Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: OA/12950/2013

THE IMMIGRATION ACTS

Heard at Birmingham	**Decision and Reasons Promulgated**
on 5 March 2015	**on 18 August 2015**

Before

UPPER TRIBUNAL JUDGE PITT

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

KAR
(ANONYMITY ORDER MADE)

Respondent

Representation:
For the Appellant: Mr Smart, Senior Home Office Presenting Officer
For the Respondent: Mr Pipe, instructed by Rashid & Co.

DECISION AND REASONS

1. This appeal is brought by the Secretary of State for the Home Department against the decision promulgated on 24 January 2014 of First-tier Tribunal Ford which allowed the appellant's appeal against the refusal to revoke a deportation order.

2. Pursuant to Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008 (SI 2008/269) I make an anonymity order. Unless the Upper Tribunal or a Court directs otherwise, no report of these proceedings or any form of publication thereof shall directly or indirectly identify the original appellant. This direction applies to,

amongst others, all parties. Any failure to comply with this direction could give rise to contempt of court proceedings. I do so in order to avoid a likelihood of serious harm arising to the minor children concerned in this matter.

3. For the purposes of this decision I refer to the Secretary of State as the respondent and to KAR as the appellant, reflecting their positions as they were before the First-tier Tribunal.

Background

4. The appellant is a citizen of Jamaica and was born in 1971.

5. The appellant came to the UK in 1995 when he was 24 years' old. The documents before me stated both that he came as a visitor and/or using someone else's passport. Be that as it may, it is not disputed that, at best, other than 6 months' leave as a visitor in 1995, he remained in the UK unlawfully thereafter.

6. Prior to coming to the UK, the appellant already had a son, KR, born in March 1989. At some point KR came to the UK to join the appellant.

7. After coming to the UK, the appellant had four more children with four different women. The children are:

   TM (daughter) born in October 1996

   LP (daughter) born in September 1997

   KJ (son) born in May 1999

   AR (daughter) born in November 1999

8. On 14 April 2003 the appellant was convicted on indictment of four counts of being knowingly concerned in fraudulently evading duty chargeable on goods (controlled drug – Class A) and two counts of possessing class A drugs with intent to supply. He was sentenced to 14 years' imprisonment. A drug trafficking confiscation order for £1,435 was made or in default an additional 45 days to his term of imprisonment.

9. In May 2008 whilst still in detention but serving at an open prison and working in a charity shop, the appellant began a relationship with HT, a British national. She remains his partner.

10. On 29 October 2008 the appellant was sent a notice of liability to deportation.

11. On 1 April 2009 the respondent made a decision under section 32(5) of the UK Borders Act 2007 to deport the appellant. His appeal against that decision was dismissed on 19 June 2009.

12. The appellant was released on licence in April 2009 having served 7 years' imprisonment.

13. Between the appellant's release on licence in 2009 and 2011 a substantial amount of litigation ensued, including an asylum claim, further representations and actions in the High Court whilst the respondent continued to seek to deport the appellant. The representations to the respondent included an application to revoke the deportation order.

14. Meanwhile, the appellant and HT had two daughters, FR, born in May 2010 and MR, born in August 2011.

15. The application to revoke the deportation order was refused on 21 January 2012. The appeal against that decision was dismissed by First-tier Tribunal Judge Place in a determination promulgated on 13 March 2012. The appellant's appeal to the Upper Tribunal against the decision of Judge Place was dismissed by Deputy Upper Tribunal Judge Plimmer in a determination promulgated on 13 March 2013.

16. The appellant then made further submissions on 9 and 15 April 2013. Those submissions were on the basis of social work evidence that had not been considered in the previous proceedings. On 10 May 2013 the respondent again refused to revoke the deportation order. It is it that third deportation decision, the second decision on revocation, that underpins the current proceedings.

17. The decision of 10 May 2013 found that the family and private life of the appellant, his partner and his children were not sufficient to merit revocation. The Article 8 ECHR claim was certified under section 94 (2) of the Nationality, Immigration and Asylum Act 2002, affording only an out of country appeal right.

