confirms that the Appellant is an active, devoted and valued member of the church. He contributes to various activities and the community will continue to be his guide in the future. The Appellant's friend has known him for twelve years and believes that he is now moving forward in his life with integrity. It is quite clear that all these individuals are the Appellant's well-wishers. They want to see the Appellant living a happy and peaceful life in the United Kingdom. They will all miss him and face emotional challenges in the event of his deportation to Nigeria. The right of the Appellant's family to respect for their private and family life is also engaged. I attach weight to all these factors in the Appellant's favour.

65. The Appellant has been released on licence with certain conditions and his sentence will end on 18 March 2023. The fact that he has not committed further crimes whilst on licence is not a certain indicator that there is a low risk of reoffending. I have evidence from the Appellant's Probation Service Officer that there is a low risk. The Probation Service Officer also confirms that the Appellant has been complying with the licence conditions and they have no concerns about him. In his evidence, the Appellant accepted responsibility for all his crimes and expressed regret and remorse. He worked in prison and attended various courses including victim awareness and offending behaviour. He has taken steps to address his criminality and is committed to avoid further offending. I am prepared to accept, with some reluctance, that the Appellant is at low risk of reoffending and harm. I attach weight to this finding in my assessment as it bears on one element of the public interest in deportation, namely, protection of the public from further offending.

66. 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 (sic) latest conviction involved very serious crimes. I accept, as Ms Miszkiel submitted, that the sentencing Judge took into account the Appellant's previous convictions when imposing the sentence of four

years imprisonment with a further fourteen months to run concurrently. I avoid double-counting in my assessment and use the sentence imposed as the guide. The Appellant, for the purpose of the statutory scheme, is a serious offender. He continued to commit crimes in the United Kingdom despite being on notice that he could be deported. There is a very strong public interest in his deportation and I attach particular weight to it in my assessment.

67. I have found above that there are no very significant obstacles to the Appellant's integration into Nigeria and the effect of the deportation on his partner would not be unduly harsh. I adopt the findings that I 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 my judgement, the countervailing considerations are not sufficiently compelling to outweigh the general public interest in the Appellant's deportation".

The Grounds of Appeal

17. Ground 2: The judge's findings at [37] to [43] are unreasonable or irrational when assessing that there are no very significant obstacles to integration in the light of the background evidence in relation to the security situation.

18. The FCO security advice is that throughout Nigeria there are high levels of violent street crime including muggings, kidnapping, carjacking and armed robbery. The FCO advice was that travelling on public transport throughout Nigeria is dangerous and there are frequent reports of robberies and carjackings.

19. The Appellant's grandparents were from Oyo State and not Lagos or Abuja and the Appellant has no family in Nigeria. The judge failed to reasonably take into account at [40] that the high risk of kidnapping and violent crime is throughout Nigeria and therefore includes Lagos and Abuja when finding that the Appellant can return to Lagos or Abuja.

20. The judge made unreasonable and/or irrational findings regarding the security situation and that the Appellant could keep himself safe and could relocate to Lagos or Abuja in the light of the Appellant's and his family's limited financial circumstances. The FCO confirmed that there was a risk of terrorism across Nigeria including the capital city Abuja and that the risk had increased in 2022 and that terrorist kidnappings could happen anywhere. The Australian travel advice set out in the written submissions was that the risk had increased and that "there is a high risk of terrorist attacks across Nigeria, including in the capital city Abuja, by various militant groups. This risk increased in 2022 and further attacks are likely. We continue to advise you should reconsider your need to travel to Nigeria".

21. The judge failed to reasonably consider the UN Special Rapporteur's Report of June 2021 which highlighted the security situation had deteriorated. Ms Miszkiel referred me to paras [103]-[105] of the report. She said that the report was not considered in the Country Policy and Information Note: Actors of protection version 2.0 of October 2021 (the 2021 CPIN) on which the judge relied.

22. The judge failed to give adequate reasons how the Appellant would be able to keep himself safe in Nigeria from kidnapping and violent crime and the security challenge in light of his and his family's limited resources, his homelessness in Nigeria and his difficulty in obtaining employment. The FCO travel advice highlights that the risk to the Appellant is immediate on arrival.

23. Ground 5: The judge's assessment of proportionality is unreasonable/irrational as it has been tainted by the judge's findings in relation to Exception 1 and Exception 2. The judge failed to assess reasonably all the relevant factors set out in Maslov v Austria [2008] ECHR. The judge made many undisputed findings in the Appellant's favour and failed to reasonably give "very serious reasons" when assessing proportionality to justify the Appellant's deportation. The judge's finding in relation to the public interest deterrence and the very strong public interest could not reasonably or rationally be "very good reasons" to deport the Appellant and outweigh the risk of him being the victim of violent crime and/or kidnapping in Nigeria.

