IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2023-002976
First-tier Tribunal No: HU/19742/2019

THE IMMIGRATION ACTS

Decision & Reasons Issued:
On the 27 June 2024

Before

UPPER TRIBUNAL JUDGE KOPIECZEK

Between

H
(ANONYMITY ORDER MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellant: Ms E. Gunn, Counsel instructed by David Benson Solicitors
For the Respondent: Mr N. Wain, Senior Home Office Presenting Officer

Heard at Field House on 1 May 2024

Order Regarding Anonymity

Pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008, the appellant is granted anonymity, because this appeal involves a minor.

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.

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DECISION AND REASONS

Introduction

1. This appeal comes back before me following a hearing on 20 October 2023 following which I decided that the First-tier Tribunal ("FtT") erred in law in allowing this appellant's appeal against the respondent's decision of 4 November 2019 to refuse his human rights claim, that claim having been made in the context of a decision to make a deportation order.

2. As I said in my earlier, error of law decision, the decision to deport the appellant arises from his convictions for two offences of converting or transferring criminal property for which he was sentenced on 30 November 2017 to six years' imprisonment for each offence to run concurrently.

3. The appellant has a daughter, K, born in 2010, who is a British citizen. The appellant's wife, K's mother, was involved in the same offending as that of the appellant. She received a sentence of 9 months' imprisonment suspended for 18 months. She has leave to remain until 20 June 2024.

4. The further background to the appeal is best illustrated by quoting the paragraphs of my error of law decision in which I deal with the respondent's grounds of appeal in relation to the FtT's decision. From those paragraphs it can be seen that I was not satisfied that two of the three grounds of appeal were made out. The relevant paragraphs are as follows.

> "26. I am not satisfied that ground 1 is made out (the unduly harsh issue). As is clear from my summary of the FtJ's decision, and a detailed reading of the decision, it is evident that the FtJ undertook a wide-ranging, comprehensive assessment of the effect of the appellant's deportation on K, both in terms of his being in India and separated from her, and in terms of her leaving the UK to be with him.
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> 27. It is evident that the FtJ was aware of the need for there to be a degree of harshness that went beyond the 'mere' separation of a parent from a child. He was assisted in that assessment by the expert evidence. Although there is something to be said for the contention on behalf of the respondent that there is some flavour of the generic in the experts' reports, there is nevertheless significant individual assessment. The weight to be afforded to the expert evidence was a matter for the FtJ.
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> 28. It will usually be possible to identify some fact that a judge has not expressly referred to but a judge cannot be expected to refer to every fact in relation to a family's or a child's circumstances. The FtJ undertook a very detailed assessment of K's and the

family's circumstances in the analysis of the effect of the appellant's deportation on K.

29. I am not satisfied that there is any error of law in that assessment.

30. As regards ground 2, it is true that at [21] the FtJ did mistakenly refer to the appellant as a medium offender, but that was plainly just an error. He elsewhere correctly identified that the appellant was a 'serious' offender who needed to establish very compelling circumstances over and above the exceptions to deportation within s.117C of the 2002 Act (see [19], [29], [64]).

31. The criticism of the FtJ's assessment of the reoffending risk does not bear close scrutiny given the FtJ's references to the OASYs report and the probation service offender manager's report. He did in fact note what was said about the appellant not appreciating the effect of his offending on the victims but referred to later evidence that he had developed more of a realisation in that respect.

32. However, it is clear that the threshold for a finding of very compelling circumstances is a high one, as the FtJ certainly acknowledged at [64]. The very high threshold for establishing very compelling circumstances is clear from the authorities referred to from [46] of the Supreme Court's decision in *HA (Iraq)*. In *Hesham Ali v Secretary of State for the Home Department* [2016] UKSC 60 at [38] it was said that there needed to be "a very strong claim indeed". *HA (Iraq)* refers more than once to the "high hurdle" which must be surmounted in this context.

33. The FtJ's assessment of very compelling circumstances is apparently confined to [65] in terms of what those circumstances are. Although a decision by a judge has to be assessed overall, it is at [65] only where the reader can find what circumstances the FtJ considered to be very compelling. In the appellant's favour, apart from the low risk of reoffending, the issue that the FtJ highlighted was the effect of the appellant's deportation on K. But there is nothing in that summary of the effect on her which is not already reflected in the conclusion on undue harshness.

34. A consideration of very compelling circumstances necessarily involves something more than the 'unduly harsh' conclusion. The appellant's rule 24 response at [17], reflected in Ms Gunn's submissions, seeks to identify the matters that the FtJ considered that went beyond the unduly harsh finding, including that K's mother has been granted limited leave to remain. However, the FtJ did not expressly refer to that matter at [65]. It is not evident that he did in that paragraph consider that this was relevant to

the assessment of very compelling circumstances, although he did refer to it at [62].

