IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2023-001375

First-tier Tribunal No: HU/25337/2016

THE IMMIGRATION ACTS

Decision & Reasons Issued:
On 28th March 2024

Before

UPPER TRIBUNAL JUDGE KOPIECZEK

Between

A K
(ANONYMITY ORDER MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellant: Mr M. Biggs, Counsel instructed by Connaughts Solicitors
For the Respondent: Mr E.Tufan, Senior Home Office Presenting Officer

Heard at Field House on 2 February 2024

Order Regarding Anonymity

Pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008, the appellant is granted anonymity, in the light of certain matters personal to him as revealed in this decision.

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

INTRODUCTION

1. This appeal comes back before me following a decision that I and Deputy Upper Tribunal Shepherd made which was to find that the First-tier Tribunal ("FtT"), Judge Howard, erred in law in allowing this appellant's appeal against a decision to make a deportation order against him because of his criminal offending. This hearing before me alone was for the re-making of the decision on appeal.

2. Mr Biggs indicated that there was to be no fresh evidence adduced, either written or oral.

3. It will be useful to include in this decision various parts of the first (error of law) decision in order to explain the background and the context of the re-making. I therefore quote the following introductory paragraphs.

> "2. On 3 February 2016 the Secretary of State made a decision to make a deportation order against the appellant following his conviction in the Crown Court at Manchester for five offences of conspiracy to defraud, for which he received a total sentence of 6 years' imprisonment on 23 April 2014. The offences were committed in 2007 and 2008.
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> 3. The sentencing judge's remarks make clear the seriousness of the offences. They involved fraudulent attempts to obtain loans on properties that were not owned by the appellant or his co-defendants. The total value of loans obtained was said to be 3.5 million pounds, with a further 3.3 million pounds in loans applied for but not obtained. The sentencing judge, however, accepted that there was an element of double counting in the figure for loans obtained and concluded that the value of loans unrepaid amounted to over a million pounds.
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> 4. The further background to the appeal is that the appellant is a Zambian national born in 1968, who arrived in the UK in 1988 aged 14. On 11 February 1992 he was convicted of attempted fraud and sentenced to three years and six months' imprisonment. He was warned by the Secretary of State of the risk of deportation. On 28 October 1996 he was convicted of two offences of theft and sentenced to 21 months' imprisonment. He was also convicted of theft of a motor vehicle and sentenced to a consecutive term of 15 months' imprisonment.
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> 5. On 22 May 1998 he was notified that he was liable to be deported because of his criminal offending. His appeal against the decision to deport him was dismissed in March 2000 but no deportation order was made. On 6 March 2008 the appellant was convicted of making false representations for gain and sentenced to nine months' imprisonment for each offence to run consecutively. It is not clear what the total sentence was.
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> 6. In May 2011 it appears that an immigration judge allowed an appeal against deportation to the extent that the Secretary of State was required to make a further decision. On 12 March 2013 the respondent made a decision to deport the appellant pursuant to section 3 of the Immigration Act 1971 because of his criminal

offending. Following an allowed appeal to FtT the appellant was granted leave to remain until 15 April 2016.

7. A deportation order was again made on 3 February 2016 following the 2014 convictions but the respondent agreed to reconsider it following submissions from the appellant. However, on 1 November 2016 the respondent made a further decision to maintain the deportation order and rejected the appellant's human rights claim.

8. According to the FtT's decision in this case, the appellant appealed to the FtT but ultimately the matter came before the Court of Appeal which, on 15 June 2020, remitted to the FtT the appeal against the respondent's deportation decision of 3 February 2016. It was that remitted appeal that came before the FtT on 13 January 2023 in the form of an appeal against the refusal of a human rights claim. First-tier Tribunal judge Howard ("the FtJ") allowed the appeal and it is the respondent's appeal of that decision that is before us."

4. Under a subheading "Assessment and conclusions" we said the following.

"43. We have referred in detail to the FtJ's decision and to the submissions made on behalf of the parties before us. Our determination of whether the FtJ materially erred in law does not, therefore, need to refer extensively again to the FtJ's decision, the grounds or submissions.

