Neutral Citation Number: [2021] EWCA Civ 619

Case No: C5/2019/2790

IN THE COURT OF APPEAL (CIVIL DIVISION)
ON APPEAL FROM THE UPPER TRIBUNAL
(IMMIGRATION AND ASYLUM CHAMBER)
Upper Tribunal Judge Plimmer
HU/04039/2019

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 29 April 2021

Before :

LORD JUSTICE PETER JACKSON
LORD JUSTICE DINGEMANS
and
LADY JUSTICE ANDREWS

- -

Between:

TD (Albania)	**Appellant**
and	
Secretary of State for the Home Department	**Respondent**

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- -

Ramby de Mello, **Tony Muman** and **Muhammad Ul-Haq (**instructed by **JM Wilson Solicitors)** for the **Appellant**
Émilie Pottle (instructed by **Government Legal Department**) for the **Respondent**

Hearing date : 22 April 2021

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Approved Judgment

Covid-19 Protocol: This judgment was handed down remotely by circulation to the parties' representatives by email, release to BAILII and publication on the Courts and Tribunals Judiciary website. The date and time for hand-down is deemed to be at 10:30am on Thursday, 29 April 2021

Lord Justice Peter Jackson:

Overview

1. This appeal arises from the Secretary of State's decision to refuse the Appellant's human rights claim following a decision to deport him to Albania as a persistent offender. The Appellant, having unsuccessfully appealed to the First-tier Tribunal ('FTT') and to the Upper Tribunal ('UT'), now appeals to this court.

2. The Appellant, who is now 34 years old, is a citizen of Albania. He arrived in the UK in 2002 as an unaccompanied minor and claimed asylum. His claim was refused, but eventually in 2011 he was granted indefinite leave to remain. In 2006, he met his British partner. They have three children, E, L and I, born in 2008, 2009 and 2012 respectively.

3. At the time of the proceedings before the FTT, the Appellant had a number of criminal convictions. In April 2012, he had been fined by the magistrates for driving whilst uninsured. In August 2012, he received a sentence of 23 weeks imprisonment in the Crown Court for attempted theft from the person. In May 2013, he received a sentence of eight months imprisonment from the Crown Court for going equipped for theft and theft from a meter. In July 2014, he received a sentence of 10 months imprisonment from the Crown Court for possession of articles for use in fraud. In February 2018, he was fined by the magistrates and disqualified from driving for driving under the influence of drugs. In June 2018, he received a sentence of 8 months imprisonment from the Crown Court for dangerous driving, driving while disqualified, driving without insurance, and failing to stop. The offence involved a police chase in which a stinger was deployed.

4. The Secretary of State considered whether to pursue deportation in 2013 and in 2014, but decided not to do so. However, in July 2018, while the Appellant was serving his fourth sentence of imprisonment, it was determined that he should be deported pursuant to s. 3(5)(a) Immigration Act 1971 on the basis that it would be conducive to the public good in view of the cumulative effect of his convictions. In August 2018, the Appellant made representations on human rights grounds and on 18 February 2019 his claim was refused. The Secretary of State did not accept that the effect of the Appellant's deportation on his partner or children would be 'unduly harsh', whether or not they accompanied him to Albania; nor were there 'very compelling circumstances' to outweigh the public interest in deportation.

The statutory framework

5. Whenever a Court or Tribunal is required to consider, in the context of the deportation of a foreign criminal, whether an interference with a person's right to respect of private and family life is justified under Article 8(2) of the European Convention on Human Rights, it must apply Part 5A of the Nationality Immigration and Asylum Act 2002 (as amended by the Immigration Act 2014), and have regard to the considerations listed in ss. 117B and 117C of that Act.

6. A "foreign criminal" is defined in s. 117D(2) as a person who is not a British citizen who has been convicted in the United Kingdom of an offence and has either been sentenced to a period of imprisonment of at least 12 months or been convicted of an offence that has caused serious harm or is a persistent offender.

7. Section 117C sets out additional considerations in cases involving foreign criminals:

> "117C (1) The deportation of foreign criminals is in the public interest.
>
> (2) The more serious the offence committed by a foreign criminal, the greater is the public interest in deportation of the criminal.
>
> (3) In the case of a foreign criminal ("C") who has not been sentenced to a period of imprisonment of four years of more, the public interest requires Cs deportation unless Exception 1 or Exception 2 applies.
>
> (4) 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 Cs integration into the country to which C is proposed to be deported.
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> (5) 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 effects of Cs deportation on the partner or child would be unduly harsh.
>
> (6) In the case of a foreign criminal who has been sentenced to a period of imprisonment of at least four years, the public interest requires deportation unless there are very compelling circumstances, over and above those described in Exceptions I and 2.

