Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: DA/00159/2014

THE IMMIGRATION ACTS

Heard at Field House	**Decision and Reasons Promulgated**
On 11th February 2015	**On 18th June 2015**

Before

MRS JUSTICE THIRLWALL DBE
DR HUGO STOREY, JUDGE OF THE UPPER TRIBUNAL

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

AFZAAL HUSSAIN

Respondent

Representation:
For the Appellant: Mr Tufan Home Office Presenting Officer
For the Respondent: Mr A Slatter

DECISION AND REASONS

1. On 5th July 2014 a panel of the First Tier Tribunal (FTT) allowed an appeal by the respondent against a decision to deport him made by the Secretary of State pursuant to section 32 (5) of the UK Borders Act 2003 on 16th January 2014. The Secretary of State obtained permission to appeal from the Upper Tribunal. On 13th November 2014 the Upper Tribunal set aside the FTT's decision because there had been a material error of law. The Upper Tribunal directed that the case should remain in

the Upper Tribunal for a further hearing for the decision to be remade. That hearing took place before us on 11th February 2015.

Background

2. The respondent is a national of Pakistan. He was born on 1st February 1959. According to the FTT decision he married Yasmeen Hussain, a British Citizen, in Pakistan on 5th May 1987 in an Islamic ceremony. On 10th August 1992 they were married in a civil ceremony in the United Kingdom. Mrs Hussain had 5 children in the UK from a previous marriage. The respondent and Mrs Hussain had 2 more children, a son born 19th January 1988 and a daughter born on 6th September 1990. On 19th September 1990 the respondent claimed asylum which was refused on 15th July 1992 with no right of appeal. On 5th February 1993 the respondent was granted 12 months' leave to remain until February 1994. He was granted indefinite leave to remain on 1st July 1994. He and his wife were divorced in 1995/1996, the precise date is not apparent from the FTT determination.

Offences

3. The trigger for the Deportation Order was the respondent's conviction on 5th September 2011 of conspiracy to obtain a pecuniary advantage by deception for which he was sentenced on 7th October 2011 to a term of 5 years' imprisonment. The date of the offence was 22nd August 2006. This was the respondent's second conviction for an offence of fraud. In 2002 he had been convicted after a trial of conspiracy to defraud and was sentenced to 5 years' imprisonment. There are links between the two offences. We take the facts from the OASys Assessment prepared on 11th October 2013 and from the sentencing remarks of the judge on 7th October 2011. We note there is an error as to the year of the first conviction. In the judge's sentencing remarks he refers to 2007 but all the evidence points to it being in 2002 (we note, in particular, the evidence of the respondent's children about their ages at the time their parents were sent to prison).

4. In 2001 the respondent and other members of his family befriended a woman who was suffering from Alzheimer's disease. They persuaded her to permit them to manage her affairs. Over a period which is not clear from the record, they managed her affairs for their own benefit. It appears that they obtained very large sums of money, possibly as much as £500,000 in total by selling her house and withdrawing money from various bank accounts. This was a serious offence, involving the manipulation of a very vulnerable individual who had placed her trust in the respondent. After a trial in 2002 in which the respondent's wife and one of his sons were co-defendants all three were convicted. The respondent's wife's conviction was later quashed on appeal. The respondent was sentenced to 5 years' imprisonment. Confiscation proceedings took place and an order was made against the respondent in the sum of £150,000. The respondent did not pay and he served a further 2 years' imprisonment in default of payment of the confiscation order. It follows that he must have served at least 4½ years' imprisonment as a result of the first conviction and the confiscation order.