18. Following that decision, the appellant was detained and removal directions were set. A judicial review application against removal was dismissed and the appellant was deported to Jamaica on 2 June 2013. From there, on 28 June 2013, he lodged an appeal against the refusal to revoke the deportation order.

Decision of the First-tier Tribunal

19. The appellant's appeal against the refusal dated 10 May 2013 came before First-tier Tribunal Judge Ford on 13 January 2014.

20. Judge Ford found that the appeal should be allowed, essentially because of the significant difficulties the appellant's minor children arising from their separation from their father.

21. Judge Ford considered there to be material change from the earlier judicial decisions. There is no challenge to that approach. The social work reports from 2013 gave significant information about the children and their families and Judge Ford also heard up to date evidence from the children's mothers and from some of the children on developments since the appellant had been deported to Jamaica.

22. Judge Ford considered in detail the evidence in relation to the appellant's children. There is no challenge to her finding that the appellant's deportation was having a

serious, detrimental effect on the minor children and was not in their best interests, particularly FR and MR as their mother, still in a relationship with the appellant, was having great personal difficulty in coping with his absence notwithstanding the support of her parents.

23. The appellant's submissions seeking to defend Judge Ford's determination are right to indicate that it is thorough, detailed and includes correct legal self-direction as to the need for exceptionality where the Immigration Rules are not met; see [15].

24. At [115] Judge Ford brought together the various strands of her consideration and concluded:

> "By the smallest and narrowest of margins, I am satisfied that due to the evidence concerning the impact on the Appellant's children of his deportation and physical absence from the UK, this decision is unduly harsh. I am satisfied that this is an exceptional case. The decision to refuse to revoke the deportation order was not in the best interest of the children. This, when taken together with the low risk of re-offending and low risk of serious harm to the public, renders this decision disproportionate when it is balanced against the serious offences committed. I have not made the error of regarding the best interests of the children as the primary consideration. It is only one consideration, but when taken together with all of the factors in this case, I am satisfied that the family life interests outweigh the public interest in deportation. I do fully take into account the will of Parliament that such crimes by a foreign national criminal should lead to deportation for an extended period but the public interest must be weighed against the private and family life interests in each individual case."

Error of Law

Paragraph 391 of the Immigration Rules

25. At the hearing before me on 5 March 2015, the respondent raised a matter not in the written grounds to the effect that Judge Ford erred in failing to apply paragraph 391 of the Immigration Rules.

26. It was accepted for the appellant that the new ground could be dealt with before me. I heard submissions on the point and gave an oral indication that, following paragraph 391, a material error arose where the provision that a deportation order would not be revoked "at any time" where the sentence was at least 4 years', as here, had not been taken into account by the First-tier Tribunal.

27. I also gave an oral indication that the decision showed legal error as the extremely high level of seriousness of the offence as reflected in a sentence of 14 years' imprisonment and weight attracting to the public interest thereby was not substantively reflected in the exceptionality assessment conducted by the First-tier Tribunal. My detailed reasons for that finding are below.

28. After I had announced my decision on error of law, the parties were in agreement that the appeal could be re-made by me on the evidence already before me with the assistance of written submissions from the representatives on the new provisions of

sections 117A-C of the Nationality, Immigration and Asylum Act 2002 and the Immigration Rules brought in by the Immigration Act 2014. A timetable was agreed for those submissions.

29. The respondent's written argument provided on 16 March 2015, however, indicated that the submission on paragraph 391 had been wrong in law and was withdrawn. The error of law challenge was maintained on the other grounds and argument put for the appeal being re-made as refused.

30. In the appellant's reply dated 22 March 2015 I was asked to revisit my error of law decision in the light of the respondent's concession on paragraph 391 and find that no error arose. The written submissions went on to put the case for the appeal being allowed in the event that I remained of the view that the First-tier Tribunal disclosed legal error and re-made the decision.

31. Neither party requested further time for written argument or for a hearing for further oral submissions or evidence so I have made my decision on the basis of what was before me on 5 March 2015 and the written submissions from the parties following that hearing.

32. Given the concession made for the respondent in her written submission I accept that no legal error arises from the absence of consideration of paragraph 391 in the determination of Judge Ford. As advocated in the written submission for the appellant, I revisited my error of law finding and decided that it remained sound even in the absence of the paragraph 391 point and such that the decision of Judge Ford had to be set aside.