Paragraphs 398 and 399 of the Immigration Rules correspond to ss. 117C(6) and (5) respectively.

8. Section 55 of the Border, Citizenship and Immigration Act 2009 requires the Secretary of State to make arrangements to ensure that her functions in relation to immigration are discharged having regard to the need to safeguard and promote the welfare of children who are in the United Kingdom.

The decision of the First-tier Tribunal

9. The Appellant appealed to the FTT. He and his partner made statements and gave evidence. In a decision dated 18 June 2019, FTTJ Lodge dismissed the appeal. He found that the Appellant was a 'persistent offender' whose offending fell at the lower end of the scale. Indications were that the immigration proceedings had had a salutary

effect on him and he was in work and cooperating with his probation officer. He was in a genuine, subsisting relationship with his three British children, though he had been separated from them during his spells of imprisonment. He was in regular contact with his family in Albania, comprising his parents, two sisters and a brother, who were in work, but he had not returned to the country since arriving in the United Kingdom.

10. The judge found that it would be unduly harsh for the children to live in Albania, having regard to their ages, and because they had lived all of their lives in the United Kingdom and are British citizens, and because they and their mother do not speak Albanian and have no experience of the Albanian school system.

11. The judge expressed his decision under s. 117C(5) and its equivalent, Paragraph 399(a) of the Immigration Rules, in these terms:

> "27. The central issue is whether it would be unduly harsh for the children to remain in the UK even though the appellant is to be deported. The respondent makes the points that the appellant's British citizen partner is entitled to receive support in the form of benefits, the children have free education and healthcare in the UK, and that she has family members who could assist in the care of the children.
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> 28. With regard to the children, I have a letter in the appellant's bundle from [name] School. L is noted to be a reasonably well-behaved child but there are safeguarding issues. E raises more significant concerns. She has mentioned "killing herself". It is not clear how serious that suggestion was but it is also noted that she has indicated that she feels depressed.
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> 29. In evidence before me, the appellant's partner made a telling point. She said that the children would not be able to keep in touch with the father if he left the UK. She would not allow it over the telephone or Skype if he were deported. She would not allow it because it would involve them having to say goodbye at the end of the conversation. It would appear that when he spoke to them from prison (although they didn't know he was in prison), they became very upset when the conversation ended, such that she would not allow them to be put through that again. She added for good measure that if the appellant committed any further offences which meant he was liable to imprisonment, she would end the relationship at that point. She could not go through it again.
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> 30. Clearly the deportation of any father will have an impact on the children. They will be very upset. I have no psychiatric evidence or report from a social worker because the children are entirely unaware of these proceedings. It was not suggested that I should adjourn for any such evidence. Mr Muman indicated that having taken instructions from his client, his client was insistent that the matter should proceed.

> 31. I have to have regard to the pressing public interest in the deportation of foreign criminals. I must however balance that against the best interests of the children viewed through the lens of the Rules and the interference with family life.
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> 32. In considering the public interest, I have regard to the fact that the appellant is a persistent offender though I accept his offending falls at lower end of the scale. His longest prison sentence is 8 months. All indications are that these proceedings have had a salutary effect on him. He is in work and l have no evidence that he is not cooperating with his probation officer.
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> 33. Returning to the impact on the children, I am satisfied that the impact will be significant, particularly on the two eldest children. I am equally satisfied that family life in any real sense will not be able to continue through modern means of communication. The appellant is the breadwinner and the family will lose their breadwinner. The mother will be thrown back onto benefits. I cannot but find that it is in the best interests of the children that the appellant remains part of the family in the UK. That however is not the critical issue and neither can it be a trump card.
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> 34. I have given this matter anxious consideration, I am not satisfied that it will be unduly harsh for the children to remain in the UK if the appellant is deported. l have no reliable evidence that there will be a psychologically significant impact on the children if the appellant is deported. The letter from the school does not address that issue. It is too nebulous to draw any conclusions about the mental health of the children.
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> 35. The children will be very upset but the appellant has been separated from his children before during his spells of imprisonment. I have no evidence that that has unduly affected them or their progress at school. They will have the support of their mother and her wider family. They will remain in education and have access to health care and their mother will have an entitlement to benefits.
>
> 36. I cannot find that paragraph 339 (a) *(sc. 399 (a))* is met."