44. It is common ground that because of the length of the sentence of imprisonment imposed on the appellant in 2014 (six years' imprisonment), both the Immigration Rules ("the Rules") (paragraphs A398-399) and s.117C of the 2002 Act require the appellant to establish that there are very compelling circumstances over and above the provisions of the Rules and the Exceptions 1 and 2 within s.117C such that the public interest does not require his deportation.

45. The FtJ concluded that there were such very compelling circumstances. The respondent contends that he erred in his assessment of that issue.

46. We are satisfied that the FtJ was aware of the need for the appellant to establish very compelling circumstances. We are not, however, satisfied that he gave legally adequate reasons for concluding that there are very compelling circumstances such that the public interest does not require the appellant's deportation. We are also satisfied that the FtJ misdirected himself in relation to the question of whether the effect of the appellant's deportation would be unduly harsh in relation to his son.

47. As regards the latter, it is to be remembered that the test for undue harshness is a high one *(KO (Nigeria) & Ors v Secretary of State for the Home Department* [2018] UKSC at [23], [27] and [43]). The FtJ was entitled to his view of the evidence in terms of accepting Alexander's account of his feelings [40], and he was entitled to take into account the evidence of conflict between him and his mother and the police involvement on an occasion [39]. However, then to conclude at [40] that knowingly to subject a child to "the prospect of anger and frustration" is "unduly harsh" fails to recognise, and runs in opposition to, the statutory regime within both the Rules and s.117C of the 2002

Act. That regime necessarily contemplates the prospect of separation of a child from the parent who is to be deported and the natural feelings that that would engender in a child in many, if not most, cases, which may well include anger and frustration.

48. It is true that the FtJ had before him specific evidence of the frustration and anger that Alexander may experience but we consider that the FtJ misdirected himself when concluding that the prospect of anger and frustration could meet the high threshold for undue harshness.

49. Furthermore, it is not at all clear from the FtJ's decision that his finding of very compelling circumstances was anything other than a repetition of his view in relation to the unduly harsh effect on the appellant's son. Very compelling circumstances must necessarily involve something more. The very compelling circumstances finding in favour of the appellant is to be found in [47], but one sees its echo in [48].

50. At [47] the FtJ referred to the consequences of deportation being a prohibition on return within 10 years, and his conclusion that family life could not continue in Zambia during that time. Leading to the very compelling circumstances conclusion there is then exclusive focus on the effect on Alexander. The FtJ stated that on the evidence this would have a very detrimental effect on Alexander, going on to state that he could not discount the possibility that Alexander, whilst currently achieving well at school, "will out of deep resentment and frustration at his circumstances, once again find himself in conflict with his mother and subject to attention by the police". He then referred to what he had said at [39] in relation to that conflict with his mother, going on to conclude that "on the particular circumstance of this case" such an outcome would be "both unduly harsh and very compelling".

51. At [48] the FtJ referred to the public interest, but his conclusion that the public interest does not require deportation is evidently firmly rooted in, and only in, the consequences of the deportation for Alexander.

52. Even if the FtJ was entitled to conclude that the consequences of the appellant's deportation would be unduly harsh for Alexander, contrary to the view we have already expressed, there would need to be something additional in order for a legally sustainable finding of very compelling circumstances. A finding of undue harshness cannot, without more, at the same time equate to a finding of very compelling circumstances. By definition both the Rules (paragraph 398(c)) and s.117C(6) require something "over and above" such a finding. The conclusion at [47] that the outcome would be "both unduly harsh and very compelling" fails to have regard to that essential distinction, relating as it does, only to Alexander's situation.

53. On behalf of the appellant it is said that [47] incorporates by reference all the other relevant circumstances, given the phrase "on the particular circumstance of this case". We do not accept that this can be so. In part this is because of what we have said about [47] otherwise expressly being focussed only on Alexander. In addition, however, between [27] and [30] the FtJ rejected the contention that there were very compelling circumstances in relation to the appellant's private life

in terms of associations and friendships, and (probably) also in relation to the appellant's physical and mental health. Certainly in relation to his health he found that the appellant's cancer was in remission and that medical treatment is available in Zambia. In so far as the FtJ found that the appellant's mental health was relevant in terms of his anxiety, he also found that medical treatment would be available in Zambia.