5. What happened next can be derived from the sentencing remarks of the judge who sentenced him in October 2011. At the time he was arrested for the fraud set out above Mr Hussain owned 60 Lady Margaret Road, the family home. Before the confiscation order was made, he granted power of attorney to his daughter, who then sold the house to her partner. The purpose of this arrangement was to put the family home beyond the reach of confiscation proceedings. In the event, the mortgage payments fell into arrears and the property was repossessed by the loan company, 'Mortgage Business'; that company put the property on the market. On 18th April 2007 it was sold to Fahzaha Jaffree for the sum of £263,000. Ms Jaffree was a friend of the respondent's son. She agreed, having been asked by the respondent's son to buy the house, relying on false representations. The respondent was behind this scheme to retain the family home. Ms Jaffree claimed to be the owner of a consultancy with an annual income of some £68,795. She applied for and obtained a loan of £256,500, repayable over 25 years. The property was duly bought. In January 2009 the respondent was arrested along with his son for conspiracy to obtain a money transfer by deception. The sentencing judge described the offence thus; "this was a deliberate and a carefully executed conspiracy to obtain the sum of £250,025 by deception. The conspiracy was driven by the dishonest desire to hold onto property to which the family were not entitled. It was fraudulent from the outset. It was a single but carefully planned transaction. One payment was made, but the mortgage of course was for a period of some years". When the house was sold, some of the proceeds went towards the confiscation order. We assume that is the sum of £80,000 to which the UT referred. The fact that this offence took place after the respondent had deliberately put his house beyond the reach of any confiscation order aggravated the seriousness of the offence, as did the fact that the respondent involved his son. On this occasion the respondent pleaded guilty. It is right to record that in the end the bank sustained no loss.

6. In his letter to the Home Office of 2nd December 2011 the respondent sets out in detail his working life in the UK. He said, "I came to the UK in 1990 and never claimed any form of benefits up until 2002. Instead, I have made positive contributions to the economic wellbeing of this country, by starting my own business…I ensured the company was run in an ethical manner and I established positive working relationships with members of the British car auction and the general public". He omits any reference to the first conviction or the conduct which led up to it. When dealing with the conviction which triggered the order for his deportation he said this, "although I have been convicted for a financial crime **relating to my own assets** (our emphasis), I feel this may have been the consequence of the guilt I experienced whilst financially being unable to support my family." He then goes on to say that he is sorry for his actions and that he will not commit any crime again. The OASys Assessment, under the heading Offence Analysis records that Mr Hussain minimises his role in the second offence. He was, in fact, the prime mover and involved two much younger people to assist him.

7. We see from paragraph 7 of the findings of the FTT, the respondent gave evidence that in 2002 he "went to prison for mortgage fraud". This was a significant understatement. At paragraph 8 the following appears "in 2011 he was charged with

mortgage fraud over a mortgage in the name of his stepson's friend. It related to his old home which had been repossessed and his stepson had tried to repurchase it. Although he did not commit this offence, he pleaded guilty because he wanted his wife and children to be left alone. He was sentenced to 5 years' imprisonment along with his stepson. The property was then sold on behalf of the CPS and the funds of £80,000 were paid towards his outstanding confiscation order and to the mortgage lender who made no loss as a result." The last sentence was truthful. The rest of it was not. It wholly undermines his expressions of remorse and reveals him to be untruthful when giving evidence. We note that Yasser Hussain, one of the respondent's sons, said that the second conviction was linked to the first conviction in relation to the mortgage. That is a phrase which was repeated in the FTT's findings. What was overlooked, however, (not least because Mr Hussain had lied about it) was the fact that having committed one serious offence the respondent i) sought to put the house beyond the reach of the confiscation order and ii) involved his son and another young woman in obtaining a mortgage so that the house would be retained. We note that the FTT came to the conclusion "as regards the offences that they were uncharacteristic for the respondent". Our analysis demonstrates the contrary. The offences reveal a persistent disregard for the law and a sustained attempt to avoid its consequences. As a result the respondent received two five year sentences and an additional sentence for non payment of the confiscation order. The FTT also found that the respondent was "truly remorseful". Whilst we have no difficulty in accepting that is what he said at the hearing, the evidence from his conduct (and from the OAsys assessment) suggests otherwise. In the opinion of the probation officer and in the opinion of the FTT the respondent is at "low risk" of serious harm or reoffending. We accept that. We do not doubt that he is sorry for his predicament but that is different from remorse.

