IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2023-004314
First-tier Tribunal No: PA/52577/2022

THE IMMIGRATION ACTS

Decision & Reasons Issued:
On the 04 April 2024

Before

DEPUTY UPPER TRIBUNAL JUDGE JARVIS

Between

GRB (IRAN)
(ANONYMITY ORDER MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellant: Mr K. Gayle, Counsel on behalf of Elder Rahimi
For the Respondent: Mr E. Tufan, Senior Home Office Presenting Officer

Heard at Field House on 21 March 2024

Order Regarding Anonymity

Pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008, the Appellant and/or any member of his family is granted anonymity.

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

DECISION AND REASONS

Introduction

1. This is the substantive decision in respect of the Appellant's appeal against the Respondent's decision to deport him to Iran, dated 29 June 2022. This decision should be read in conjunction with the Upper Tribunal's earlier decision (dated 8 January 2024) that the First-tier Tribunal had materially erred when dismissing the Appellant's appeal.

Relevant background

2. The Appellant entered the United Kingdom clandestinely on 23 November 2000 and claimed asylum which was refused by the Respondent on the basis of non-compliance with the asylum interview on 29 March 2001. The subsequent appeal was dismissed on 16 January 2002 on the basis that the Appellant had failed to attend his own hearing.

3. On 28 November 2005, the Appellant was convicted of two counts of sexual assault at Sheffield Crown Court and was sentenced to 6 months imprisonment (and an extended three-year licence); he was placed on the sex offenders register for a period of 10 years which was later extended.

4. On 9 January 2009, the Appellant was convicted of three counts of supplying control class A drugs (cocaine) and one count of being concerned in supplying a controlled class A drug. On 6 February 2009, the Appellant was sentenced to a total of four years imprisonment.

5. This led to the Respondent issuing a notice of liability to automatic deportation letter to the Appellant on 3 March 2009 and 28 April 2010.

6. In response, the Appellant made a fresh asylum claim on 30 November 2009 which was refused on 13 December 2010; the Appellant did not appeal that decision and/or 15 December 2010 a signed Deportation Order was made against him.

7. On 1 February 2011, the Appellant completed an Iranian travel document application form but failed to provide any supporting ID documents or sign a disclaimer agreeing to return to Iran and he was therefore considered to be non-compliant.

8. On 18 April 2011, the Appellant agreed to a face-to-face interview at the Iranian embassy. In that interview the Appellant told the Iranian authorities that he did not want to return home as he had no family, passport or birth certificate and had not completed his military service; again the Appellant was treated as non-compliant with the travel document process.

9. The Appellant refused to contact the Iranian Embassy to obtain a travel document despite a request made by the Respondent on 5 September 2011.

10. The Appellant lodged fresh representations on 9 August 2011 which led to his release from detention on 15 September 2011. Those fresh representations were refused and certified under section 96(1) by the Respondent on 19 December 2011.

11. On 9 May 2014, the Appellant was convicted at Peterborough Magistrates of supplying a controlled class A drug (crack cocaine and heroin) and sentenced to three years imprisonment.

12. Further representations were raised by the Appellant's sister and his current partner (Ms M) but were met with refusal (by way of a letter dated 10 June 2015) which also concluded that the Appellant had not successfully established a fresh claim for the purposes of paragraph 353 of the rules.

13. On 18 July 2018, the Appellant made further representations which were treated as an application to revoke the Deportation Order and make fresh claim for asylum with human rights.

14. On 21 June 2019, the Respondent received a disclosable email from Peterborough Children's Services (the Family Safeguarding Team) in relation to incidents of domestic abuse against Ms M by the Appellant. In response to an enquiry from the Respondent, the Appellant submitted further submissions on 5 July 2019 in which it was confirmed that the Appellant had enrolled on a Domestic Abuse Perpetrator Programme ("DAPP") and had moved out of the family home as of December 2018 but was continuing to co-parent his children with Ms M.