12. The judge then considered the position of the Appellant's partner and found that for the reasons given in relation to the children, it would not be unduly harsh for her to remain in the United Kingdom if he was deported.

13. The judge finally addressed the claim under s. 117C(6):

> "44. As the exceptions to deportation are not applicable I have considered whether there are very compelling circumstances which mean the appellant should not be deported. I cannot find that there are. Having regard to the very significant public

> interest in the deportation of foreign criminals the appellant needs to provide evidence of a very strong Article 8 claim over and above the circumstances described in the exceptions to deportation. He has not done that.
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> 45. The appeal is accordingly dismissed."

14. Another judge of the FTT granted permission to appeal on the basis that it was arguable that the judge had required independent evidence to support the evidence of the Appellant and his partner, and that that may have been an error of law.

The decision of the Upper Tribunal

15. The UT (UTJ Plimmer) dismissed the appeal in a decision dated 18 September 2019. She reviewed the statutory framework and referred to authority, including the decision of the Supreme Court in *KO (Nigeria) v Secretary of State for the Home Department (Equality and Human Rights Commission intervening)* [2018] UKSC 53; [2018] 1WLR 5273. She succinctly summarised the statutory regime:

> "15. Having properly accepted the concession that the appellant is a persistent offender and therefore a foreign criminal, the FTT was obliged to address each of the self-contained provisions within s. 117C. The FTT completed this task fully albeit with admirable brevity. The FIT considered in turn all the possible categories the appellant could potentially meet, by reference to s. 117C. The FTT addressed Exception 2 vis a vis the impact upon the children before turning to the impact upon the partner (s. 117C(5)). The FTT then turned to Exception 1 regarding the appellant's private life (s. 117C(4) before finally addressing whether there were any very compelling circumstances for the purposes of s. 117C(6)."

16. She then then went on to deal with the significance of the relative seriousness of the Appellant's offending, both in the context of s. 117C(5) and s. 117C(6):

> "16. It matters not that the appellant's offending fell at the lower end of the scale for the purposes of Exceptions 1 and 2 - see KO (supra). As a foreign criminal he could only succeed if he met the self-contained tests set out within s.117C. Mr Muman was unable to explain why the nature of the appellant's offending was relevant to the assessment of the Exceptions in s. 117C of the 2002 Act. Mr Muman made no reference to s. 117C(6). Although the seriousness of offending would be a relevant consideration when undertaking this more wide-ranging assessment, this was not relied upon. The reason for this is likely to be the absence of any evidence of very compelling circumstances over and above the Exceptions. When the FIT addressed this at [44], there is no reason to consider that it would not have taken into account all the evidence including its own findings at [32]."

17. On the question of whether the FTT had erred in its approach to the test of undue harshness, the judge said this:

> "17. It is clear from reading the FTT's decision as a whole that the judge was fully aware of the evidence provided by the appellant and his partner. Their evidence is summarised in considerable detail at [6] to [20]. The FTT accepted that impact on the children would be "significant" and they would be "very upset", but was entitled to find that there was no reliable evidence that there will be a "psychologically significant impact" upon them. When the decision is read as a whole, the following is tolerably clear:
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> - Although the FTT accepted that there would be a significant impact on the children, this did not reach the threshold of unduly harsh.
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> - Whilst the children's mother described some of the difficulties she and the children faced when the appellant was imprisoned, this was insufficient to meet the unduly harsh test.
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> - The FTT was not requiring expert evidence for the threshold to be met but did not regard the mother's own assessment of likely psychological damage to be reliable.
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> - The FTT considered the evidence from the children's headteacher in the form of a letter dated 20 May 2019 in which there is a summary of reports and concerns regarding the children from various sources. The FTT was entitled to regard this letter as nebulous. Although this described various issues of concern regarding the children, it also highlighted positive matters. In addition, the headteacher did not attribute any of the issues of concern to the appellant having been 'away' (when he was imprisoned). Indeed the reference to the eldest child indicating a desire to kill herself seems to have been a remark made in the aftermath of feeling left out by the other girls in her class and was not directly related to the appellant. Rather, she described being upset that her father had not walked her to school but had stayed in bed and that she did not see him very often.
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> 18. I do not accept that the FTT applied a test that was too high. The test is a demanding one. The parents provided evidence that the children would be very upset. However, most children would be very upset to lose their father to another country. As KO emphasises, one is looking for a degree of harshness going beyond what would necessarily be involved for any child faced with the deportation of a parent. Although the parents asserted that there may be significant psychological damage, the FTT was