Decision on Error of Law

33. As above, it is my judgement that the decision of First-tier Tribunal Judge Ford discloses legal error in failing to take proper account of the weight of the public interest arising from the extreme seriousness of the appellant's offence and concomitant very high need for deportation to continue in order to deter and express public revulsion at such extremely serous offences. This was the ground set out at paragraphs 1 and 2 of the respondent's written grounds and on which permission was granted on 10 March 2014 in the decision of Upper Tribunal Judge Grubb.

34. I accept that Judge Ford refers to the standard principles and importance of the public interest at [16], [80], [81], [111], [115] and [116]. There is a reference at [79] and [111] to the "very serious nature" of the offence and to how this is reflected in the long sentence.

35. What remains absent from the determination, in my view, however, is proper reflection in substance of the extreme seriousness of the offence here and how that increases the weight attracting to the public interest over and above that which must always feature in deportation cases since the introduction of the current statutory regime in July 2012; see SS (Nigeria) v SSHD [2013] EWCA Civ 550, paragraphs [48]-[55], in particular at [54].

36. I also referred to the Upper Tribunal case of McLarty (Deportation - proportionality balance) [2014] UKUT 315 (IAC) which indicates at [29]-[31]:

> "29. First, the proportionality test requires a Court or Tribunal to address itself to and assess the aims or object of the policy in question and then to set against that assessment the factors said to warrant departing from the stated object or policy. In the present case the object or policy in question is the public interest, set out in an Act of Parliament, in favour of deporting criminals. It is essential that in any assessment the weight of the specific object be appraised both in the abstract sense of how important that object is in policy terms, but also on the basis of the particular facts of the case - how serious was the specific appellant's criminality.
>
> 30. With regard to the overall weight to be attached to the policy there can be little doubt, as we have set out above, but that Parliament views the object of deporting those with a criminal record as a very strong policy. This is a constant in all cases.
>
> 31. However, the weight to be attached to that object will also include a variable component which reflects the criminality in issue."

37. The consideration at [115], set out above, does not show an appreciation of the height of the public interest here or the factors of deterrence and expression of public revulsion, however, weighing only the best interest of the children and low risk of reoffending against "the serious offences".

38. In reaching my decision on error of law, I was further assisted by the learning of the Court of Appeal in SSHD v AJ (Angola) [2014] EWCA Civ 1636 on the correct approach to the role of the Immigration Rules in the exceptionality assessment:

> "39 The fact that the new rules are intended to operate as a comprehensive code is significant, because it means that an official or a tribunal should seek to take account of any Convention rights of an appellant through the lens of the new rules themselves, rather than looking to apply Convention rights for themselves in a free-standing way outside the new rules. This feature of the new rules makes the decision-making framework in relation to foreign criminals different from that in relation to other parts of the Immigration Rules, where the Secretary of State retains a general discretion outside the Rules in exercise of which, in some circumstances, decisions may need to be made in order to accommodate certain claims for leave to remain on the basis of Convention rights, as explained in *Huang* and *R (Nagre) v Secretary of State for the Home Department* [2013] EWHC 720 (Admin).
>
> 40. The requirement that claims by appellants who are foreign criminals for leave to remain, based on the Convention rights of themselves or their partners, relations or children, should be assessed under the new rules and through their lens is important, as the Court of Appeal in *MF (Nigeria)* has emphasised. It seeks to ensure uniformity of approach between different officials, tribunals and courts who have to assess such claims, in the interests of fair and equal treatment of different appellants with similar cases on the facts. In this regard, the new rules also serve as a safeguard in relation to rights of appellants under Article 14 to equal treatment within the scope of Article 8. The requirement of assessment through the lens of the new rules also seeks to ensure that decisions are made in

> a way that is properly informed by the considerable weight to be given to the public interest in deportation of foreign criminals, as declared by Parliament in the 2007 Act and reinforced by the Secretary of State (as the relevant Minister with responsibility for operation of the immigration system), so as to promote public confidence in that system in this sensitive area"

39. It was not disputed here that the appellant could not benefit from the Immigration Rules in force at the time of the hearing before Judge Ford. Those Immigration Rules took account of the appellant's children and made provision for them where they were able to remain in the UK with their mothers; see paragraph 399(b) then in force.