15. On 12 December 2019, a section 72 notice (under the NIAA 2002) was issued to the Appellant to which he made further submissions on 18 December 2019.

16. The Respondent eventually refused the Appellant's further representations from 18 July 2018 (as well as taking into account all of the further representations and evidence) on 29 June 2022. The Appellant appealed to the First-tier Tribunal and the appeal was dismissed on both international protection and human rights grounds.

17. As explained in the Upper Tribunal's error of law decision, the Respondent's representative on that occasion conceded that the judge's conclusions in respect of Article 8 ECHR were materially flawed.

18. The outcome of the error decision was that the judge's conclusions in respect of Article 8 ECHR were set aside whereas the judge's conclusions in dismissing the Appellant's international protection claim were to be preserved.

The substantive hearing at the Upper Tribunal

19. The Appellant and his partner Ms M attended the remaking hearing at the Upper Tribunal at Field House. Both the Appellant and Ms M were cross-examined by the Respondent; they gave their evidence in English.

20. At the end of those questions, I heard oral submissions from both representatives of which I have kept my own note and at the end of the hearing I reserved my decision.

Findings and reasons

21. In coming to my conclusions in this appeal, I have had careful regard to the composite bundle served by the Appellant's representatives for the error of law hearing of 367 pages; the stitched bundle from the First-tier proceedings consisting of 511 PDF pages; the Appellant's supplementary bundle served on 18 March 2024 consisting of 12 pages and my earlier error of law decision promulgated on 8 January 2024.

22. In assessing the Appellant's Article 8 ECHR appeal, I have applied the balance of probabilities and considered all of the evidence at the date of the hearing.

23. Both parties agreed that the proceedings before me were limited to Article 8 ECHR and there was no application by the Appellant to seek to reopen any of the international protection issues. I should however, for completeness, reiterate that the judge's conclusions that the Appellant lied about his political activities in the UK (including attending demonstrations) and found that he would not face a real risk on return to Iran are preserved.

24. The judge also concluded that the Appellant had successfully rebutted the section 72 presumption on the basis that he had not offended for over 9 years at the date of the First-tier Tribunal hearing.

Article 8 ECHR

25. My starting point for the assessment of the Appellant's Article 8 ECHR appeal, is the Upper Tribunal's decision in Binaku (s.11 TCEA; s.117C NIAA; para. 399D) [2021] UKUT 34 (IAC).

26. I therefore proceed on the basis that the statutory scheme in sections 117A - 117D of the NIAA 2002 is a complete code for the assessment of Article 8 ECHR. This therefore means that the Respondent's Immigration Rules do not play a part in the assessment of Article 8 issues (**headnote 6**) and section 117C applies equally to appeals relating to a human rights refusal in the context of an application to revoke a Deportation Order as much as to a person who the Respondent is seeking to deport for the first time (**headnote 7**).

The Appellant's family relationships

27. Although the First-tier Tribunal's conclusions on Article 8 were set aside, the Respondent did not seek to go behind the view of the judge that the Appellant has a close relationship with his children and, at that time, Ms M was expecting their third child.

28. Equally I note that the Appellant did not deny the Respondent's case that he had to leave the family home in 2018 because of domestic abuse issues – the witnesses asserted that the Appellant had been absent for about 4 months but as helpfully pointed out by Mr Tufan, this was wholly inaccurate as their witness statement evidence from July 2019 shows clearly enough that the Appellant had moved out of the family home in December 2018 and had still not returned by the time the witness statements were signed.

29. It is unsatisfactory that despite the amount of evidence provided by the Appellant for the appeal, there was little to clarify when it was that he returned to the family home. Nonetheless, I note that Mr Tufan did not dispute that the Appellant had returned to live with his partner and children and that this occurred at some time just after July 2019.

30. In any event, I accept (as there was no challenge to this before me) that the Appellant completed the DAPP course in February 2019 and social services closed their file on him in April 2019. It is of course also obvious that Ms M attended the hearing both at the First-tier Tribunal and before me, and I therefore conclude that the relationship was restored despite the Appellant's egregious behaviour against her from at least October 2017 until June 2019.