8. In an undated decision letter written at some point after 16th December 2013, the Secretary of State wrote;

> "Under section 32(5) of the UK Borders Act 2007, the Secretary of State must make a deportation order in respect of a foreign national who has been convicted in the United Kingdom (UK) of an offence, who has been sentenced to a period of imprisonment of at least 12 months, unless the foreign national falls within one of the exceptions set out in section 33 of that Act."…
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> "Having reviewed [the documents and representations provided by the respondent] it has been concluded that you do not fall within any of the exceptions for automatic deportation in section 33 of the UK Borders Act 2007 for the reasons set out below".

9. There then follows the background, reference to the sentencing remarks of the judge, reference to the submissions received on 23rd November 2011 and December 2011 in support of the respondent's Article 8 claims and then consideration of the respondent's position under ECHR. The letter deals with Articles 3 and 8. There is no need to repeat its contents here. The FTT overturned the decision and decided that there were "sufficient exceptional circumstances…to outweigh the public interest in deporting the appellant". For that reason the tribunal did not consider Article 3 or Article 8 outside the Immigration Rules.

10. The Upper Tribunal identified an error of law in the approach taken by the FTT in balancing the respondent's circumstances against the public interest in deportation. It is for us to consider the matter now. The Upper Tribunal preserved those findings of fact that had not expressly been challenged.

Preliminary point

11. At the beginning of the hearing before us, Mr Slatter raised a procedural issue. In its decision of 13th December 2014 the Upper Tribunal, at paragraph 21, said "there has been no cross appeal as regards the decision not to address Article 3. We have not therefore given any active consideration to that aspect." Mr Slatter wished to rely on Article 3, as he had before the FTT. He had not sought to cross appeal because his client had been successful before the FTT under the rules. He referred us to AN (only loser can appeal) Afghanistan [2005] UKIAT 00097 a decision of the Immigration Appeal Tribunal, CMG Ockleton, Deputy President, presiding, which concluded that a person who does not challenge the decision may not appeal on the basis that the decision was correct but should have been reached by another route. That is plainly correct. Where the losing party appeals the respondent may lodge a notice under Rule 24 of the Upper Tribunal Procedure Rules. It is in the Rule 24 notice that we would expect to find reference in this case to the Article 3 argument. Rule 24(3)(f) requires that the notice state "the grounds upon which the respondent relies, including … any grounds on which the respondent was unsuccessful in the proceedings which are the subject of the appeal, but intends to rely on in the appeal". The Rule 24 response filed on behalf of the respondent before the Upper Tribunal in November 2014 does not explicitly refer to Article 3. Mr Slatter sought to rely on paragraph 7 which reads "in light of the panel's unchallenged finding that the respondent is at 'real risk of suicide because of his mental state if deported to Pakistan where he will be without any family support of any kind' (see paragraph 48 Determination), any error on a point of law in relation to the weight attributed by the panel to relevant factors, was plainly not material to the outcome of the appeal." Mr Slatter submits that implicit in that paragraph is the respondent's reliance on Article 3. If that were the case it would have been far better to say so. As a minimum the Upper Tribunal would then have understood that this was the respondent's position. Mr Slatter then referred us to the skeleton which had formed the basis of his case before the FTT. We acknowledge that Article 3 was at the forefront of the case before the FTT. Mr Tufan accepted that the case had been conducted on that basis and did not seek to argue that he was taken by surprise by the reliance on Article 3. In those circumstances we permitted the respondent to argue Article 3.

The law

The Immigration Rules

12. **Paragraph 396**: *where a person is liable to deportation the presumption shall be that the public interest requires deportation. It is in the public interest to deport where the Secretary of State must make a deportation order in accordance with section 32 of the UK Borders Act 2007.*

This is such a case.