35. The FtJ at [65] did, however, state that he had considered all the competing interests "that I have described in this decision in the round". He also referred to the case as an unusual one. However, even on the assumption that the FtJ did include the leave to remain granted to K's mother as a factor in the finding of very compelling circumstances, it is not clear from the FtJ's decision how this amounts to a factor in favour of the appellant and in the assessment of very compelling circumstances. Similarly, whilst the FtJ was entitled to find that the low risk of reoffending was a relevant factor, it is difficult to see how this adds very much at all on the appellant's side of the balance in circumstances where, as I have already indicated, the finding of very compelling circumstances is almost exclusively rooted in the effect on K, which is simply a virtual repeat of the unduly harsh assessment.

36. In my judgement, the FtJ's reasons for finding that there are very compelling circumstances over and above the relevant exceptions to the public interest in deportation are not legally adequate given the high threshold for such a conclusion. In that respect I am satisfied that the FtJ erred in law such as to require the decision to be set aside."

5. Certain findings made by the FtJ, not infected by the error of law, were preserved, that matter having been canvassed with the parties at the hearing and foreshadowed in advance in my error of law decision. I have set out those below, in the reasons part of this decision.

6. I had before me the evidence that was before the FtT, as well as a supplementary bundle of 201 pages and a skeleton argument dated 25 April 2024 on behalf of the appellant.

7. At the resumed hearing, the appellant and his wife gave oral evidence. In the light of the medical evidence I was satisfied that the appellant should be treated as a vulnerable adult in line with the Joint Presidential Child, Vulnerable Adult and Sensitive Appellant Guidance Note No.2 of 2010. Appropriate adjustments were canvassed with Ms Gunn and adopted at the hearing. No submissions were made on behalf of the appellant during the course of his evidence or in final submissions in terms of any issues arising in this respect concerning the way the hearing was conducted that may have adversely affected his evidence.

8. The following is a summary of the oral evidence.

The oral evidence

9. In examination-in-chief the appellant adopted his three witness statements, dated 28 September 2021, 18 May 2023 and 23 April 2024.

The doctor's appointment that he had last week was for a skin problem on his neck which, he thought, might be a side effect of his antidepressant medication. He has not been taking that medication regularly from January because of the side effects. He takes medication for what might be eczema which has spread to his neck and back. He has been told to book an appointment to re-start the antidepressants.

10. Before January he was taking Sertraline once a week; not daily. It was causing him a lot of itchiness and not helping him out.

11. In cross-examination he said that he *is* taking anti-depressant medication. As to whether he is undertaking CBT after the psychiatrist recommended it, in 2023 he received a phone call from the psychiatrist saying that he was discharging him but did not give him a reason. He said that he had completed his counselling therapy.

12. His marriage was an arranged marriage. His and his wife's parents are still in India but his father-in-law passed away in 2021. He has a younger brother in India. The last time he went to India 2013. That was the only time.

13. Referred to his most recent witness statement, the appellant said that his wife visited India in 2023 for the death anniversary of her father. She was not able to attend the funeral in 2021. She is the eldest of the family, so she had to do certain rights. Again, referred to his most recent witness statement he agreed that she had stayed for two months, having stayed with her family.

14. He would not have support from his or his wife's family if he returns to India because of his offences. His father is very upset with him and does not want to talk to him. He asks his younger brother about their well-being. His wife's father has passed away. His mother-in-law comes from a lower caste. She runs a shop and is not able to support him. He has his daughter and his family in the UK, and it is very very difficult for him to go back and settle. His daughter considers the UK her home. She is studying and has friends here.

15. Referred to his first witness statement and what he said in relation to the offences about being vulnerable to financial inducements, the appellant was asked whether he saw himself as a victim in the offences. The appellant's reply was "I can say no and then yes". His thinking is that what he did was completely wrong and he should not have done it. He repents for it. Because of that he caused harm to his family name, his friends and society. What he did could have happened to his family members or his parents. He cannot change the past but he can change the future for his family and friends and as a law-abiding citizen.

16. He was asked what he meant in his witness statement dated 26 April 2021 that a certain Mr Chowdhury enticed him into committing the offences. The appellant said that in 2014 he was working and had to pay

rent and bills, to renew his visa and so on. Because of that he was in debt which dragged him to that level.