24. In respect of ground 5, Ms Miszkiel submitted that the judge did not take into account Maslov with specific reference to [73] where the Grand Chamber stated that "it evidently makes a difference whether the person concerned had already come to the country during his or her childhood or youth, or was even born there, or whether he or she only came as an adult". Moreover the judge did not identify "very serious reasons" with reference to [75] of the decision of the Grand Chamber stated:

> "In short, the Court considers that for a settled migrant who has lawfully spent all or the major part of his or her childhood and youth in the host country very serious reasons are required to justify expulsion. This is all the more so where the person concerned committed the offences underlying the expulsion measure as a juvenile".

25. Ms Everett made submissions. She urged me to find that the judge did not err in law. The decision was rational and he took into account all material matters and properly applied the law.

Conclusions

26. Ground 2: I do not find that the judge erred in law. He properly directed himself in respect of the test to be applied. There is no challenge to his self-direction. He was aware of the risks involved as a result of the high crime including terrorism and was entitled to conclude that this Appellant, nevertheless, would be able to keep himself safe. There is nothing perverse about the conclusion reached by the judge.

27. The evidence did not support that this Appellant would be at a level of risk so that he would not be able to go about day to day life in Nigeria or that he would be an outsider. The judge was entitled to take into account the 2021 CPIN. He had regard to the report of the UN Special Rapporteur following a visit to Nigeria conducted from 19 August to 2 September 2019. This report is concerned with extrajudicial, summary or arbitrary executions in Nigeria and the conclusions support that the criminal justice is broken, there is widespread loss of public trust and confidence, corruption and rampant impunity are all root causes of the widespread unlawful killings perpetrated by the security forces, armed groups and gangs alike stop the authorities undermine the justice system including the independence of the judiciary and there is a lack of access to

remedy and a total absence of victim survivor centred approaches to address the widespread and repeated human rights violations. The number of killings have increased over the past ten years as have the levels of criminality and insecurity and there is widespread failure by the federal authorities to investigate and hold perpetrators accountable. The judge listed this report as one of the sources that the Appellant relied on at [39]. He did not set out parts of the report and it was not necessary for him to do so. The judge was entitled to rely on the 2021 CPIN in respect of law enforcement and the judicial system.

28. Ms Miszkiel drew my attention to foreign travel advice from the UK and Australian governments. This evidence was before the judge. I find that there is nothing in the decision that would support that this evidence was not taken into account. The judge accepted that Nigeria is a dangerous place; however, he was entitled to conclude that the dangers posed would not inhibit the Appellant's ability to participate in life and to be accepted in Nigeria and that he would be prevented from integration.

29. The materiality of the report of the UN Special Rapporteur is of questionable in my view. The focus of the judge's decision rightly concerned whether there were very significant obstacles to integration applying the correct test. Considering the test, the judge was entitled to conclude that neither the report or the advice from governments for those travelling to Nigeria would impact this Appellant's ability to participate in life in Nigeria and to operate on a day to day basis. The judge was entitled to conclude that despite the challenge presented by crime and security risks, the elevated threshold was not met.

30. With respect to Ms Miszkiel, she may have lost sight of the issue before the judge. The case was argued before me as though the issue before the judge was sufficiency of protection and relocation under the Refugee Convention. The Appellant is not a refugee and there is no suggestion that he is at risk of persecution anywhere in Nigeria. The issue was not sufficiency of protection or relocation. While Ms Miszkiel submitted that the risk on return amounted to a risk under Article 3 ECHR, this was not a ground of appeal before the FTT.

31. The judge's conclusions at [41] were open to him on the evidence. He took into account all the material evidence and gave adequate reasons. Many countries have a poor human rights record and very high levels of crime; however, depending on the circumstances of the individual concerned this does not necessarily amount to very significant obstacles. The judge gave adequate reasons explaining why he considered that this Appellant would be able to keep himself safe despite the challenges. He was entitled to attach weight to the Appellant's education, intelligence and resourcefulness. He was entitled to conclude that he had a level of familiarity with the country having spent time there as a child. He took into account relevant factors to enable him to make an assessment of reintegration in the context of the applicable legal test.

32. Ground 5: Permission was granted on this ground in respect of the very significant obstacles to integration point only. Permission was refused on ground 6 which is a wider challenge to the s.117 (6) assessment. My decision in respect of ground 2 is determinative of ground 5.

33. However, I will deal with the points raised in respect of Maslov and Hesham Ali. In respect of the latter, the judge at [66] of his decision attached weight to deterrence as an element of the public interest. Ms Mizskiel relied on what the

Supreme Court said in HA at [59] to support her argument that this amounts to an error of law:

> "The only caveat I would make is that the wider policy consideration of public concern may be open to question on the grounds that it is not relevant to the legitimate aim of the prevention of crime and disorder".