54. The FtJ found at [35] that the appellant was socially and culturally integrated in the UK and has no familial or social ties to Zambia. He referred to the appellant's evidence of abuse that he suffered in his early years in the UK at the hands of a religious cult, which he accepted as credible.

55. Whilst the FtJ would have been entitled to take into account in the assessment of very compelling circumstances those aspects of the Exceptions within s.117C that he found did apply to the appellant, it is not evident from the conclusion in relation to very compelling circumstances at [47] that he did incorporate those conclusions into that assessment. The reliance by the appellant on the FtJ's use of the phrase "on the particular circumstance of this case" is an inadequate basis for that conclusion, and again bearing in mind what we have said about the obvious focus for the FtJ's conclusion of very compelling circumstances in that paragraph and the next.

56. Accordingly, we are satisfied that that the FtJ erred in law in allowing the appeal on the basis of a finding of undue harshness and very compelling circumstances. Those errors of law are such as to require the decision to be set aside."

SUBMISSIONS ON RE-MAKING

5. In his submissions, Mr Tufan referred to the appellant's criminal convictions other than those which prompted the decision to make a deportation order. It was submitted that the appellant was not able to meet the Exceptions to deportation within s.117C of the Nationality, Immigration and Asylum Act 2002 ("the 2002 Act"), either in terms of lawful residence for the requisite period or in relation to his son, who is now 19 years of age.

6. In addition, in relation to the appellant's son, Mr Tufan pointed out that the evidence before the FtT at para 47 was that appellant only sees his son on alternative weekends. Even if his son were under 18 years of age, Mr Tufan submitted that the appellant's removal would not be unduly harsh in relation to his son.

7. Mr Tufan relied on *HA (Iraq) v Secretary of State for the Home Department* [2022] UKSC 22, in particular what was said at paras 41 and 43 about the high threshold for a finding of undue harshness. I was also referred to para 49 of the same decision in relation to the threshold for a finding of very compelling circumstances over and above the Exceptions within the 2002 Act. It was submitted that there was nothing to suggest that the very high thresholds were reached in this case.

8. It was submitted that although the lack of further offending would need to be considered in terms of rehabilitation, the fact only of no further offending attracts no material weight in this case (*HA (Iraq)* at para 58). It was further submitted that the appellant is not able to succeed in his appeal with reference to his health in terms of Article 3 of the ECHR, because of the high threshold, nor correspondingly, in terms of Article 8 in that context.

9. In his submissions Mr Biggs relied on the skeleton argument provided for the hearings before the FtT and the Upper Tribunal ("UT"). In relation to the latter, I was referred to para 13 which identifies the significant findings made by the FtT. It was submitted that given that the appellant arrived in the UK when he was 14 years old, and that he had lived here for over 40 years, this was a *Maslov*-type case. It was submitted that one is looking at, in effect, a British citizen, or put another way someone who is "functionally British".

10. It was further submitted that the fact that the appellant was brought into a sexual cult and was the victim of sexual abuse undermines the public interest. Mr Biggs also relied on *HA (Iraq)* in terms of rehabilitation and the varying weight that can be afforded to it. The public interest, it was submitted, is to be considered within a range (*Akinyemi v Secretary of State for the Home Department* [2019] EWCA Civ 2098).

11. Mr Biggs submitted that the findings made by the FtT in relation to the appellant's son are not affected by the passage of time. The findings cumulatively are capable of meeting the elevated threshold for very compelling circumstances under s.117C(6) of the 2002 Act.

12. As regards the character evidence, it was accepted by Mr Biggs that this was not a similar situation to that in *UE (Nigeria) & Ors v Secretary of state for the Home department* [2010] EWCA Civ 975 in terms of benefit to the community, but the character evidence was nevertheless relevant, it was submitted.

13. It was further submitted that although the appellant's son is over 18, removal of the appellant would nevertheless be contrary to the Article 8 rights of the family. It would be disproportionate to expect the appellant's son to live with him in Zambia, although his son's evidence is that he would do so. If the appellant's son remains in the UK without the appellant, it would have a seriously deleterious affect on his son. Those factors, it was submitted, are capable of amounting to undue harshness. Mr Biggs argued that merely because the appellant's son is no longer under 18, that does not mean that the effect of his removal would not be unduly harsh.