17. He was asked how, apart from complying with his licence conditions, he had addressed his offending behaviour. He said that his probation officer is always asking him about his licence conditions and about the offence. From 2021 to now he has had three probation officers with whom he has discussed his offence, the self-realisation after his sentence and how the prison sentence had changed him. From 2017 until now he had tried to explain how it happened. The last rehabilitation course was in 2021.

18. As to the courses he had done, as set out in his witness statement, the appellant said that he had done a few of those courses in prison to help him in the future. He does not know whether those courses would mean that he could obtain work in India because he had not been to India for 12 years.

19. He had not discussed with his wife the possibility of them all living together in India. His daughter was born in the UK and his wife supports them. He is not allowed to work. They are not ready for separation.

20. It is true that his daughter will not start her GCSEs for another year and a half. As to what is said in the social worker’s report about her doing well at school, her main focus is to get good GCSE and A-level grades. She considers the UK her home. He helps her in her schoolwork, cooking, and drops her off and collects her from school. She is very attached to him. She likes studying here and has her family here except his mother and father.

21. She visited India in 2012, 2013 and 2014. Each time they had to take her to hospital with a urine infection. They said it was the water, the food and the temperature. In 2013 they had to come back early.

22. The relatives he has in the UK are his eldest cousin who he calls his uncle, other cousins and their children and his cousins’ sisters and their children. On his wife’s side she has her aunt (her mother’s sister) and their children and their families.

23. The appellant’s wife, B, gave evidence. She adopted her witness statements in examination-in-chief. In cross-examination she said that as regards her role in the appellant’s offending, at first she did not know what was going on. When she did find out, the appellant told her that he was just helping a friend. She did not know 100%, but even he did not know the actual story. As to whether she was saying that her husband was not completely responsible and that it was partly his friend, she replied “Yes”.

24. As to the sentencing judge having said that her husband had played a leading role, she said that when they went to court they found out the original story and what his friend had done with him. Her husband had

made a mistake in helping and trusting his friend. They are sorry for what they did and for the people who lost money because of them.

25. Her husband was in prison from 2017 until 2021. In 2019 she started part-time work. His two brothers helped her and she was living with her aunt.

26. She would not have support from family if her husband had to leave the UK. Before, they knew that he was coming back home. They could not support her on a permanent basis. This is about her daughter’s future. She wants her father here, mentally as well as for her education.

27. When she went to India between October 2023 to January 2024 she stayed with her mother. As to whether she had considered the possibility of them all going to India, including their daughter, she said that she is not sure what she is going to do. She went to India after 10 years and she was struggling. Her daughter went to India when she was four years old but once she had started her education she did not go. She would find it difficult. She will be doing her GCSEs and they do not want to disrupt her education.

28. After she came back from attending the ceremony in India for the death of her father, her daughter said that she did not want her or her father to go anywhere without her. She thought that ‘immigration’ stopped her at the airport because she was not with her other, so she is scared if they go anywhere without her.

29. Her daughter has just started her education and it would be difficult if she goes to India. She wants to get to the best university so she can do what she wants to do. She went to India twice and she had an infection and a fever. For those three weeks in India she was not well.

30. In answer to my questions, she said that her husband’s family is only two cousin-brothers and no real brothers. He has no other relatives. They were able to pay for the visit to India because at that time her husband was working and she was working part-time.

Submissions

31. Mr Wain relied on the decision letter. He accepted that it had been found that it would be unduly harsh for the appellant to go to India and unduly harsh for his wife and daughter to go with him. It was submitted that there was a high threshold for a finding of ‘very compelling circumstances’. In that context Mr Wain referred to *KO (Nigeria) & Ors v Secretary of State for the Home Department* [2018] UKSC 53.

32. Mr Wain also referred to the factors relevant to very compelling circumstances set out at [51] of *HA (Iraq) v Secretary of State for the Home Department* [2022] UKSC 22. The nature and seriousness of the offences was relevant, and in the appellant’s favour was the fact that he had pleaded guilty. However, the surest guide to the public interest was

the length of sentence, being one of six years' imprisonment. Reference was made to the sentencing remarks and the fact that the appellant playing a leading role in the offences.

33. Mr Wain submitted that considering the appellant's oral evidence and his witness statements, he had not fully accepted full responsibility for his offences. In his first witness statement at [7] he said that he was vulnerable to financial enticements. Mr Chowdhury, to whom the appellant referred, was not named as a co-defendant who had played a leading role. The appellant accepts responsibility in terms of the effect on his family but not in relation to the victims of the offences.

34. Referring to the evidence of the appellant's wife, Mr Wain submitted that although she accepted that the offences had been committed, she said that it was a mistake in trusting a friend and they were not aware of the full extent of the offences until they got to court. However, it was submitted that that did not marry up with the sentencing remarks and what is known of their offending.