31. On that basis, I find that the Appellant has established that he now has an Article 8(1) family life with Ms M and his three British children. The Appellant has therefore established that he has a genuine subsisting partnership with his partner (who is a qualifying person for the purposes of section 117D as she is a British citizen) and a genuine parental relationship with his three British children (who are themselves also qualifying people for the purposes of the section 117D definition).

32. There is no dispute between the parties that the starting point in respect of the application of section 117C is the *very compelling circumstances over and above the statutory exceptions* test in s. 117C(6) - this is because the Respondent can lawfully rely upon the Appellant's imprisonment of four years as a result of his 2009 drug convictions despite the fact that the Appellant later reoffended in a similar way and was sentenced to a lesser sentence of three years.

33. Nonetheless, this is, in my view, a case in which it is appropriate to have regard to the exceptions in section 117C(5) as part of the process of understanding the competing sides of the proportionality balance inherent in the assessment of very compelling circumstances over and above.

The impact of deportation upon Ms M

34. There is no suggestion that it would not be unduly harsh for Ms M to relocate with the Appellant to Iran and therefore the only issue to be assessed is whether it is unduly harsh upon Ms M for the Appellant to be deported.

35. I have referred to the Supreme Court's decision in HA (Iraq) v Secretary of State for the Home Department [2022] UKSC 22 ("HA") which states the following:

> *"41. … I consider that the best approach is to follow the guidance which was stated to be "authoritative" in KO (Nigeria), namely the MK self-direction:*

> *"… 'unduly harsh' does not equate with uncomfortable, inconvenient, undesirable or merely difficult. Rather, it poses a considerably more elevated threshold. 'Harsh' in this context, denotes something severe, or bleak. It is the antithesis of pleasant or comfortable. Furthermore, the addition of the adverb 'unduly' raises an already elevated standard still higher."*
>
> *42. This direction has been cited and applied in many tribunal decisions. It recognises that the level of harshness which is "acceptable" or "justifiable" in the context of the public interest in the deportation of foreign criminals involves an "elevated" threshold or standard. It further recognises that "unduly" raises that elevated standard "still higher" - ie it involves a highly elevated threshold or standard. As Underhill LJ observed at para 52, it is nevertheless not as high as that set by the "very compelling circumstances" test in section 117C(6).*
>
> *43. Whilst it may be said that the self-direction involves the use of synonyms rather than the statutory language, it is apparent that the statutory language has caused real difficulties for courts and tribunals, as borne out by the fact that this is the second case before this court relating to that language within four years. In these circumstances I consider that it is appropriate for the MK self-direction to be adopted and applied, in accordance with the approval given to it in KO (Nigeria) itself.*
>
> *44. Having given that self-direction, and recognised that it involves an appropriately elevated standard, it is for the tribunal to make an informed assessment of the effect of deportation on the qualifying child or partner and to make an evaluative judgment as to whether that elevated standard has been met on the facts and circumstances of the case before it."*

36. In respect of Ms M's evidence in her most recent witness statement (dated 13 March 2024), she indicates (at paragraph 3) that she would not be able to cope without the Appellant in her life. In her statement, Ms M goes on to explain that the Appellant is an integral part of the family, has cared for the children whilst she has been working and that her own close family do not live nearby. Ms M also adds that they would not be able to support her sufficiently with the care of her three children if the Appellant was to be deported.

37. Having heard the evidence of both the Appellant and Ms M, I find that they were consistent in their claims that Ms M's father lives around two hours away from her; her mother lives between 50 to 60 minutes away; one of her brothers lives around three hours drive away; another brother around half an hour away and a further brother who lives around 20 minutes drive from their home.

38. In the absence of any challenge, I also accept Ms M's evidence that her mother works as a full-time carer and therefore has little time to assist her and the children.