> entitled to find that to be unreliable. The letter from the school outlined incidents and concerns but in no cogent manner linked these to the appellant's absence.
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> 19. There is no reason to believe that the FTT was unaware of the guidance in KO even though it was not specifically referred to. The FTT was well aware that family life between the appellant and his children would terminate but was entitled to find that the effect upon the children would not reach the high threshold required by the unduly harsh test."

The grounds of appeal

18. A decision on the Appellant's application for permission to appeal was postponed to await the decision of this court in *HA (Iraq), RA (Iraq) v Secretary of State for the Home Department* [2020] EWCA Civ 1176; [2021] 1 WLR 1327, which was handed down on 4 September 2020. Thereafter permission to appeal was granted by David Richards LJ on two grounds, contending that:

    (1) The UT fell into error by failing to hold that the FTT applied an incorrect test under s. 117C(5) in determining whether the effect of the Appellant's deportation on the children and his partner would be unduly harsh. On the correct approach in law, the facts in this case demonstrate that undue harshness will result from the Appellant's deportation.

    (2) The UT erred in its consideration of the FTT's approach under s. 117C(6). There is no requirement to demonstrate a very strong Article 8 claim over and above the circumstances described in the exceptions to deportation and it was wrong to describe the public interest in the Appellant's deportation as "very significant".

19. The Secretary of State has sought permission to appeal to the Supreme Court in *HA (Iraq)*. She applied for this appeal to be stayed pending the determination of that application. That application was refused by Lewis LJ on 8 March 2021.

Relevant case-law on undue harshness

20. In *KO (Nigeria)*, Lord Carnwath, with whom the other members of the Supreme Court agreed, explained the nature of the test of undue harshness:

> "23 On the other hand the expression "unduly harsh" seems clearly intended to introduce a higher hurdle than that of "reasonableness" under section 117B(6), taking account of the public interest in the deportation of foreign criminals. Further the word "unduly" implies an element of comparison. It assumes that there is a "due" level of "harshness", that is a level which may be acceptable or justifiable in the relevant context. "Unduly" implies something going beyond that level. The relevant context is that set by section 117C(1), that is the public interest in the deportation of foreign criminals. One is looking for a degree of harshness going beyond what would necessarily be involved for any child faced with the deportation of a parent.

> What it does not require in my view (and subject to the discussion of the cases in the next section) is a balancing of relative levels of severity of the parent's offence, other than is inherent in the distinction drawn by the section itself by reference to length of sentence…"

21. The appeals in *HA (Iraq)* arose from decisions of the Upper Tribunal giving guidance on the application of *KO (Nigeria)*. The decision of this court underlined that what is required in all cases is an informed evaluative assessment of whether the effect of deportation on a child or partner would be unduly harsh in the context of the strong public interest in the deportation of foreign criminals. The leading judgment of Underhill V-P contains these passages:

> "51 … The underlying question for tribunals is whether the harshness which the deportation will cause for the partner and/or child is of a sufficiently elevated degree to outweigh that public interest in the deportation of foreign criminals."
>
> "53 … It is inherent in the nature of an exercise of the kind required by section 117C(5) that Parliament intended that tribunals should in each case make an informed evaluative assessment of whether the effect of the deportation of the parent or partner on their child or partner would be "unduly harsh" in the context of the strong public interest in the deportation of foreign criminals; and further exposition of that phrase will never be of more than limited value."
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> "56 … if tribunals treat the essential question as being "is this level of harshness out of the ordinary?" they may be tempted to find that Exception 2 does not apply simply on the basis that the situation fits into some commonly-encountered pattern. That would be dangerous. How a child will be affected by a parent's deportation will depend on an almost infinitely variable range of circumstances and it is not possible to identify a baseline of "ordinariness". Simply by way of example, the degree of harshness of the impact may be affected by the child's age; by whether the parent lives with them (NB that a divorced or separated father may still have a genuine and subsisting relationship with a child who lives with the mother); by the degree of the child's emotional dependence on the parent; by the financial consequences of his deportation; by the availability of emotional and financial support from a remaining parent and other family members; by the practicability of maintaining a relationship with the deported parent; and of course by all the individual characteristics of the child.
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> 57 … Tribunals considering the parent case under Exception 2 should not err in law if in each case they carefully evaluate the likely effect of the parent's deportation on the particular child and then decide whether that effect is not merely harsh but

> unduly harsh applying *KO (Nigeria)* in accordance with the guidance at paras 50—53 above."