Paragraph 397: *a deportation order will not be made if the person's removal pursuant to the order would be contrary to the UK's obligation under the Refugee Convention or the Human Rights Convention. Where deportation would not be contrary to these obligations, it will only be in exceptional circumstances that the public interest in deportation is outweighed.*

Article 3

13. As is well known, Article 3 provides that "no-one shall be subjected to torture or to inhuman or degrading treatment or punishment". Mr Slatter's submission was a simple one. The respondent is at real risk of suicide if he is returned to Pakistan. To remove him to Pakistan therefore would be a breach of Article 3. He relies on the finding of fact of the FTT at paragraph 48 "we have reached the conclusion that the appellant is at real risk of suicide because of his mental state if he is deported to Pakistan where he will be without any family support of any kind". Mr Tufan did not seek to challenge that particular finding but drew our attention to the evidence upon which the Tribunal relied in coming to its conclusion namely a report from Ms Susan Pagella, a psychotherapist who has an MA in education and a diploma in psychiatric studies, amongst other qualifications. She had interviewed the appellant on 6th June 2014 for approximately 2 hours. She has experience of working with asylum seekers and victims of torture in her role as therapist. She is not a psychiatrist. She is not medically qualified. She is not a psychologist. She describes herself as having a clinical duty of care. Quite what that means is not clear. In her opinion as at June 2014 she considered it "highly probable that in the case of his proposed deportation being carried out, that he would put his plan of suicide into action".

14. The respondent has had depression for some years. It appears to have begun in 2002 i.e. at about the time the first offence came to light. It was present when he committed the offence which triggered the order for deportation. The judge acknowledged it in his sentencing remarks. We have reviewed all the medical records provided. At an assessment in October 2011 he said that he had seen a psychiatrist 4 months before (presumably for the purposes of a report for court). There is one reference in the records to his having seen a psychiatrist 9 years ago for depression. That would coincide with the evidence that he began to suffer from depression at the time of his first conviction in 2002. In evidence before the FTT there was reference to his having seen a psychiatrist. In the last 4 years there has been no referral to a psychiatrist. He takes anti depressants. The report of Ms Pagella describes his appearance and we have seen him. He looks older than his years. He told her that he believes he cannot survive psychologically without his children. He also asserts he cannot survive without his medication. We observe that, whether he lives in Pakistan or the UK there is no reason for him not to have his anti depressants. As to separation from his children the reality is that he was in prison for many of their formative years. We accept that the effect upon them as young children of his first period of incarceration must have been detrimental. It is clear from their evidence to the FTT that they will be very saddened were he to move to

Pakistan. However, they will continue in the UK to have the support of their mother who has always been their primary carer.

15. Ms Pagella opined that the respondent's general physical and mental health appeared poor. This is not borne out by the medical records which reveal no more than a range of physical conditions often found in people of his age. He apparently described to her his dilemma that if he were to kill himself his children would be very stressed. However, his final word on the topic seems to have been that he would end his life straight away if he were deported because there would be no point and no hope and that "this is my last decision". Ms Pagella concluded that the respondent was currently in a highly disturbed mental state. She considered that "if he were to be removed from his family to Pakistan that he would find this unbearable and proceed to carry out his plans to end his life".

16. We were referred to the Pakistan Country of Origin Information (COI) Report published by the Home Office on 9 August 2013. We note the shortage of psychiatrists in Pakistan and the high numbers of people with depression. The shortage of psychiatrists is of very marginal relevance to the respondent. Notwithstanding his expressed intention to take his own life if deported it is not suggested by anyone that he needs to see a psychiatrist.

17. Mr Slatter referred us to the decision in GS [India] and others against the Secretary of State for the Home Department 2015 EWCA (Civ) 14. This case does not assist him. The Court of Appeal was concerned with 6 appeals against decisions to remove them from the UK. Most of the appellants were at risk of a very early death if returned to their home states. Five of the six appellants were suffering from terminal renal failure or end stage kidney disease. The sixth was at an advanced stage of HIV infection. All six asserted that their removal from the UK would breach their rights under Article 3 of the ECHR. None succeeded.