14. Mr Biggs argued that even if it could not be said that the decision would result in undue harshness, all the factors combined amount to very compelling circumstances. Although the appellant is unable to meet Exception 1 in terms of lawful residence for most of his life, the *Maslov* factors fall to be considered. The appellant is fully integrated here, has no

connection to Zambia and these amount to very strong Article 8 factors on their own.

15. Other matters to be considered, it was argued, are the appellant's family life with his wife who has no connection to Zambia, and the likelihood that the marriage would be permanently ruptured if he is removed.

16. Mr Biggs further submitted that the FtT found that the appellant had integrated in the UK and had no ties to Zambia. The only reason he is unable to satisfy the exception in s.117(C)(4) of the 2002 Act is because of his immigration status (no lawful residence), but he had been in the UK for 40 years. Mr Biggs referred to *Sanambar v Secretary of State for the Home Department* [2021] UKSC 30 which reviewed the *Maslov* authorities.

17. In reply, Mr Tufan submitted that, contrary to the contention that the appellant is to all intents and purposes British, he came to the UK when he was 14 years of age. He submitted that it was not suggested that the appellant was not able to speak the language spoken in Zambia.

18. I was referred to *Secretary of State for the Home Department v Kamara* [2016] EWCA Civ 813 and the concept of a person being 'enough of an insider'. Mr Tufan also relied on *Mwesezi v Secretary of State for the Home Department* [2018] EWCA Civ 1104, in particular at para 26 which, he submitted, puts the decision in *Kamara* into context. The appellant in *Mwesezi* had arrived in the UK when he was 2 years old. It was submitted that the circumstances in *Kamara* were different from those of this appellant. Mr Tufan pointed out that in *Maslov* the offending was by a child.

CONCLUSIONS

19. As has been indicated, there was no up-to-date evidence on behalf of the appellant, with the exception of a witness statement from the appellant's partner which contained no additional information of substance. In our error of law decision we directed that "Any further evidence" was to be filed and served in accordance with certain time limits and we gave other directions in relation to any such further evidence.

20. There was no application for permission to allow oral evidence only, without supporting additional witness statements.

21. Although there was no direction that *required* further evidence to be provided, it must be assumed that, for whatever reason, a conscious decision has been made not to provide any further, updating, evidence at this stage. To be specific, there is no updating evidence in relation to the appellant's health in any respect, or any updating evidence in relation to his partner or his son. There are, however, certain findings that are preserved from the decision of the FtT and I have determined this appeal in the light of those preserved findings.

22. The error of law decision directed the parties to consider the question of what findings made by Judge Howard could be preserved. In that respect Mr Biggs referred to para 13 of the skeleton argument for this hearing which, he submitted, were the findings that can be preserved (being unaffected by the error of law in the FtT's decision). Mr Tufan made no specific submissions on the point.

23. Before indicating my view as to what findings can be preserved, I should refer to a matter on this issue which I canvassed with Mr Biggs. It relates to Judge Howard's findings in respect of the appellant's son, Alexander. Those findings are best described by referring to the summary of Judge Howard's findings at paras 19-21 of the error of law decision as follows:

> "19. He also noted that the appellant's son, Alexander, is a British citizen, born in June 2005. He found at [37] that the appellant's son is a "somewhat immature" 17-year-old. He referred to a report by a social worker and what is said to have been the disruption to his son's life recently "not least the acrimony there has been in his parents' separation". The social work report describes "a much more positive set of circumstances moving forward", the FtJ said. He referred to a recent confrontation between the appellant's son and his mother whereby the appellant had to intervene, but said that the evidence suggested that both parents were working hard to stabilise his emotional development.
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> 20. At [38] the FtJ concluded that Alexander's experiences of the past few years made it desirable that he has the presence of both parents in his upbringing. He concluded that his recent tendency towards conflict with one or other of his parents suggests that he is frustrated at not being settled in his family life, rather than his "testing the boundaries". At [39] he found that the evidence of his genuine difficulties when one or other of his parents is removed from his sphere of influence served as a reminder of his difficulties, particularly considering that the confrontation between him and his mother was sufficiently acute for her to have felt it necessary to call the police.
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> 21. He found that if Alexander had to join the appellant in Zambia this would fracture his relationship with his mother and if he remained without his father "we have seen the ways in which the emotional disturbance that creates in the child manifests themselves". He concluded that knowingly to subject a child, as he then was, to the prospect of anger and frustration is unduly harsh. He found that Alexander was telling the truth in his evidence as to his feelings on the matter, rather than simply attempting to help the appellant."