22. The decision in *HA (Iraq)* does no more than explain that what is required is a case-specific approach in which the decision-maker addresses the reality of the child's situation and fairly balances the justification for deportation and its consequences. It warns of the danger of substituting for the statutory test a generalised comparison between the child's situation and a baseline of notional ordinariness. It affirms that this is not what *KO (Nigeria)*, properly understood, requires.

Relevant case-law on very compelling circumstances

23. In *NA (Pakistan) v Secretary of State for the Home Department* [2016] EWCA Civ 662; [2017] 1 WLR 207 it was established that when determining for the purposes of s. 117C(6) whether there were very compelling circumstances over and above those described in s. 117C(5), it would be relevant that the offender's sentence was only slightly above the minimum level required for him to qualify as a foreign criminal, although that fact on its own would not constitute very compelling circumstances. Moreover, positive evidence of rehabilitation, and thus of a reduced risk of re-offending, could in principle be included in the overall proportionality exercise. The correct approach was described by Jackson LJ in this way:

> "32 … The decision-maker, be it the Secretary of State or a tribunal, must look at all the matters relied upon collectively, in order to determine whether they are sufficiently compelling to outweigh the high public interest in deportation.
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> 33 Although there is no "exceptionality" requirement, it inexorably follows from the statutory scheme that the cases in which circumstances are sufficiently compelling to outweigh the high public interest in deportation will be rare. The commonplace incidents of family life, such as ageing parents in poor health or the natural love between parents and children, will not be sufficient.
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> 34 The best interests of children certainly carry great weight, as identified by Lord Kerr of Tonaghmore JSC in *H (H) v Deputy Prosecutor of the Italian Republic, Genoa (Official Solicitor intervening)* [2013] 1 AC 338, para 145. Nevertheless, it is a consequence of criminal conduct that offenders may be separated from their children for many years, contrary to the best interests of those children. The desirability of children being with both parents is a commonplace of family life. That is not usually a sufficiently compelling circumstance to outweigh the high public interest in deporting foreign criminals."

24. In the recent decision of the European Court of Human Rights in *Unuane v The United Kingdom* (Application no. 80343/17), the applicant faced deportation to Nigeria after being convicted of falsification of multiple immigration documents. He was sentenced to 5½ years imprisonment, while his partner was sentenced to 18 months imprisonment. They had three children, one of whom had a rare heart condition for which he had

already undergone three serious operations; he was awaiting a further operation that could not be carried out in Nigeria. The Secretary of State made deportation orders in respect of the whole family. The FTT dismissed their appeals. The UT allowed the appeals of the partner and children on the basis of undue harshness, but rejected the applicant's claim of very compelling circumstances (this was the only avenue open to him, due to the length of his sentence) and dismissed his appeal.

25. The applicant's case in the ECtHR was that courts and tribunals were precluded by domestic immigration rules from carrying out an assessment of deportation in compliance with the case-law of the Court, notably *Boultif v Switzerland*, 54273/00; [2001] ECHR 497 and *Üner v the Netherlands*, 46410/99; [2002] ECHR 27. That argument was rejected in *Unuane* at [83]. However, on the facts of the individual case, it was found that the UT had not conducted a separate balancing exercise under Article 8, and the Court made its own assessment, which led it to conclude that the seriousness of the applicant's offences was not of a nature or degree capable of outweighing the best interests of the children so as to justify his expulsion.

The arguments on this appeal

26. In relation to the first ground of appeal Mr Ramby de Mello and Mr Tony Muman submit that there was only one answer open to the FTT on the evidence before it. The threshold of undue harshness for the children was crossed by the single finding that deportation would effectively terminate family life. Moreover, the fact that a family will be thrown back onto welfare benefits as a result of deportation should ordinarily be compelling enough to cross the threshold in a case concerning an offender of this kind. As it is, the FTT set the test too high. It did not sufficiently explore the evidence it had. Having accepted that the effect of deportation on the children will be significant, it was wrong to look for further "reliable evidence". Overall, the decision was so lacking as to show that the FTT applied the wrong test, namely the elevated test in *KO (Nigeria)*, as Mr de Mello describes it. In effect, the tribunals fell into the error identified in *HA (Iraq)*.