35. As regards the appellant's compliance with licence conditions, his behaviour and the courses he had been on are neutral matters and lack of offending is what is expected of a citizen. The fact that both the appellant and his wife were involved in the offending increases the public interest in removal, it was submitted. In addition, the appellant's wife has no settled status in the UK.

36. Mr Wain further submitted that any difficulties that the family would experience do not extend to those which go beyond the "severe" or "bleak" in terms of undue harshness, either in terms of the appellant's wife and daughter going to India or in terms of the appellant going to India alone. It was clear that there was a family network in the UK that supported the appellant's wife whilst he was in prison.

37. Although in the appellant's favour is that his daughter is a British citizen, that is not a trump card. Even taking into account the social worker's report, and the psychological report of Dr Hina Rauf, there were no very compelling circumstances. In addition, the social worker only considered the 'stay' scenario, but not the situation were they all to go to India.

38. It was submitted that the evidence of K doing well both in and out of school indicates that she would be able to adapt to moving to India. The evidence from Dr Rauf was that K had not needed to use the school counselling and there is no evidence of any physical health problems. The report states that she is not suffering from any mental health problems and she is supported by her parents. At para 13.1.2 it states that she had separation anxiety and low mood when she was separated from her father but she had some therapy which helped her.

39. K's best interests are a primary but not paramount consideration. Both the appellant and his wife are Indian nationals and they have ties to India.

It was submitted that there would not be a complete disruption of social, cultural and family ties were they all to go to India.

40. It was submitted that the appellant would be able to obtain work in India as would his wife.

41. Although there was evidence from Dr Hameed that the appellant has mental health problems, it was submitted that Dr Hameed did not consider that family life could continue in India, and support would be available for the appellant there.

42. In her submissions, Ms Gunn relied on her skeleton argument. Ms Gunn also referred to *HA (Iraq)*, and pointed out that the appellant had pleaded guilty to the offences which resulted in a reduction in the sentence imposed.

43. It was submitted that, contrary to the submissions on behalf of the respondent, the appellant does recognise that he had had done wrong and recognises the impact that his offences had had on others, not limited to his family. His wife's evidence was that she was not aware of the extent of the offending prior to the court proceedings.

44. Ms Gunn submitted that the length of time that the appellant had been in the UK, 19 years, is significant, as is the time that has elapsed since the offences. Since that time there have been no other offences and he has been assessed as a low risk of reoffending. There were no adjudications whilst he was in prison and he undertook a number of courses, including victim awareness. He had tried to use his time productively. He had attended all his probation appointments, had complied with his licence conditions and had attempted to address his offending. There was positive evidence of rehabilitation which was relevant, as decided in *HA (Iraq)* at [58].

45. As regards the issue of the family's nationalities, it was submitted that this was an unusual case in that the appellant's daughter was a British citizen. The FtT had pointed out that India does not allow dual citizenship, so by moving to India she would lose her British citizenship. Ms Gunn accepted that the FtT at [50] had referred to the Indian overseas citizenship programme.

46. It was submitted that although K's British citizenship was not a trump card, it was a strong factor in the appellant's favour. Although the appellant's wife does not have settled status, she has leave to remain and deportation proceedings were not pursued against her. It was submitted that there was no indication that her leave would not be extended.

47. Ms Gunn referred to the report from Diana Harris which states that the appellant's wife lost the emotional, physical, practical parenting and financial support of the appellant whilst he was in prison. That report, and

the latest report (which I take to be a reference to Nickki Austin's report dated 22 April 2024), indicate the strength of their family life.

48. Ms Gunn reiterated the findings of the FtT in terms of the unduly harsh effect on K if the appellant had to leave the UK or if K had to relocate to India. Although it was submitted on behalf of the respondent that K could integrate in India, there are findings made by the FtT to the contrary, and there was no evidence that she would be able to integrate successfully. Reliance was also placed on the letter from K, dated 8 April 2024. The additional reports from Ms Austin and Dr Rauf indicate that it would not be in K's best interests to leave the UK and that she would be "significantly impacted" by separation from the appellant. It was further submitted that K is at a significant transitionary stage of her education and the contention that she would be able to integrate in India does not withstand scrutiny.