18. After a comprehensive review of the domestic and Strasbourg cases Laws LJ considered the decision of the European Court of Human Rights in Bensaid v the UK [2001] 33 EHRR 205, a case where the applicant to the Strasbourg court had serious mental health problems, including schizophrenia. He sought to prevent removal to Algeria on the grounds that it would breach his Article 3 rights. At paragraph 37 of Bensaid the Strasbourg court said:

> "The difficulties in obtaining medication and the stress inherent in returning to that part of Algeria, where there is violence and active terrorism, would, according to the applicant, seriously endanger his health. Deterioration in his already existing mental illness could involve relapse into hallucinations and psychotic delusions involving self-harm and harm to others, as well as restrictions in social functioning (such as withdrawal and lack of motivation). The Court considers that the suffering associated with such a relapse could, in principle, fall within the scope of Article 3".

19. As Laws LJ records at paragraph 40 of **GS,** the Strasbourg Court "accepts the seriousness of the applicant's medical condition. Having regard, however, to the higher threshold set by Article 3, particularly where the case does not concern the

direct responsibility of the contracting state for the infliction of harm, the court does not find that there is a sufficiently real risk that the applicant's removal in these circumstances would be contrary to the standards of Article 3. The case does not disclose the exceptional circumstances of D v United Kingdom where the applicant was in the final stages of a terminal illness, Aids, and had no prospect of medical care or family support on expulsion to St Kitts".

20. At paragraph 41 Laws LJ sets out the way the Strasbourg court dealt with D v the United Kingdom 1997 24 EHRR 423. "it is true that the principle [sc: the absolute nature of the Article 3 right applicable "irrespective of the reprehensible nature of the conduct of the person in question" –[paragraph 47] has so far been applied by the Court in contexts in which the risk to the individual of being subject to any of the proscribed forms of treatment emanates from intentionally inflicted acts of the public authority in the receiving country or from those of non-state bodies in that country when the authorities there are unable to afford the appropriate protection…".

21. We derive no support for the respondent's argument from GS. We remind ourselves of the starting point, contained in the decision of the House of Lords in Ullah v Secretary of State for the Home Department [2004] UKHL 26: Lord Bingham set out the relevant test in an Article 3 foreign case: are there strong grounds for believing that the person, if returned, faces a real risk of torture, inhuman or degrading treatment or punishment. As Dyson LJ said in J v Secretary of State for the Home Department [2005] EWCA Civ 629 a real risk "imposes a more stringent test than merely that the risk must be more than "not fanciful." Having reviewed the Strasbourg cases in which the applicants relied on the risk of suicide (including Bensaid) the court set out six principles that amplified the test of "real risk" in a suicide case:

> "First the test requires an assessment to be made of the severity of the treatment which it is said that the applicant would suffer if removed. This must attain a minimum level of severity. The court has said on a number of occasions that the assessment of its severity depends on all the circumstances of the case. But the ill-treatment must "necessarily be serious" such that it is "an affront to fundamental humanitarian principles to remove an individual to a country where he is at risk of serious ill-treatment";…
>
> Secondly, a causal link must be shown to exist between the act or threatened act of removal or expulsion and the inhuman treatment relied on as violating the applicant's article 3 rights. Thus in Soering at para [91], the court said:
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> > "In so far as any liability under the Convention is or may be incurred, it is liability incurred by the extraditing Contracting State by reason of its having taken action which has as a direct consequence the exposure of an individual to proscribed ill-treatment." (emphasis added).
>
> See also para [108] of Vilvarajah where the court said that the examination of the article 3 issue "must focus on the foreseeable consequences of the removal of the applicants to Sri Lanka…"