39. The Appellant and his partner now have three children who are 9, 7 and 2 months old. Ms M is currently on maternity leave but would seek to return to work when able to do so but would seek to work part-time if the Appellant was able to stay and seek employment.

40. In respect of the period when the Appellant left the family residence due to domestic violence in 2018 until some point later in 2019, I note that Ms M's oral evidence was not challenged that she did not receive any real practical support from her own family and that social services did not provide any help either. I therefore find that she did manage to cope with two young children during the time but, I also take account of the fact that the Appellant was seeing the children on occasion as long as he was accompanied by his own sister.

41. There is no doubt, that the impact of deportation upon Ms M would lead to difficult circumstances: she would effectively be required to care for two young children as well as a newborn without the Appellant. I find that this would be harsh on Ms M but I conclude that the evidence before me does not establish that the elevated threshold of *undue* harshness is made out.

42. It is clear from the evidence that despite the difficulty of the situation, Ms M was able to cope on her own with two children and there is no suggestion that social services considered her circumstances to be so difficult that she required their assistance despite their parallel involvement with the domestic abuse issue at that time.

43. There is no doubt that the presence of the newborn child complicates matters, but in my view Ms M has shown herself to be a resilient and determined person who would be able to manage the three children.

The impact on the three children

44. I start from my earlier finding that the children's mother, Ms M, would be able to manage in the absence of the Appellant although such circumstances would be harsh upon her.

45. This finding however is not determinative of the impact on the three children. I find that despite the Appellant's extremely poor behaviour in this country in the past, he has nonetheless generally acted as a reliable father figure in recent years. There can be no doubt that the previous domestic abuse would have had a negative impact upon the two eldest children and I have taken this into account but the evidence also shows that social services were content with the Appellant's rehabilitation through the DAPP and Ms M was agreeable to having the Appellant return to the family home.

46. There is no evidence before me to show that the Appellant has returned to his former use of domestic violence against Ms M and I therefore conclude that he has been a reliable father figure in the life of the children since his return at some point in mid-late 2019.

47. I have also taken into account what the children have said in their letters from March of this year about their love for the Appellant and their desire that he should not be deported.

48. I find that it is in their best interests, applying section 55 of the BCIA 2009, that the Appellant remain in the United Kingdom within the family unit. This is not determinative of the unduly harsh test or the applicable very compelling circumstances test, but it is nonetheless a primary and significant consideration.

49. Whilst I accept that the Appellant continued to have some access to see his children in-person during the time when he was separated from the family between 2018 to 2019, I nonetheless reiterate that Ms M was able to cope, and her evidence is that this was without any support from the family and with no intervention from social services.

50. The difference now is that there is a third child (now only two months old) and there can be no doubt that the presence of such a young baby significantly increases the stresses for Ms M in caring for the children in the absence of the Appellant.

51. Overall, I conclude that although Ms M would find circumstances at home without the Appellant difficult and harsh I conclude that she would continue to be able to manage the three children despite the third child's very young age.

52. Whilst the two eldest children would find the separation distressing, they have unfortunately already experienced disruption in their family life with their father in the past because of the domestic abuse towards Ms M and his departure from the household of at least 8 months between 2018 & 2019. I take into account that the Appellant still had a presence of sorts as he was still able to see the children as long as he was accompanied by his sister and the separation turned out not to be permanent, but in practice it was Ms M who was dealing with the day-to-day realities for the family and, despite those particular challenges, she managed.

53. This is relevant because I have found that she is a highly resilient person who would be able to cope and I conclude that there is no weighty evidence to show that she could not provide for her children emotionally in the Appellant's absence. I therefore find that the two eldest children will be affected by the Appellant's deportation and that this is certainly harsh but I conclude that they would be supported and cared for by Ms M and I do not think that it is more likely than not that their education or health would be affected significantly.

54. It may well be that the impact of the Appellant's deportation is that Ms M would have to rely upon benefits if she was not able to return to work but I find that these are public funds to which she is in principle entitled to.