24. Mr Biggs accepted that there was no up-to-date evidence, but he submitted that there was no reason to think that anything had changed in relation to the above findings, although it was of course accepted that Alexander is no longer 17 years old. Of course, the conclusion as to undue harshness (para 21 above) in Judge Howard's decision cannot stand as a preserved finding in the light of our decision that Judge Howard erred in law in this respect.

25. Having reflected on this issue, I am satisfied that the findings made by Judge Howard, as summarised in paras 19-21 above of the error of law decision can be preserved, with the exception of Alexander's age and the conclusion in the last two sentences of para 21 on undue harshness. The error of law decision found that the conclusions in relation to the unduly harsh Exception could not stand.

26. The other findings made by Judge Howard that can preserved for the purposes of my re-making of the decision can be summarised as follows, with paragraph numbers of Judge Howard's decision in brackets. They incorporate, for the most part, the suggested preserved findings to be found in Mr Biggs' skeleton argument at para 13.

- The appellant has been diagnosed with stomach cancer but this is now in remission. Medical treatment for cancer is available in Zambia [27].

- The appellant is not in receipt of medication or therapy for the anxiety which is focussed on the outcome of the immigration proceedings and concerns for his son. Mental health provision is available in Zambia [28].

- The appellant has not been lawfully resident in the UK for most of his life, because although he had been in the UK for most of his life, the majority of his presence has been without leave [35].

- He arrived in the UK when he was aged 14 with entry clearance [35].

- The appellant is socially and culturally integrated in the United Kingdom, and that he has no familial or social links with Zambia [35].

- The circumstances in which the appellant came to the UK are that he arrived with a view to being adopted by a family settled in the UK. He was not in fact adopted and his situation at the time was "parlous". He was assimilated into a religious cult, with the appellant maintaining that whilst under control of the cult he was sexually abused. It was more likely than not that he was sexually abused [35].

- The appellant had been in a relationship with his son's mother at the time of the most recent decision but that that relationship had ended. The appellant was now married to someone else (who he identified) and he married her when he was subject to the most recent deportation order [36].

- The appellant's risk of reoffending was low. He has not been convicted of any violent offences and the risk of his causing serious harm to a third party was correspondingly low [41].

- All attempts at rehabilitation prior to 2014 had been unsuccessful [44].

- Family life could not continue in Zambia during the operative period of at least 10 years of the deportation order. That would have a very detrimental effect on Alexander [47].

- There is the possibility that Alexander, whilst currently achieving well at school, "will out of deep resentment and frustration at his circumstances, once again find himself in conflict with his mother and subject to attention by the police" [47].

27. It is common ground that the appellant is unable to succeed in his appeal *merely* with reference to the Exceptions 1 and 2 within s.117C of the 2202 Act because the six-year sentence of imprisonment that he received requires him to establish that there are "very compelling circumstances, over and above those described in Exceptions 1 and 2." The 'very compelling circumstances' requirement arises because his sentence was one of at least four years' imprisonment (s.117C(6)).

28. That is not to say that whether or not the appellant can establish that his case comes within any or all of the features of the Exceptions is irrelevant (see *NA (Pakistan) v Secretary of State for the Home Department & Ors* [2016] EWCA Civ 662 and *HA (Iraq*) from para 50). It is just that because of the length of the sentence of imprisonment something more is required, i.e. very compelling circumstances "over and above" the Exceptions.

29. In the error of law decision we referred to the high threshold required to meet the unduly harsh test (*KO (Nigeria) & Ors v Secretary of State for the Home Department* [2018] UKSC at [23], [27] and [43]). Similarly, as submitted by Mr Tufan, the Supreme Court in *HA (Iraq)* at para 49 referred to the high threshold that is required. The Court referred to what was said by Lord Reed in *Hesham Ali v Secretary of State for the Home Department* [2016] UKSC 60 at para 38, namely 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, as Laws LJ put it in the *SS (Nigeria)* case [2014] 1WLR 998. 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."