40. Through the Immigration Rules the respondent made legitimate provision for the Article 8 rights of the children and, without more, something meeting the requirement for "exceptionality" in paragraph 398, the situation of the children cannot defeat deportation. The decision of Judge Ford does not conduct the exceptionality here on that basis, "through the lens of the new rules".

41. Before taking a definitive decision on error of law here, I took care to ask myself if I was merely disagreeing with what is, in the main, a clear and thorough decision from Judge Ford. I remained of the view that there is a failure to weigh properly the public interest given the extreme seriousness of the offence, to take into account in substance the importance of deterrence and need for the expression of public revulsion and to take account of the provision already made for the difficulties that will be faced by children of deportees under the substantive provision of paragraph 399(b) of the Immigration Rules.

42. I am satisfied that those errors are such that that it cannot be said that the same outcome would have been reached had they not occurred. I must therefore set aside the decision of the First-tier Tribunal and re-make the decision.

Re-Making of the Appeal

43. Although there are two previous judicial decisions which found that the appellant should be deported and remain deported, I accept that the situation now is materially different and requires a fresh assessment. Some 6 years have passed since the deportation order was made and 2 years since the appellant was deported to Jamaica. There is the additional social work material and up to date evidence brought before First-tier Tribunal-tier Judge Ford.

44. Further, significant legislation concerning deportation appeals has been brought into force. Before me, the appeal falls to be considered in line with Section 19 of the Immigration Act 2014 which inserted Part 5A of the Nationality, Immigration and Asylum Act 2002 with effect from 28th July 2014. All deportation appeals heard after that date, whether the decision to deport or the deportation order was made prior to that date or not, are subject to this new statutory scheme; Singh v SSHD [2015] EWCA Civ 74 applied.

45. The relevant parts of section 117A-C are as follows:

117A Application of this Part

(1) This Part applies where a court or tribunal is required to determine whether a decision made under the Immigration Acts—

(a) breaches a person's right to respect for private and family life under Article 8, and

(b) as a result would be unlawful under section 6 of the Human Rights Act 1998.

(2) In considering the public interest question, the court or tribunal must (in particular) have regard—

(a) in all cases, to the considerations listed in section 117B, and

(b) in cases concerning the deportation of foreign criminals, to the considerations listed in section 117C.

(3) In subsection (2), "the public interest question" means the question of whether an interference with a person's right to respect for private and family life is justified under Article 8(2).

117B Article 8: public interest considerations applicable in all cases

(1) The maintenance of effective immigration controls is in the public interest.

(2) It is in the public interest, and in particular in the interests of the economic well-being of the United Kingdom, that persons who seek to enter or remain in the United Kingdom are able to speak English, because persons who can speak English—

(a) are less of a burden on taxpayers, and

(b) are better able to integrate into society.

(3) It is in the public interest, and in particular in the interests of the economic well-being of the United Kingdom, that persons who seek to enter or remain in the United Kingdom are financially independent, because such persons—

(a) are not a burden on taxpayers, and

(b) are better able to integrate into society.

(4) Little weight should be given to—

(a) a private life, or

(b) a relationship formed with a qualifying partner, that is established by a person at a time when the person is in the United Kingdom unlawfully.

(5) Little weight should be given to a private life established by a person at a time when the person's immigration status is precarious.

(6) In the case of a person who is not liable to deportation, the public interest does not require the person's removal where—

(a) the person has a genuine and subsisting parental relationship with a qualifying child, and

(b) it would not be reasonable to expect the child to leave the United Kingdom.

117C Article 8: additional considerations in cases involving foreign criminals

(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 or more, the public interest requires C's 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 C's integration into the country to which C is proposed to be deported.

(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 effect of C's 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 1 and 2.

(7) The considerations in subsections (1) to (6) are to be taken into account where a court or tribunal is considering a decision to deport a foreign criminal only to the extent that the reason for the decision was the offence or offences for which the criminal has been convicted.