> Thirdly, in the context of a foreign case, the article 3 threshold is particularly high simply because it is a foreign case. And it is even higher where the alleged inhuman treatment is not the direct or indirect responsibility of the public authorities of the receiving state, but results from some naturally occurring illness, whether physical or mental. This is made clear in para [49] of D and para [40] of Bensaid.
>
> Fourthly, an article 3 claim can in principle succeed in a suicide case (para [37] of Bensaid).
>
> Fifthly, in deciding whether there is a real risk of a breach of article 3 in a suicide case, a question of importance is whether the applicant's fear of ill-treatment in the receiving state upon which the risk of suicide is said to be based is objectively well-founded. If the fear is not well-founded, that will tend to weigh against there being a real risk that the removal will be in breach of article 3.
>
> Sixthly, a further question of considerable relevance is whether the removing and/or the receiving state has effective mechanisms to reduce the risk of suicide. If there are effective mechanisms, that too will weigh heavily against an applicant's claim that removal will violate his or her article 3 rights".

22. At its highest the respondent's case is that because he suffers from depression and has said he will take his own life if removed to Pakistan the removal carries with it a real risk of a breach of Article 3. The factual situation is very different from that of the applicant in Bensaid (whose article 3 claim failed). There was in that case a sustained history of serious mental disorder. Here the illness is treated satisfactorily with anti depressants. The risk of suicide arises not because of a deterioration in the illness (which has not occurred and there is no evidence that it will) but because the respondent does not want to live in Pakistan. There is no allegation of any ill treatment in Pakistan. If the respondent's condition were to deteriorate while he was in Pakistan he would have access to medical treatment. Whilst we accept that an article 3 claim can in principle succeed in a suicide case we are quite sure that it cannot succeed here. The evidence does not begin to satisfy the Ullah test as amplified in J. We should add that we do not consider that the evidence, viewed as a whole, demonstrates that the respondent will in fact take his own life. He has, as the FTT found, a family whom he loves and who love him. He acknowledges that they would be very stressed were he to take his own life. We dismiss the Article 3 claim.

23. We return to the Immigration Rules.

24. At the time of the hearing before the FTT the rules (described then as new) had come into force in July 2012. Amended rules came into force on 28th July 2014. We set out the relevant parts of both sets of rules below.

The 2012 Rules

Deportation and Article 8

25. **Paragraph 398:**

> 398. Where a person claims that their deportation would be contrary to the UK's obligations under Article 8 of the Human Rights Convention, and

(a) the deportation of the person from the UK is conducive to the public good because they have been convicted of an offence for which they have been sentenced to a period of imprisonment of at least 4 years;

(b) …

(c) the deportation of the person from the UK is conducive to the public good because, in the view of the Secretary of State, their offending has caused serious harm or they are a persistent offender who shows a particular disregard for the law,

the Secretary of State in assessing that claim will consider whether paragraph 399 or 399A applies and, if it does not, it will only be in exceptional circumstances that the public interest in deportation will be outweighed by other factors.

399. This paragraph applies where paragraph 398 (b) or (c) applies if –

(a) ….

(b) …

399A. This paragraph applies where paragraph 398(b) or (c) applies if –(a) the person has lived continuously in the UK for at least 20 years immediately preceding the date of the immigration decision (discounting any period of imprisonment) and he has no ties (including social, cultural or family) with the country to which he would have to go if required to leave the UK; or (b)….

399B. …

The July 2014 Rules

Paragraph A398: These rules apply where:

(a) a foreign criminal liable to deportation claims that his deportation would be contrary to the United Kingdom's obligations under Article 8 of the Human Rights Convention;

Paragraph 398: where a person claims that their deportation would be contrary to the UK's obligations under Article 8 of the Human Rights Convention and

(a) the deportation of the person from the UK is conducive to the public good and in the public interest because they have been convicted of an offence on which they have been sentenced to a period of imprisonment of at least 4 years;

…

the Secretary of State in assessing that claim will consider whether paragraph 399 or 399a applies and, if it does not, the public interest in deportation will only be outweighed by other factors where there are very compelling circumstances over and above those described in paragraphs 399 and 399A.

26. Paragraphs 399 and 399A apply where paragraph 398 (b) or (c) apply. That is not the case here. The factors included there are, in brief, family life enjoyed with children under 18 and family life with a partner who is a British Citizen.