49. As regards the appellant's social, cultural and family ties, the appellant's evidence is that he has not been to India since 2013. Ms Gunn also referred to the family members that the appellant has in the UK

Assessment and Conclusions

50. The findings of fact from the decision of the FtT which I am satisfied should be preserved because they are not infected by the error of law, and about which there was no disagreement between the parties, are as follows, with paragraph numbers of the FtT's decision in brackets.

a) The appellant is at low risk of reoffending [36].

b) Contact by modern means of communication methods and by visits would not be any very significant mitigation for the 'stay' scenario which would be akin to a bereavement for K (per *HA (Iraq) v Secretary of State for the Home Department* [2020] EWCA Civ 117) [46].

c) The effect of separating the appellant from K by the appellant's deportation is properly described as being the antithesis of pleasant or comfortable [46].

d) It would be unduly harsh for K to remain in the UK without the appellant [47].

e) India does not allow dual nationality [50], [58].

f) The expert opinions of Dr Halari and Ms Harris deserve to be given significant weight in relation to the 'stay' and 'go' scenario in relation to K [45], [54].

g) It has not been established that the family do not have the financial resources to build a new life or pay for a good standard of education for K in India [55].

h) The loss of the advantages of K's British citizenship, at least for the rest of her childhood, would be a very significant and weighty factor that would be exacerbated by the prohibition on dual citizenship that would force her or her parents to choose between renouncing K's British citizenship or living in India with the limited benefits of the overseas citizenship programme [58].

i) It would be unduly harsh for K to live in India [59].

j) The appellant is unable to meet Exception 1 under s.117C(4) of the Nationality, Immigration and Asylum Act 2002 ("the 2002 Act").

k) The appellant speaks English and appears to be financially independent, but these are neutral factors [61].

l) Little weight is to be attached to the appellant's private life in the UK [61].

m) Although the appellant's wife was involved in the offending and the sentencing judge recommended her for deportation, that has not been pursued by the respondent who has instead chosen to grant her leave to remain [62].

n) The appellant and his wife's offences were committed at a time when they were K's carers, and in relation to which they behaved irresponsibly.

51. There are, then, preserved findings that it would be unduly harsh for K to remain in the UK without the appellant, and for her to go to India with him. The issue remains whether there are very compelling circumstances over and above Exceptions 1 and 2, because the appellant has been sentenced to a term of imprisonment exceeding four years (s.117C(6) of the 2002 Act).

52. As I said in my error of law decision,

> "The very high threshold for establishing very compelling circumstances is clear from the authorities referred to from [46] of the Supreme Court's decision in *HA (Iraq)*. In *Hesham Ali v Secretary of State for the Home Department* [2016] UKSC 60 at [38] it was said that there needed to be 'a very strong claim indeed'. *HA (Iraq)* refers more than once to the 'high hurdle' which must be surmounted in this context."

53. Relevant to the issue of very compelling circumstances is the extent to which the appellant meets Exceptions 1 and 2 of s.117C(4) and (5) (*NA (Pakistan) v Secretary of State for the Home Department* [2016] EWCA Civ 662). The FtT found that he did not meet Exception 1 in terms of residence in the UK for more than half of his life nor in terms of very significant obstacles to integration in India. The FtT did not hear submissions on the question of the appellant's social and cultural integration in the UK.

54. In relation to social and cultural integration, I take into account the fact of the appellant's conviction for serious offences. Criminal offending can be an indication of a lack of integration. The appellant has been in the UK since September 2005 and was a student for some years, with lawful leave. Having said that, his offending appears to have occurred whilst he was a student and working part-time.

55. I accept that he has been actively involved with his daughter's education including in terms of dropping her off and picking her up from school, and attending various of her school events and other extra-curricular activities. Inevitably on those occasions he will have been interacting with others. The OASys report refers to friends that he has associated with, although it was through one friend in particular that he became involved in the offending. I bear in mind that he has some relatives in the UK.

56. There is, overall, a lack of evidence of any deep social and cultural integration beyond the facts that I have referred to, and the fact of his having a wife and child here. However, it is not argued on behalf of the respondent that the appellant is not socially and culturally integrated in the UK. I accept that he is, although I do not consider that social and cultural integration to be of significant depth in the assessment of very compelling circumstances.

57. As regards Exception 2, as is clear, the FtT found that the appellant met this Exception. Thus, it has been found that he has a genuine and subsisting parental relationship with a qualifying child, and the effect of his deportation on her would be unduly harsh. In my error of law decision I decided that there was no error of law in the FtT's conclusion in that distinct respect.

58. It is not merely the fact that of an individual meeting one of the Exceptions, in whole or in part, that is relevant to the issue of very compelling circumstances. It is clear from *NA (Pakistan)* that on the facts of any given case there may be such potency in the extent to which one or both of the Exceptions are met so as to amount to very compelling circumstances, alone or in combination with other factors. Thus, at [37] the Court said this:

> "It will then be necessary to look to see whether any of the factors falling within Exceptions 1 and 2 are of such force, whether by themselves or taken in conjunction with any other relevant factors not covered by the circumstances described in Exceptions 1 and 2, as to satisfy the test in section 117C(6)."