46. The Immigration Rules have also been amended and for my purposes are as follows:

"A362.Where Article 8 is raised in the context of deportation under Part 13 of these Rules, the claim under Article 8 will only succeed where the requirements of these rules as at 28 July 2014 are met, regardless of when the notice of intention to deport or the deportation order, as appropriate, was served.

…

Revocation of deportation order

390. An application for revocation of a deportation order will be considered in the light of all the circumstances including the following:

(i) the grounds on which the order was made;

(ii) any representations made in support of revocation;

(iii) the interests of the community, including the maintenance of an effective immigration control;

(iv) the interests of the applicant, including any compassionate circumstances.

390A. Where paragraph 398 applies the Secretary of State 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 maintaining the deportation order will be outweighed by other factors.

…

391A. In other cases, revocation of the order will not normally be authorised unless the situation has been materially altered, either by a change of circumstances since the order was made, or by fresh information coming to light which was not before the appellate authorities or the Secretary of State. The passage of time since the person was deported may also in itself amount to such a change of circumstances as to warrant revocation of the order.

…

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.

397. A deportation order will not be made if the person's removal pursuant to the order would be contrary to the UK's obligations 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.

Deportation and Article 8

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;

(b) a foreign criminal applies for a deportation order made against him to be revoked.

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 for which they have been sentenced to a period of imprisonment of at least 4 years;

(b) 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 for

which they have been sentenced to a period of imprisonment of less than 4 years but at least 12 months;

(c) the deportation of the person from the UK is conducive to the public good and in the public interest 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, 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.

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

(a) the person has a genuine and subsisting parental relationship with a child under the age of 18 years who is in the UK, and

(i) the child is a British Citizen; or

(ii) the child has lived in the UK continuously for at least the 7 years immediately preceding the date of the immigration decision; and in either case

(a) it would be unduly harsh for the child to live in the country to which the person is to be deported; and

(b) it would be unduly harsh for the child to remain in the UK without the person who is to be deported; or

(b) the person has a genuine and subsisting relationship with a partner who is in the UK and is a British Citizen or settled in the UK, and

(i) the relationship was formed at a time when the person (deportee) was in the UK lawfully and their immigration status was not precarious; and

(ii) it would be unduly harsh for that partner to live in the country to which the person is to be deported, because of compelling circumstances over and above those described in paragraph EX.2. of Appendix FM; and

(iii) it would be unduly harsh for that partner to remain in the UK without the person who is to be deported.

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

(a) the person has been lawfully resident in the UK for most of his life; and

(b) he is socially and culturally integrated in the UK; and

(c) there would be very significant obstacles to his integration into the country to which it is proposed he is deported."

47. The head note of Chege (section 117D – Article 8 – approach) [2015] UKUT 00165 (IAC) states:

"The correct approach, where an appeal on human rights grounds has been brought in seeking to resist deportation, is to consider:

> (i) is the appellant a foreign criminal as defined by s117D (2) (a), (b) or (c);
>
> (ii) if so, does he fall within paragraph 399 or 399A of the Immigration Rules;
>
> (iii) if not are there very compelling circumstances over and beyond those falling within 399 and 399A relied upon, such identification to be informed by the seriousness of the criminality and taking into account the factors set out in s117B.
>
> Compelling as an adjective has the meaning of having a powerful and irresistible effect; convincing.
>
> The purpose of paragraph 398 is to recognize circumstances that are sufficiently compelling to outweigh the public interest in deportation but do not fall within paragraphs 399 and 399A.
>
> The task of the judge is to assess the competing interests and to determine whether an interference with a person's right to respect for private and family life is justified under Article 8(2) or whether the public interest arguments should prevail notwithstanding the engagement of Article 8.
>
> It follows from this that if an appeal does not succeed on human rights grounds, paragraph 397 provides the respondent with a residual discretion to grant leave to remain in exceptional circumstances where an appellant cannot succeed by invoking rights protected by Article 8 of the ECHR."