30. The assessment of very compelling circumstances, therefore, requires consideration of the extent to which the appellant is able to meet the Exceptions within s.117(C). s.117(C)(4) provides that:

> "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."

31. We have already seen that the appellant has not been lawfully resident in the UK for most of his life. For that reason alone he is unable to meet Exception 1 in its entirety. It is significant, however, that he has been here for a very considerable number of years, since the age of 14. It is also significant, and is a preserved finding, that he is socially and culturally integrated in the UK.

32. There is no preserved finding in terms of very significant obstacles to integration in Zambia. I have taken account of the parties' submissions on the point.

33. In relation to the concept of integration, in *Kamara* at para 14, Sales LJ, as he then was, said this:

> "In my view, the concept of a foreign criminal's "integration" into the country to which it is proposed that he be deported, as set out in section 117C(4)(c) and paragraph 399A, is a broad one. It is not confined to the mere ability to find a job or to sustain life while living in the other country. It is not appropriate to treat the statutory language as subject to some gloss and it will usually be sufficient for a court or tribunal simply to direct itself in the terms that Parliament has chosen to use. 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."

34. In *Mwesezi*, at para 26, Sales LJ reiterated what he had said in the above paragraph in that "…it will usually be sufficient for a court or tribunal simply to direct itself in the terms that Parliament has chosen to use".

35. The fact that the appellant is socially and culturally integrated in the UK plainly does not equate to a conclusion that, correspondingly, there would be very significant obstacles to his integration on return to Zambia. A significant factor, however, in this consideration is the finding that the appellant has no familial or social links with Zambia. That finding by Judge Howard is to some degree consistent with the finding that he arrived in the UK with a view to being adopted, although that did not happen.

36. I am in no doubt that reintegrating in Zambia would be difficult for the appellant given the time that has passed since he lived there, and his age (14) when he left. In his witness statement dated 27 June 2022 the appellant says at para 96 that he only knows the UK and cannot start a new life in Zambia with no home, no job and no security. At para 106 of the same witness statement he states that he has spent a considerable amount of time in the UK, including his productive years and that he would

face insurmountable obstacles and suffer great hardship if he is forced to return to *Pakistan*. Clearly the reference to Pakistan is a mistake by his solicitors in the drafting of the witness statement.

37. Mr Tufan submitted that it was not suggested that the appellant was not able to speak the language spoken in Zambia. That is true; there was no evidence adduced by the appellant that he is not able to speak the language or languages of Zambia.

38. In his witness statement dated 27 June 2022 at para 38 the appellant states that he is now allowed to work in the UK, is employed, works very hard and intends to continue working to provide for his family in the UK. In this, as in all other respects, there is no further evidence from the appellant and I take it to be the case, therefore, that this is the current position. There is evidence in a letter dated 16 August 2022 of his employment as a renewable energy business development consultant from 1 June 2022, and an earlier letter dated 10 January 2022 in relation to his employment from 1 September 2021 as an administrative officer for a property company.

39. There is evidence that the appellant has been involved in charity work in various respects. A letter dated 18 August 2022 from Ross Gow of Acuity Group Partners refers to the appellant having a number of ongoing charity projects in the field of prisoner reform and prisoner mental health. There is an email from the then High Sheriff of Greater London dated 25 September 2022 referring to the appellant's charity work, including a charity walk in which he walked 60 miles and cycled 20 miles. There is a letter of reference dated 12 September 2022 from another charity, The Passion Project Foundation, a charity concerned with various social issues relating to young people.

40. The evidence of the appellant's employment(s) and charity work is significant in more than one respect. In relation to the question of very significant obstacles to integration it indicates that he has the ability to work, and to work hard, notwithstanding his health issues. He has clearly impressed his employers and the charity organisers with his industry. No evidence has been adduced that the appellant would not be able to find work in Zambia in the sense that there would be no work available for him.