34. What is not made clear in the grounds or in oral submissions is that the extract of [59] relied on does not represent a complete picture. Hamblen J was referring to the view of Lord Wilson in Hesham Ali (which was not endorsed by the majority). Hamblen J preferred the dissenting view of Kerr LJ at [168]:-.

> "Expression of societal revulsion, the third of the factors applied in *OH (Serbia)*, should no longer be seen as a component of the public interest in deportation. It is not rationally connected to, nor does it serve, the aim of preventing crime and disorder. Societal disapproval of any form of criminal offending should be expressed through the imposition of an appropriate penalty. There is no rational basis for expressing additional revulsion on account of the nationality of the offender, and indeed to do so would be contrary to the spirit of the Convention".

35. Lord Wilson was of the view that the point made about deterrence by Lord Kerr was too narrow. The issue was not considered by the other members of the court in Hesham Ali.

36. At [58] of HA the Supreme Court endorsed [141] of the following summary of Underhill LJ's judgement in Court of Appeal's decision in HA which reads as follows:

> "What those authorities seem to me to establish is that the fact that a potential deportee has shown positive evidence of rehabilitation, and thus of a reduced risk of re-offending, cannot be excluded from the overall proportionality exercise. The authorities say so, and it must be right in principle in view of the holistic nature of that exercise. Where a tribunal is able to make an assessment that the foreign criminal is unlikely to re-offend, that is a factor which can carry some weight in the balance when considering very compelling circumstances. The weight which it will bear will vary from case to case, but it will rarely be of great weight bearing in mind that, as Moore-Bick LJ says in *Danso*, the public interest in the deportation of criminals is not based only on the need to protect the public from further offending by the foreign criminal in question but also on wider policy considerations of deterrence and public concern. I would add that tribunals will properly be cautious about their ability to make findings on the risk of re-offending, and will usually be unable to do so with any confidence based on no more than the undertaking of prison courses or mere assertions of reform by the offender or the absence of subsequent offending for what will typically be a relatively short period".

37. At [52]-[53] of his judgment in Akinyemi v Secretary of State for the Home Department [2019] EWCA Civ 2098, [2020] 1 WLR 1843, Ryder LJ referred to the judgments of Lord Wilson and Lord Kerr in Hesham Ali. He expressed a preference for Lord Kerr's approach to the supposed third component in the public interest, but he made it clear that that view was not necessary to his reasoning.

38. In Zulfiqar v SSHD [2022] EWCA Civ 492, Underhill LJ stated:

> "43. Plainly the judgment of Lord Kerr in *Hesham Ali* cannot unsettle the previous case-law of this Court as summarised above, since none of the other members of the Court endorsed what he said. The Court proceeded on that basis in *HA (Iraq) v Secretary of State for the Home Department* [2020] EWCA Civ 1176, [2021] 1 WLR 1327: see para. 139 of my judgment.
>
> 44. It remains the law, therefore, that there is a third component in the public interest of the kind identified in *OH (Serbia).* As for exactly how that component is to be characterised, Lord Wilson's self-criticism about the language used in his judgment can be accommodated, as he made clear, without undermining the essential point in the *OH (Serbia)* line of cases. What that comes down to is that the public takes the view that non-UK nationals who have committed serious offences should generally not be permitted to continue to live here (following their release from prison); and that it is in the interests of maintaining public confidence in the system, and thus in the public interest, that that view should be given effect to. It does not of course follow that foreign criminals should be deported in every case. It remains necessary to consider whether, on the facts of the particular case, the public interest (including that component of it) is outweighed by the interference with their private and family lives which deportation would entail, taking the approach prescribed by section 117C".

39. It follows from the case law that the judge was unarguably entitled to consider the wider policy of deterrence and public concern and what weight to attach to this was a matter for him. This ground is misconceived and misrepresents the law.

40. In respect of [75] of Maslov, the fact that the judge did not set out this paragraph or make specific reference to it does not amount to an error of law. The judge set out the relevant case law at [56] including Maslov and the relevant factors to take into account which he analysed under the heading "Applicable principles". He then went on to apply those principles at [62]. He took into account that the Appellant came here as a child and had been lawfully resident in the UK for most of his life. It is clear that the judge was aware that there is a distinction between an individual who has come to the country during childhood and someone who has come as an adult. The judge applied the correct principles to the facts before him. The reference to "serious reasons" in [75] of Maslov is what the relevant criteria set out at [71] amount to and it is unarguably clear that the judge considered the criteria. Experienced judges are to be taken to be aware of the relevant authorities and to be seeking to apply them: KM v SSHD [2021] EWCA Civ 693.

41. The grounds amount to a disagreement with the decision of the FTT. There is no error of law in the decision of the judge. The conclusion was open to him on the evidence.

Notice of Decision

The appeal is dismissed.

Joanna McWilliam

Judge of the Upper Tribunal
Immigration and Asylum Chamber

8 November 2023