59. It is evident that the FtT found that there was a very potent 'unduly harsh' case in terms of the effect on K of the appellant leaving the UK without her, and of her remaining in the UK without him. On the basis of the expert evidence, reinforced by the updated evidence, and K's own written evidence, it is easy to see why he came to that view.

60. As explained by the Supreme Court in *HA (Iraq)* at [51], when considering whether there are very compelling circumstances over and above Exceptions 1 and 2, all the relevant circumstances of the case will be considered and weighed against the very strong public interest in deportation. In ten bullet points the relevant factors are set out.

61. I have considered each of those factors. In respect of most of them there is no dispute. The nature and seriousness of the offences is evident from the sentencing remarks. The FtT quoted them but they are worth repeating. The sentencing judge said the following, as quoted by the FtT:

> “You each fall to be sentenced for your respective parts in a money laundering enterprise, which was an integral part of a sophisticated fraud with highly damaging consequences for its victims.
>
> …
>
> The sentencing guidelines for money laundering offences make it clear that, when assessing the harm of such offences, the court must take into account the level of ha harm associated with the underlying offence. That is so, in my judgement, even bearing in mind that the Crown explicitly accept at they cannot and do not suggest that any of you were involved in the initial fraud.
>
> However, I am satisfied that three of you, [the Appellant and two others], were so closely connected with those carrying out the frauds that you were well aware of their scope and nature, at least to the extent of knowing that the monies came from frauds of individuals and that the operation had to be set up to act as soon as those individuals had released the monies.
>
> The frauds were sophisticated, highly planned and pitiless. By their very nature, they succeeded against the vulnerable and the gullible. Their consequences in financial terms were very great and, in individual cases, losses caused great hardship. However, in some ways the intangible consequences were even more serious as is reflected by the victim personal statements submitted. People who were previously able to run their own affairs have had their confidence shattered and the quality of their lives has been permanently affected.
>
> Money laundering is not a victimless offence. Especially when, as here, so closely integrated with the initial fraud. Bank accounts have to be set up or made available in advance, requiring willing participants; accounts set up with false identities, or the use of accounts for people who had left the country. Those who were to operate these accounts had to be prepared, at very short notice, to move money and to withdraw cash virtually the instant a victim had taken the fraudster's bait. The speed with which the victim's money was dissipated is witness to the professionalism of this organisation.
>
> As far as credit for plea is concerned, each of you pleaded guilty after the jury had been sworn and at the conclusion of the Crown's opening. Of course, I bear in mind that this brought to an end what would otherwise have been a formal trial because you were all well aware of the extent of the evidence against you.

> The sentencing guidelines indicate a reduction of 10% for a guilty plea on the day of the trial with either a lesser or no reduction thereafter. Given the extent of the prosecution evidence, I consider in each case a 10% reduction is appropriate.
>
> [In the case of the Appellant], I fully accept the description of your role as set out in the Crown's sentencing note. You played a leading part in the money laundering operation. You persuaded your wife to take part and your activities in the Post Office constituted a gross breach of trust against your employers, who required you to be vigilant to combat money laundering.
>
> You were involved in this enterprise over a substantial period of time. I have already commented on the sophisticated nature of the offending and the degree of planning which you were actively involved in. A further, serious, aggravating factor is that you totally ignored the warning implicit in being arrested in September 2014 and interviewed again the next year, and you carried on helping to run the operation whilst on bail.
>
> I am satisfied that, in your case, the starting point should be elevated beyond that indicated solely by the amount of money personally laundered by you, namely £530,000, to reflect the gravity of the initial fraud.
>
> I bear in mind that the amount, taken on its own, puts you at the lower end of Category 3, high culpability. It is submitted on your behalf that I should not make an uplift to the sentence starting point by reference to what is described in the guidelines as Harm B.
>
> Because of your role, I cannot accept that submission. I do bear in mind your previous good character. I also bear in mind your personal circumstances, but, given the scale of your offence, their relevance is marginal."

62. In my view, one of the striking features of the sentencing remarks is the description of the offences as "sophisticated, highly planned and pitiless", that "By their very nature, they succeeded against the vulnerable and the gullible" and that their consequences in financial terms were very great and in individual cases losses caused great hardship. Furthermore, that people who were previously able to run their own affairs "have had their confidence shattered" and the quality of their lives has been permanently affected.

63. The appellant has expressed remorse, although the OASys report indicates that at that time he sought to minimise his culpability. As noted by the FtJ at [36], however, there is evidence from his offender manager that since his release the appellant's understanding of the severe impact of his offending had increased.