41. The letters of reference from Professor Sam Lingam, dated 7 March 2022, who treated the appellant when he had stomach cancer, from Ronald Conforth, a former police officer and director of a specialist criminal intelligence business, dated 20 June 2022, from a Paul Fox, director, dated 7 March 2022, from Dr Umar Khan dated 17 June 2022, and from Sheryar Khan, a businessman and Deputy Leader of North East Lincolnshire Council, indicate that the appellant has the ability to make significant social connections with individuals of standing in the community, notwithstanding his criminal convictions. Not all of those who provided references had known the appellant for very long when they wrote their

references and yet the appellant was able to impress them as to his character.

42. Of course, returning to Zambia after all this time, and with no existing connections, will mean that establishing new connections will take time. However, in my judgement the evidence points to the appellant as being a person who would be able to establish social and other connections within a reasonable time.

43. In all the circumstances, I am not satisfied that the appellant has established that there would be very significant obstacles to his integration in Zambia, in the light of the evidence put before me.

44. As regards Exception 2, s.117(C)(5) of the 2002 Act provides that:

> "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."

45. The appellant's partner, Ms C, is not a British citizen. She is a citizen of Romania and is not, therefore, a qualifying partner. Their relationship is genuine and subsisting, and is plainly significant, but it is not one that brings the appellant within Exception 2.

46. The appellant's son, Alexander, is not a qualifying child. A qualifying child is one who is a person under the age of 18, which he is not. He was born on 17 June 2005 and is now nearly 19 years old. Mr Biggs submitted that merely because the appellant's son is no longer under 18, that does not mean that the effect of his removal would not be unduly harsh in relation to his son. I agree. However, his age inevitably means that the appellant cannot meet Exception 2 in relation to his son.

47. Nevertheless, as has already been seen, the focus now shifts to a consideration of very compelling circumstances over and above those described in the Exceptions.

48. I have taken into account the extent to which the appellant is able to meet the Exceptions, as set out in my analysis above. I have referred to authority on the question of very compelling circumstances. Part of the assessment of very compelling circumstances is the significant issue of undue harshness, and again I have considered the threshold for a finding of undue harshness.

49. In relation to his partner, Ms C, who married the appellant on 9 April 2021, her witness statement dated 7 March 2022 speaks of the closeness of their relationship; states that being with the appellant gives her the ability to enjoy her life, and that his presence in her life is vital to her well-being and happiness. She states that she and Alexander need the appellant in their lives and cannot be without him. She also refers to the closeness of the relationship between Alexander and the appellant.

50. I note that Ms C gave evidence to the FtT. Although Judge Howard's decision does not give a summary of her oral evidence, it is not apparent that there was any adverse finding in relation to her evidence.

51. Ms C provided a further witness statement for this, the re-making, hearing, although it is not signed or dated. Nevertheless, I accept that it is her witness statement and that she stands by the contents. It explains that she has had to travel to look after her parents who are unwell. She relies on the contents of her earlier witness statement and states that she is anxious and upset about missing the hearing. The witness statement does ask that she be able to attend remotely but no application in that respect was made, no doubt because the appellant's representatives understand the complications of receiving evidence from abroad. There was no application for an adjournment to allow her to attend the hearing in person. Aside from the above, the witness statement does not provide any additional factual information about her relationship with the appellant or in relation to the impact on her and the family as a whole of his being removed.

52. Whilst I accept that the appellant's removal will have a significant emotional effect on Ms C, I cannot see in the evidence that that effect would be 'unduly harsh'. Separating a couple who are in a close relationship is inevitably very upsetting for all concerned. However, even accepting that Ms C will be very concerned about the appellant returning to Zambia after all these years, and with his health conditions, the evidence does not reveal that the hardship that she will inevitably suffer amounts to undue hardship.

53. It is otherwise also significant that Ms C entered into a relationship with the appellant when he was in the UK unlawfully, his leave having expired in April 2016.

54. As I have already mentioned, there is no up-to-date evidence from, or in relation to, Alexander. As found by Judge Howard, the appellant's deportation would have a very detrimental effect on Alexander. Again, as found by Judge Howard, there is the possibility that out of deep resentment and frustration at his circumstances, he may once again find himself in conflict with his mother and subject to attention by the police. I take into account the preserved findings from the decision of the FtT, which I have set out at my para 20 above (with the notable exception of the unduly harsh finding) and the last two bullet points in my para 23. Whilst Judge Howard found Alexander to be a "somewhat immature 17-year-old", that was over a year ago now. It is reasonable to conclude that he is now more mature, although that does not mean that he may not still be immature for his age.