48. It was common ground before me that the appellant is a foreign national criminal as defined in s117D.

49. He cannot fall within paragraphs 399 and 399A as he has a sentence of 14 years' and comes within paragraph 398(a).

50. The appellant can therefore only succeed in his appeal where there are "very compelling circumstances over and above those described in paragraphs 399 and 399A relied upon, such identification to be informed by the seriousness of the criminality and taking into account the factors set out in s117B.

51. The compelling factor here, realistically, is the damage being done to the appellant's children as a result of his deportation. There was no challenge to the best interest assessment of Judge Ford or her finding that the children's situations are "quite severe". I am entirely content to adopt her position on the seriousness for the appellant's children, nothing suggesting that it will diminish with time. The children have exhibited emotional and behavioural problems in their different ways and, for those of school age, their education is suffering. The two youngest children are additionally affected where the appellant was a full-time carer for them before he was deported and their mother is struggling to cope emotionally and practically in his absence. There is an additional detriment as the children are not in contact with each other as they were when the appellant was here to coordinate contact.

52. The best interests of the children here are in the return of the appellant so that he can have regular direct contact with them all and resume day to day care of his two youngest children. Those best interests remain a primary factor in the assessment

that must be conducted notwithstanding the provisions of section 117A-C and the Immigration Rules.

53. I accept, therefore, that the difficulties for the children here are at the higher end of what might be expected as a result of their father's deportation. It remains the case that the Immigration Rules anticipate hardship of this kind and provide for it at paragraph 399(a)(ii)(b).

54. I also referred to the comments of the Court of Appeal at [31] of ZZ (Tanzania) v SSHD [2014] EWCA Civ 1404, in which deportation in the context of a criminal sentence was six years was upheld:

> "31. Insofar as [a social worker] offered the opinion that [ZZ's son] would be adversely affected by the deportation of his father, the Tribunal accepted it without reservation but observed that it was essentially uncontroversial. It is unsurprising that they did not regard it as assisting the appellant's case on exceptional circumstances. As Sedley LJ said in *Lee v SSHD* [2011] EWCA Civ 348:
>
> > 'The tragic consequence is that this family … will be broken up forever because of the appellant's bad behaviour. That is what deportation does. Sometimes the balance between its justification and its consequences falls the other way, but when it does so is a question for [the Tribunal].'"

55. It will be clear from my error of law decision that I view the criminality here as extremely serious indeed. Section 117C (2) of the 2002 Act indicates that the more serious the offences, "the greater is the public interest in deportation". There must be an extremely high public interest in the continuation of the deportation order here, including the importance of deterring others from such offending and expression of public revulsion at such serious crimes involving drugs.

56. It did not appear to me that the provisions of paragraph 117B assisted the appellant. As above, other provisions already bring the public interest to weigh very heavily indeed against him. I assume that he speaks English but against the seriousness of his offending and immigration history this cannot alter the balance very much. Nothing suggests that he has been financially independent or that he has ever provided for his children financially. Little weight attracts to his family life with his partner and to any private life he had here where he was here almost entirely illegally. He does not qualify for consideration under section 117B(6) where he is subject to deportation.

57. I should also add that it is not my view that the appellant can benefit a great deal from his offences occurring as long ago as 2002 where a substantial period of imprisonment forms over half the intervening period and, as indicated above, protracted, albeit I accept legitimate, legal proceedings have led to a great deal of the remaining period with the appellant at all times knowing that he faced deportation.

58. This appeal raises deeply concerning issues. The wellbeing of the appellant's children is already significantly damaged by his deportation. They will have to face ongoing hardship in future if the deportation order is not revoked. It is my

conclusion, however, that even taking the children's difficulties at their highest together with those of the appellant's partner and the appellant himself at being separated from his children, the evidence here does not show compelling circumstances that can outweigh the extremely high public interest in the appellant remaining subject to a deportation order. The public interest here is so very high as a result of the seriousness of the offending that it demands that the appellant remain subject to a deportation order and the respondent's decision to that effect is proportionate.

59. I therefore dismiss the appeal.

Decision

60. **The decision of the First-tier Tribunal disclosed an error on a point of law and is set aside.**

61. **The appeal is re-made as dismissed.**

Signed  Date: 14 August 2015
Upper Tribunal Judge Pitt