55. I therefore find overall that the impact upon the children does not meet the elevated threshold of undue harshness despite the Appellant's deportation being against their best interests, applying §41 of HA.

Very compelling circumstances over and above the statutory exceptions

56. The law is clear that the public interest does not play an additional part in the assessment of undue harshness, but it does however play a significant part of the broader proportionality assessment in the *very compelling circumstances* test, (s. 117C(6)).

57. In HA, the Supreme Court reiterated the approach to the assessment as drawn from authorities of the ECtHR 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. As explained by Lord Reed in Hesham Ali at paras 24 to 35, relevant factors will include those identified by the European Court of Human Rights ("ECtHR") as being relevant to the Article 8 proportionality assessment. In Unuane v United Kingdom (2021) 72 EHRR 24 the ECtHR, having referred to its earlier decisions in Boultif v Switzerland (2001) 33 EHRR 50 and Üner v The Netherlands (2006) 45 EHRR 14, summarised the relevant factors at paras 72-73 as comprising the following:*
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> > *"• the nature and seriousness of the offence committed by the applicant;*
> >
> > *• the length of the applicant's stay in the country from which he or she is to be expelled;*
> >
> > *• the time elapsed since the offence was committed and the applicant's conduct during that period;*
> >
> > *• the nationalities of the various persons concerned;*
> >
> > *• the applicant's family situation, such as the length of the marriage, and other factors expressing the effectiveness of a couple's family life;*
> >
> > *• whether the spouse knew about the offence at the time when he or she entered into a family relationship;*
> >
> > *• whether there are children of the marriage, and if so, their age; and*
> >
> > *• the seriousness of the difficulties which the spouse is likely to encounter in the country to which the applicant is to be expelled …*

> • *the best interests and well-being of the children, in particular the seriousness of the difficulties which any children of the applicant are likely to encounter in the country to which the applicant is to be expelled; and*
>
> • *the solidity of social, cultural and family ties with the host country and with the country of destination.""*

58. The Court also emphasised the high threshold of the test:

> *"48. In Rhuppiah v Secretary of State for the Home Department [2016] 1 WLR 4203 at para 50 Sales LJ emphasised that the public interest "requires" deportation unless very compelling circumstances are established and stated that the test "provides a safety valve, with an appropriately high threshold of application, for those exceptional cases involving foreign criminals in which the private and family life considerations are so strong that it would be disproportionate and in violation of Article 8 to remove them."*
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> *49. As explained by Lord Reed in his judgment in Hesham Ali v Secretary of State for the Home Department [2016] UKSC 60; [2016] 1 WLR 4799 at para 38:*
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> > *"… 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] 1 WLR 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.""*

59. I therefore start with the public interest in deportation in this case which has, in my view, a dual aim on the basis that the Appellant has been living without permission in the UK since his entry in 2000 and has not left the UK despite being served with a valid Deportation Order in 2010.

Section 117B

60. I therefore start by applying section 117B and make the following findings:

a. The Appellant gave his evidence in English and there is no evidence before me that he is dependent on public funds, I therefore conclude that he takes the neutral benefits of sections 117B(2) & (3).

b. Little weight should be given to the relationship between the Appellant and Ms M on the basis that it was established when the Appellant was in the United Kingdom unlawfully, section 117B(4)(b).

c. Little weight should be given to the Appellant's private life on the basis of his unlawful residence, section 117B(4)(a).

61. In respect of section 117C: s.117C(2) reiterates that the more serious the offence the greater the public interest in deportation.

The nature and seriousness of the offence committed

62. I find that the Appellant has a lamentable criminal history which started in 2005 when he was convicted of two counts of sexual assault and sentenced to 6 months imprisonment. He has also twice been imprisoned for serious class A drug offences amounting to periods of imprisonment of three and four years respectively.

63. The Appellant has therefore shown in the past a singular lack of regard for the criminal law and indeed the safety and well-being of people in the UK. The ECtHR has long emphasised the particularly devastating impact on people's lives arising from the scourge of drugs: DALIA v. FRANCE - 26102/95 [1998] ECHR 5 at §54, as one example.