27. As to Ground 2, it is argued that in assessing whether there were very compelling circumstances the FTT failed to take account of all relevant factors, including the fact that the Appellant's offending was at the lower end of the scale, and the UT overlooked this. The fact that this factor was picked up at an earlier point in the decision does not allow one to conclude that it might not have made a difference if it had been considered at the appropriate juncture. Nor did the tribunals give significant weight to the best interests of the children. In effect, they fell into the error identified in *Unuane*.

28. Mr de Mello also briefly suggested that the domestic framework did not truly reflect the Strasbourg caselaw, but he did not really press this submission in the light of the conclusion in *Unuane*.

29. Responding for the Secretary of State, Ms Emilie Pottle maintained that *HA(Iraq)* was wrongly decided, but in view of our indication that the argument was not open to her client on this appeal, she made no oral submissions about it. As to Ground 1, she argues that the approach taken by the tribunals was in fact compliant with the approach described in that case. By reference to the FTT decision it can be seen that account was taken of all the matters discussed by Underhill LJ at [56]. The judge faced up squarely to the consequences of deportation. It is not contended that any relevant factors were

omitted: the appeal merely amounts to a disagreement with the weight given to those factors. The Appellant's arguments would mean that the threshold of undue harshness would be crossed in almost all circumstances.

30. As to Ground 2, Ms Pottle disputes that the FTT did not take account of the nature of the offending when carrying out the proportionality assessment, albeit that the judge referred to it in the Appellant's favour under s. 117C(5), where (as the UT noted) it was not material, rather than under s. 117C(6), where it might be.

Further evidence

31. When granting permission to appeal, David Richards LJ permitted the Appellant to file further evidence in the form of a second statement from his partner made on the day before the UT hearing. The statement, which was not admitted by the UT, concerns the fact that the parents had told the children of the outcome of the FTT appeal, which had caused them great distress. It also refers to the pressures on the mental health and well-being of both parents.

32. Following the admission of this evidence, the Secretary of State issued an application to file further evidence of her own, in the form of a Police National Computer record showing that the Appellant's offending behaviour has continued since the hearing before the FTT (including between the two tribunal hearings), and that he has received two further sentences of imprisonment, one of nine months and one of eight weeks suspended. It is said that this should be admitted to counterbalance the evidence of the partner that the Appellant had learned his lesson and would not reoffend.

33. I do not consider that the further evidence filed by either party has any bearing on the outcome of the appeal. The statement of the partner does no more than confirm the picture of the family's circumstances that was available to the FTT. The evidence of further offending might be relevant to the question of disposal if the appeal were to succeed, but it does not assist us to decide the questions of law to which I now turn.

Conclusion

34. I do not consider that the tribunals made any material errors of law. On the contrary, the FTT carried out a careful and balanced evaluation of all the important factors and reached a rational conclusion. It rightly gave significant weight to the interests of the children but it was entitled to find that the public interest in the deportation of the Appellant should predominate and that the effect of the deportation on the children would not be unduly harsh. This was a decision arrived at after a specific and clear-eyed assessment of the evidence and not by a process of generalisation. As such it accords with the approach that has been laid down in *KO (Nigeria)* and *HA (Iraq)* and described in *Unuane*.

35. I reject the submission that the FTT was bound to reach a different conclusion about undue harshness because of the loss of family life and the absence of a breadwinner. These are hard consequences for this family but the tribunals did not err in finding that they were justified by the public interest in the deportation of foreign criminals, which it rightly described as very significant.

36. I also do not accept that the tribunals made any material error of law when considering whether very compelling circumstances existed. It is true that the FTT brought the nature of the offending into account prematurely, but the decision, read as a whole, makes it quite clear that the judge had it in mind throughout and his conclusion, although briefly expressed, is not a surprising one. In this, as in other respects, the UT was right to find that there had been no error of law.

37. Finally, the FTT and UT were entitled to consider that the deportation of the Appellant was compatible with his rights, including those under article 8 ECHR, and was proportionate.

38. I would dismiss the appeal.

Lord Justice Dingemans

39. I agree.

Lady Justice Andrews

40. I also agree.