27. Thus the only basis upon which the public interest in deportation may be outweighed in a case where the sentence is at least 4 years is if there are very compelling circumstances over and above the existence of family life with children under 18 and family life with a partner. Under the rules in force at the time of the hearing before the FTT it was necessary to show "exceptional circumstances". The other changes are not material to this case.

28. In the event the respondent does not have children under 18 nor does he have a partner. He and his wife are divorced although they are on good terms. The family life relied upon in this case is with his grown up children and stepchildren and with his former wife. At paragraph 44 the FTT found "we are satisfied that the appellant continues to participate in family life with his children and his ex-wife in many significant ways". Between 2006 and 2011 when, it is said, the respondent was living alone his two children visited him frequently, often staying overnight. The FTT describe the two young people as their father's "carers". We do not think they can be using the term in its technical sense (a different (step) son is his mother's official "carer". She has a number of physical difficulties). During the five years the respondent was said to be living on his own he was aged between 46 and 51. He did his own cooking and is said to be a very good cook. His son said he needed help with administration and cleaning. We note that when in prison thereafter he is recorded in the medical notes as "going to the gym" and on another occasion he had injured himself "playing football". We accept the FTT's findings that the children "are emotionally dependent on their father to an extent that we consider goes beyond the normal emotional ties of young adult children and probably flows from the traumatic experiences of this family over the past years" – those experiences were all caused by the respondent. Since 2011 the children have spent no time with him. He does not wish them to visit him in detention. They had little contact with him when he served four and a half years in prison following conviction in 2002. We do not doubt that they are very sad to be separated from their father and that he would be very sad to be separated from them. Given their love for their father, and the fact that they are in employment we think it unlikely that were he to be removed to Pakistan they would not maintain contact with him by telephone or seek to visit him from time to time.

29. We include, when considering whether there are compelling circumstances in this case, the evidence about the respondent's mental health. We do not rehearse the detail again. He has depression. We have already said that we think that if he continued to feel depressed he would be able to access medical help there. He has said he will end his life if deported, notwithstanding the stress this will cause his children. As we have said above, we do not consider that it is objectively likely that he will commit suicide. We consider he will wish to continue his family life via telephone contact with his family and receiving visits from them from time to time.

30. The appellant came to this country in 1990. He has had indefinite leave to remain since 1994. He does not come within the description of a "settled migrant who has lawfully spent all or the major part of his or her childhood in the country". Within 7 years of being given ILR he began committing the offences described above. We do

not repeat the detail. Whilst it is the second conviction that triggers the requirement for deportation we are bound to take into account the whole of the offending history. Between 2002 and the present the respondent has been at liberty for between 4 and 5 years.

31. The respondent lived in Pakistan until his mid thirties. He still speaks his own language comfortably (he used interpreters before the FTT and before us) and whilst he asserted that he had no relatives in Pakistan that (if true) is not a bar to his ability to live and work there. He is in his mid 50s. He has run his own business in the past. He is a resourceful person.

32. In our judgment, taking the evidence as to the quality of the respondent's family life at its highest it falls a very long way short of constituting the very compelling circumstances required by the current rules (or the exceptional circumstances required under the 2012 rules) to outweigh the public interest in deportation in this case.

Article 8

33. In considering and rejecting the respondent's claim under the rules we have scrutinised, as required, every aspect of his Article 8 claim. The proportionality exercise arises out of the requirement for compelling circumstances which do not pertain here. We cannot see that in those circumstances there remains open to him a free standing claim under Article 8. That is the position envisaged by paragraph 44 of the decision of the Court of Appeal in MF (Nigeria) v Secretary of State for the Home Department [2013] Civ 1192. Were we to consider such a claim we would make the same findings and come to the same conclusions for reasons which are obvious. It is not for this tribunal to carry out a sterile exercise with an inevitable outcome.

34. For all the reasons set out above we allow the Secretary of State's appeal. We reinstate the decision to deport the respondent.

Signed Date 17 June 2015

Mrs Justice Thirlwall