64. It was submitted on behalf of the respondent before me that the appellant did not fully accept responsibility for his offending. A similar submission was made in relation to the appellant's wife. It seems to me that, for the reasons advanced by Mr Wain, there is some slight minimalization by the appellant of his role in the offences. However, I do not consider this to be a significant matter in the overall assessment. I am

satisfied from his and the other evidence that he does recognise the impact of his offending on others and is remorseful for it. The risk of reoffending is low, as the FtT decided in a finding that is not infected by the error of law.

65. In his sentencing remarks in relation to the appellant's wife, Judge McGregor-Johnson accepted that she would not have become involved in the offences without the influence of her husband, the appellant. He also accepted that although she knew she was involved in a substantial operation to launder money, she may have had no knowledge of the wider operation beyond that of her husband. On the other hand, in my view her oral evidence before me did tend to downplay the appellant's culpability, notwithstanding her being reminded in cross-examination of the sentencing remarks as to his involvement. Overall, however, I do not regard her having sought, somewhat, to downplay the appellant's role as having much significance in my overall assessment.

66. The appellant was sentenced in November 2017. His licence expired in November 2023. There has been no offending since. So far as rehabilitation is concerned, I bear in mind what was said on this issue by the Supreme Court in *HA (Iraq)* on that subject at [53]-[59].

67. In this case, there is something more than the mere fact of the appellant not having reoffended. I have already referred to the low risk of his reoffending. But there is some positive evidence of rehabilitation in his engagement with the offender manager and his adherence to his licence conditions. I note the recent evidence in the letter dated 23 April 2024 from the Ealing probation officer which states that during the last few months of his licence when the appellant was under his supervision, not only was he compliant with his licence conditions but "engaged with the sentence and addressing your offending behaviour. You took actions which were set and were readily available when asked."

68. The appellant has been in the UK since 2005. His family situation is evident from what has already been said. Both he and his wife are Indian nationals. Their daughter is a British citizen who was born on 28 October 2010 and is, therefore, now almost 14 years of age. I note that she is not yet at the stage of taking her GCSEs but that is not too far into the future.

69. K's best interests are a primary consideration. It is plainly in her best interests to remain with both her parents. It is a preserved finding that if she was to stay in the UK and not go to India with the appellant, that would be akin to bereavement. The report from Nikki Austin dated 22 April 2024 is consistent with that conclusion by the FtJ although Ms Austin's conclusion is not expressed in those terms.

70. If K went to India with the appellant she would be going there not as an Indian citizen but as a British citizen. She could not be a dual national. As has already been observed, the appellant and his wife would have to decide whether K should give up her British citizenship in order to live in

India as an Indian citizen. Giving up her British citizenship would plainly be a very significant matter with likely lifelong consequences. As found by the FtJ, she would, however, have some limited benefits from the overseas citizenship programme. I was not addressed in detail on the parameters of that programme.

71. Similarly, I was not addressed on whether K speaks any of the languages of India. However, the evidence from Dr Halari's report dated 20 November 2021, referred to by the FtT, is that her command of Gujarati was poor. Her ability to speak the local language(s) is plainly relevant to the extent to which she would be able to integrate into Indian society. Although her command of Gujarati is poor, there is no reason to think that her ability in the language would not improve relatively quickly, particularly bearing in mind that she appears to be achieving well academically at school. As against that, it is likely to be the case that there would be a period of considerable adjustment for her in terms of her education, and I bear in mind that she is approaching a significant stage in her education.

72. I do not regard it as being of significance that when K was much younger she had health difficulties when she visited India. There is nothing to suggest that she would not be able to adjust to the climate and other physical conditions in India within a reasonable period of time. The expert evidence is that she has no health conditions and no allergies.

73. The evidence is that the appellant has his parents in India and his younger brother. and his wife has her mother there. On his own evidence he is in contact with his younger brother at least. I am prepared to accept his evidence that his father and his wife's family are upset with him because of his offending. However, I consider it unlikely that their respective families would turn their backs on them in circumstances where they would be returning with their child, a granddaughter to their parents.

74. Even if their respective families would not have the means to support them, there is no reason to think that the appellant or his wife could not obtain employment in India. In the appellant's case, the evidence is that he had undertaken a number of courses which would be of assistance in that regard. They have both been in employment in the UK.

75. I bear in mind that the appellant and his wife have some relatives in the UK. However, I do not consider that those relationships have much significance in the context of the public interest when assessing very compelling circumstances.