64. I however should add that the Respondent did not contest the Appellant's evidence in the hearing (and in his bundle) that he came off the Sex Offender's Register on 29 December 2022 and I have taken this into account.

65. I overall find that the public interest in deportation in this case remains a particularly strong one bearing in mind the seriousness and nature of the offences to which the Appellant has been convicted despite the fact that the last sentence of imprisonment was in 2014.

The time elapsed since the offence was committed and the Appellant's conduct during that period

66. On the Appellant's side of the balance, the Supreme Court's decision in HA also clarifies the potential relevance of rehabilitation i.e. a material reduction in the risk of reoffending as part of the proportionality exercise at §58:

> *"Given that the weight to be given to any relevant factor in the proportionality assessment will be a matter for the fact finding tribunal, no definitive statement can be made as to what amount of weight should or should not be given to any particular factor. It will necessarily depend on the facts and circumstances of the case. I do not, however, consider that there is any great difference between what was stated in Binbuga and by the Court of Appeal in this case. In a case where the only evidence of rehabilitation is the fact that no further offences have been committed then, in general, that is likely to be of little or no material weight in the proportionality balance. If, on the other hand, there is evidence of positive rehabilitation which reduces the risk of further offending then that may have some weight as it bears on one element of the public interest in deportation, namely the protection of the public from further offending. Subject to that clarification, I would agree with Underhill LJ's summary of the position at para 141 of his judgment:*

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

67. Mr Tufan submitted that rehabilitation could not play an important role in the assessment of proportionality because the Appellant was relying merely upon the passage of time since his release from his three-year sentence of imprisonment.

68. It is not entirely clear from the papers when the Appellant was released from the three-year term of imprisonment given to him in 2014 but it appears that he was certainly out of prison by the very beginning of 2016.

69. I therefore find that the Appellant has not been convicted of any further criminal offences since that time despite there being some police intervention when the Appellant was required to leave the family home between 2018 and 2019.

70. The Appellant has therefore not committed any further criminal offences since 2016 which amounts to a period of just over eight years. In my view some weight should be given to this on the basis that it is not a relatively short period. However, it also remains the case that the public interest continues to take account of pubic interest factors such as deterrence and public revulsion, see §59 of HA.

71. Applying HA at §51, I also find that the Appellant's conduct in recent years has not been consistently without adverse consequences bearing in mind the reported incidents of domestic abuse which led to the Appellant being referred on to the DAPP.

72. Looking at the overall picture since 2019 then, I conclude that the Appellant has modified his behaviour somewhat and that this is a factor which adds to his side of the balancing exercise but not, as I seek to explain in this decision, materially so either on its own or in conjunction with other factors.

The Appellant's family circumstances – his relationship with Ms M

73. I also take into account that the Appellant and Ms M are in a genuine and subsisting relationship which has lasted, despite its evident difficulties, for over 10 years. Little weight is to be given to the relationship by the operation of section 117B(4)(b) but this is not determinative of the proportionality exercise and so therefore I keep the Appellant's relationship in mind when assessing his side of the balancing exercise and very compelling circumstances overall.

74. I also factor in that I have found that the Appellant's deportation would be harsh on her but not unduly harsh.

The Appellant's family circumstances – his relationship with his children

75. I take account of the Appellant's genuine parental relationship with his three children and that the impact upon those children will be harsh but not unduly so.

76. I also bear in mind that their best interests are for the Appellant to remain in the UK within the family unit.

The Appellant's private life

77. In respect of the private life aspects of the Appellant's case, this was not pursued before me by Mr Gayle who did not argue that the Appellant would face very significant obstacles to reintegration in Iran. I nonetheless, for completeness, find that the Appellant does not meet all of the particular criteria in section 117C(4) on the basis that he has not resided for most of his life in the United Kingdom lawfully (section 117C(4)(a)) and, in light of the Appellant's past engagement with sexual offending, serious drugs offending and the use of domestic abuse at home, I find that he is not culturally and socially integrated in the UK (section 117C(4)(c)). In reaching that latter conclusion I have taken into account that the Appellant came to the UK when he was an adult, speaks Farsi, has familiarity with the culture in Iran and has been residing illegally in the UK since 2001 and since 2010 in defiance of a Deportation Order made against him.