55. The most recent independent social worker's report is dated 17 February 2022, with no updating evidence.

56. Again, however, I am not satisfied that the evidence establishes that the appellant's removal would be unduly harsh in its effect on Alexander. His separation from the appellant would inevitably be deeply upsetting for him, and for the appellant, but the evidence simply does not reveal that the effect would be unduly harsh.

57. Mr Biggs urged me to consider the *Maslov* criteria and referred to *Sanambar* in which the authorities in relation to child or young adult offenders were reviewed. The offending which resulted in the instant deportation decision occurred in 2007 and 2008 when the appellant was already an adult by some considerable margin. He appears to have begun offending when he was 17 when he was convicted of attempted fraud and sentenced to three years and six months' imprisonment and received a deportation warning from the Secretary of State.

58. In the sentencing remarks in relation to the instant offence, the sentencing judge was scathing in his assessment of the appellant, describing him as "thoroughly dishonest" and enjoying an expensive lifestyle at the expense of other people. He referred to his having acquired a number of expensive houses and apartments in London and Greater Manchester. His role was described as being, in part, to curry favour with people to facilitate the actions of others in seeking to obtain loans. Paragraph 3 of my decision (above) gives further detail of the seriousness of the offending.

59. I do bear in mind, however, that Judge Howard found that there was a low risk of reoffending, and that finding is preserved.

60. I have taken into account that the appellant came to the UK when he was only 14 years of age and that, therefore, a significant period of his formative years was spent in the UK. His lack of ties to Zambia is significant as is his social integration in the UK, and his family ties.

61. It was submitted that the appellant is "functionally British". However, that suggestion invites an unwarranted texture to be applied to the appellant's status. His position is properly understood as being a foreign national who came to the UK at a young age, who has spent over 40 years in the UK, is socially and culturally integrated here and who has no social or family ties to Zambia.

62. The appellant has undertaken charity work and, therefore, notwithstanding his offending, he has made a significant contribution to UK society. That has the potential to diminish the public interest in deportation. Having said that, in *UE (Nigeria)* Keene LJ's view was that such a contribution would make a difference to the outcome of immigration cases only in a relatively few instances where the positive contribution to this country is very significant.

63. Judge Howard found that the appellant had given a credible account of having been brought into a religious cult as a child or young adult and where he was sexually abused. In the skeleton argument that was before

the FtT it suggests that this might, in part, explain his offending "and perhaps lessens the public interest in his removal as a result", alternatively that it strengthens his private life claim.

64. It may be that the sexual abuse was taken into account in mitigation of sentence in relation to some of his offending but there is no evidence of that before me. The sentencing remarks in relation to the six-year sentence make no reference to it. In any event, as part of the assessment of very compelling circumstances I do consider it relevant that the appellant was subjected to such traumatic events as a young person.

65. I have taken into account the medical evidence both in relation to the appellant's physical and mental health. However, there is no recent medical evidence in relation to any of those issues. His cancer appears to be in remission. The psychological report of Kevin Doherty is very dated, being from 13 August 2020. It refers to a number of health conditions that the appellant then suffered from including what could be described as gastric problems, hypertension (controlled by medication), and depression. It also refers to what are described as psychological symptoms such as sleep interruption and anxiety and worry about his health, his situation and the well-being of his son.

66. In summary, I have considered the extent to which the appellant is able to meet the Exceptions to deportation in s.117C of the 2002 Act and the range of other matters which have a bearing on the assessment of whether it has been established that there are very compelling circumstances over and above those Exceptions such that the appellant's deportation is not in the public interest.

67. I am not satisfied that such very compelling circumstances are evident in this case. The appellant committed very serious offences for which he received a significant period of imprisonment. This was not his only criminal offending. In an overall assessment, the combination of factors does not reveal the very compelling circumstances necessary. The public interest in his deportation is significant.

68. Accordingly, the appeal is dismissed.

DECISION

69. The decision of the First-tier Tribunal involved the making of an error on a point of law. Its decision is set aside and the decision is re-made, dismissing the appellant's appeal.

A.M. Kopieczek

Judge of the Upper Tribunal
Immigration and Asylum Chamber

27/03/2024