76. The appellant has some mental health problems. However, his evidence of the extent to which he is actively engaging with treatment was inconsistent. He said that he has been told to book an appointment to re-start antidepressants, yet then said that he is actually taking them. He is not undertaking CBT and he has finished his counselling. Furthermore,

there was no evidence to suggest that he could not receive treatment for his mental health in India.

77. The appellant's wife has leave to remain until 30 June 2024. I accept that she will apply for further leave. However, the fact that she has leave to remain does not, of course, mean that she has to stay in the UK. Her leave is temporary. There is also the significant fact that she was involved in the appellant's offending whilst in the UK on a temporary basis.

78. I do not consider that the appellant's and his wife's private lives in the UK, including in terms of the other relatives that they have here (excluding K of course), to have much significance in the assessment of whether there are very compelling circumstances meaning that the appellant's deportation is disproportionate.

79. The evidence is clear that the appellant and his wife have a genuine and subsisting relationship. Separating them would plainly have a significant impact on each of them. Separating the appellant from his daughter would similarly have a very profound impact on him. I have already referred to the impact of such separation on K.

80. However, so far as the appellant and his wife are concerned, it is important to bear in mind the seriousness of the appellant's offending, assisted by his wife, at a time when they were caring for K. The effect of the appellant's deportation on him and his wife individually, should they be separated does not, in the circumstances, *in itself* add much in their favour.

81. Having considered all the circumstances, the focus inevitably returns to K. It is not necessary to repeat the various factors that I have taken into account in relation to her or otherwise in the overall assessment. I bear in mind that in his report dated 22 April 2024 Dr Rauf's view was that K was not presenting with any mental health issues, although suffered from separation anxiety and low mood when the appellant was in prison. She does not express any opinion on the question of K moving to India, although does report K's feelings on the matter.

82. I have also taken into account Nikki Austin's report dated 22 April 2024. On page 17 of her report, she concludes that being forced to leave the UK would not be in K's best interests, although the report lacks detailed analysis of that issue.

83. Reminding myself again that a finding of very compelling circumstances requires there to be a very strong case indeed, I am satisfied that this is such a case. Very little in the appellant's or his wife's circumstances alone adds anything in their favour to this assessment. In relation to K, however, *in addition to* the unduly harsh finding in terms of her staying in the UK or leaving for India with the appellant, are other very significant factors.

84. I bear in mind that it has been found that separating her from the appellant would be akin to a bereavement. The FtT made that finding with reference to the Court of Appeal's use of that expression in *HA (Iraq)*. It is plainly a very significant conclusion indeed.

85. K is a British citizen, which of course is a fact inherent in an analysis of the Exceptions under s.117C; but going with the appellant to India would involve her foregoing that citizenship for the time that she is there as a child and, realistically for practical purposes, as a young person until she becomes independent. She is at a very significant stage of her life in the UK from a personal perspective but also from an educational perspective. Moving to India would be likely to have a considerable emotional impact on her, a view expressed in the report of Dr Halari.

86. K's own wishes are very clear, as expressed in her letters to the tribunal and in the various reports. She is plainly achieving well both in and out of school and has close friendships and attachments in the UK.

87. In *NA (Pakistan),* Jackson LJ said this at [30]:

> "In the case of a serious offender who could point to circumstances in his own case which could be said to correspond to the circumstances described in Exceptions 1 and 2, but where he could only just succeed in such an argument, it would not be possible to describe his situation as involving very compelling circumstances, over and above those described in Exceptions 1 and 2. One might describe that as a bare case of the kind described in Exceptions 1 or 2. On the other hand, if he could point to factors identified in the descriptions of Exceptions 1 and 2 of an especially compelling kind in support of an Article 8 claim, going well beyond what would be necessary to make out a bare case of the kind described in Exceptions 1 and 2, they could in principle constitute 'very compelling circumstances, over and above those described in Exceptions 1 and 2', whether taken by themselves or in conjunction with other factors relevant to application of Article 8."

88. I am satisfied that such is the case here. The unduly harsh finding in relation to Exception 2 is, I find, of an especially compelling kind in relation to K, taken together with the other circumstances in relation to her to which I have referred.

89. Accordingly, I am satisfied that there are very compelling circumstances over and above Exceptions 1 and 2 such as to outweigh the public interest in deportation in this case, making the appellant's deportation disproportionate under Article 8 of the ECHR.

Decision

The decision of the First-tier Tribunal involved the making of an error on a point of law. Its decision having been set aside, I re-make the decision by allowing the appeal.

A.M. Kopieczek

Case No: UI-2023-002976
First-tier Tribunal No: HU/19742/2019

Judge of the Upper Tribunal
Immigration and Asylum Chamber

24/06/2024