78. For very similar reasons as immediately above, I find that the Appellant's length of residence is not a materially weight matter on his side of the balance. I take this view after applying s. 117B(4) of the NIAA 2002, and bearing in mind that the last 13 years of the Appellant's residence have been set in the context of a valid Deportation Order made in 2010.

79. I have also considered that this is an application to revoke the Deportation Order and that the Respondent's position remains that those deported should serve a re-entry ban of 10 years unless the deportee can show a breach of Article 8 ECHR.

80. Even if the 10 year period of deportation had taken place, which it has not in this case as the Appellant has not been deported and/or left the UK, the

end of the 10 year period is not decisive of the issue of revocation, as per EYF (Turkey) v Secretary of State for the Home Department [2019] EWCA Civ 592 at §28: it all depends upon the circumstances of the case.

Deportation to Iran

81. There is however the main point made by Mr Gayle in his submissions, namely that the overall evidence shows that the Appellant could not be deported to Iran because the Iranian authorities require the Appellant to consent to his own removal which he will not do.

82. As I have already laid out in this decision, the Respondent details this, to some extent, at paragraphs 11 to 12 of the deportation decision where it is noted that the Appellant refused on both occasions to sign a disclaimer agreeing to his return to Iran and told the Iranian authorities that he did not want to return home during the face-to-face interview in 2011.

83. The Tribunal has no evidence from either party as to the current processes or view of the Iranian authorities. Whilst it is right to state that the Respondent has not sought to deport the Appellant since 2011, it is also clear that there have been significant periods since then in which the Appellant has not been legally removeable under UK law (rather than because of any barrier created by the Appellant/Iranian authorities) through his time in prison, during the currency of fresh claims and these proceedings.

84. Applying the Court of Appeal's decision in RA (Iraq) v The Secretary of State for the Home Department [2019] EWCA Civ 850, I note §§65-66:

> *"65. There is a threshold question to be addressed as to the (non) '**deportability**' of the individual. In order to raise a '**limbo**' argument in the first place, i.e. whether the public interest justifies making or sustaining a decision to deport or issuing a deportation order itself, the following must be demonstrated: (i) first, it must be apparent that the appellant is not capable of being actually deported immediately, or in the foreseeable future; (ii) second, it must be apparent that there are no further or remaining steps that can currently be taken in the foreseeable future to facilitate his deportation; and (iii) third, there must be no reason for anticipating change in the situation and, thus, in practical terms, the prospects of removal are remote.*
>
> *66. If those criteria are not satisfied, a challenge to an otherwise lawful decision to deport, or deportation order, on the basis of '**limbo**' (or prospective '**limbo**') calling into question whether the public interest in deportation should be overcome by considerations of family or private life or other Convention rights, is likely to face formidable, or potentially insuperable, obstacles."*

85. The reality of this case is that there is no real evidence about the Appellant's removability post-dating 2011. For instance, there is no evidence before me as to why the Appellant could not apply for an Iranian

passport from the UK bearing in mind that this appears to have been a relevant factor in the refusal of one of the travel document applications in 2011.

86. I find that the criteria in §65 are not met: I find that limbo has not been established and the removability issue does not play a material part in the proportionality assessment.

87. Overall then, I conclude that the Appellant has not shown that there are very compelling circumstances in his case which outweigh the very significant public interest in deportation.

Notice of Decision

The Article 8 ECHR appeal is dismissed.

I P Jarvis

Deputy Judge of the Upper Tribunal
Immigration and Asylum Chamber

28 March 2024