Upper Tribunal
(Immigration and Asylum Chamber) **Appeal Number: HU/12257/2016**

THE IMMIGRATION ACTS

Heard at Field House	**Decision & Reasons Promulgated**
On 7th November 2017	**On 7th December 2017**

Before

UPPER TRIBUNAL JUDGE RIMINGTON

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

MR E S R
(ANONYMITY DIRECTION NOT MADE)

Respondent

Representation:

For the Appellant: Ms P Solanki, Counsel instructed by Lighthouse Solicitors
For the Respondent: Mr E Tufan, Home Office Presenting Officer

DECISION AND REASONS

1. Although the appellant is the Secretary of State I refer to the parties as they were described before the First-tier Tribunal.

2. The appellant is a citizen or Morocco born on 25th December 1963 and he appealed against the decision of the respondent dated 29th April 2016 to make a deportation order pursuant to Section 32(5) of the UK Borders Act 2007. The reasons are set out in a letter dated 5th May 2016.

3. The appellant entered the United Kingdom in October 1974, aged 10, on his mother's passport. He remained in the United Kingdom, was educated here, worked here and had a family here.

4. On 7 August 2009 the appellant was convicted at Kingston Crown Court for possession of a class A drug, namely crack cocaine and supplying a controlled drug, class B cannabis resin and was sentenced to two years' imprisonment. Following the conviction he was served with a notice of liability to deportation and in April 2010 the appellant was detained and a deportation order signed and served on him. That deportation order was successfully appealed in September 2010 before First-tier Tribunal Judge Lobo and on 6 September 2011 the appellant was granted three years' discretionary leave to remain following his successful appeal. In September 2014 he submitted an application for leave to remain giving rise to the decision under appeal. In effect, the Secretary of State saw fit to make a further deportation order against the appellant on the same index offence of 2009 that had been successfully appealed previously. She was entitled to do so under the amended Immigration Rules.

5. Between 1980 and 1987 the appellant had received five convictions for some fifteen offences including offences against property, theft and kindred offences. The sentencing remarks of the judge at the Crown Court in 2009 included the following remarks:

> "*Finally R... three Counts. The first two of supplying Class A and being concerned in the supply of Class A, and the third Count supplying cannabis. Very different. Again, the motivation for this offending was your own addiction...*
>
> *...the offending in your case was motivated by your own addiction, just like the others. And your last conviction I note was 27 years ago. That's a long time ago. You're now aged I think about 45, and you actually so I'm told had a longstanding alcohol problem and together with that, much more recently but nonetheless had in glove with it, drug abuse or drug using. The quantities were very small in your case and I think that the appropriate sentence in your case is one of two years. You'll serve two years concurrently on Counts 1 and 2 and 14 days on Count 4....*".

6. The appellant's appeal against the second deportation order came before First-tier Tribunal Judge Carroll in February 2017 who allowed the appeal. The Secretary of State was granted permission to appeal and I found an error of law and set the decision aside with preserved findings. Judge Carroll found the appellant could not fulfil the exceptions under paragraph 399A as there were no significant obstacles to his integration in Morocco. The judge, however, proceeded to allow the appeal on the basis that appellant's length of residence alone was a compelling reason. That was an error of law and there were inadequate findings in relation to the public interest. The weight ascribed by the judge to the public interest was not demonstrated when reading the decision as a whole. The court in **Hesham Ali v SSHD** [2016] UKSC 60 referred to "a very strong claim indeed" in order to be successful in relation to deportation.

7. The matter was retained in the Upper Tribunal.

8. At the resumed hearing before me, Mr Tufan cross-examined the appellant at some length.

9. The appellant confirmed that he was last in Morocco in May 2014 and although there was a house there all his family and children were in the United Kingdom. He had a daughter who had severe mental health problems whom he supported and in the last two years he had rediscovered and developed a relationship with her. He supported her during her mental health illness. He confirmed that he did speak Arabic but mostly English. He also confirmed that when he came out of prison he worked in a bakery but was now nearly 55 years old with poor health. He would find it very difficult to work and support himself in Morocco. His parents receive state pensions and his various siblings had their own families to support. They could not give him financial support.

10. His partner, L H gave evidence and confirmed that she had been a friend of the appellant's for 30 years but they had become romantically involved since 2015. Although she was prepared to support him in his removal to Morocco she had her children and family in the United Kingdom one of whom was still a student.

11. Z D, the appellant's eldest daughter also attended to give evidence and confirmed that she had regular contact with her father every other day and would stay with him at weekends. He supported her when she went into hospital and she suffered from cyclical vomiting syndrome. Her grandfather had hitherto supported her but now he was now very old and was unable to support her. She had experienced very severe ill-health and depression, with which her newly renewed contact with her father assisted her and he also helped her with budgeting her finances with which she had difficulty.

12. The appellant's daughter C, who was 28 years, old also gave oral testimony and adopted her statement.

13. In submissions Mr Tufan relied on the case of **Bossade (ss.117A-D-interrelationship with Rules)** [2015] UKUT 00415 (IAC) and advanced that the issue in this case was whether the appellant succeeded under paragraphs 399A:

> "*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*."

14. As Mr Tufan submitted paragraph 399A(c) was mirrored by Section 117C(4)(c), that is, there should be consideration of whether there would be very significant obstacles to the appellant's integration into the country to which it is proposed he was deported. Mr Tufan submitted that the evidence was that the appellant spoke Arabic and his parents had a home in Morocco. He had been economically active in the

past. In the case of **Bossade** an appellant who was from the DRC and who had been here since the age of 2 or 3 years had been returned to his country of origin. This authority outlined the demanding test regarding 'very significant obstacles'.

15. I was also referred to the case of **AS [2017] EWCA Civ 1204** which commented on the case of **SSHD v Kamara [2016] EWCA Civ 813 [37]** confirming that *'it is not appropriate to treat the statutory language as subject to some gloss and it will usually be sufficient for a court or tribunal to direct itself in the terms that Parliament has chosen to use'*. The test for integration was a broad evaluative test but the test of very significant obstacles erected a self evidently elevated threshold.

16. In the alternative I needed to consider whether there were very compelling circumstances under paragraph 398C. None of the circumstances described amounted to very compelling circumstances. The appellant had been in the UK since the age of 11. It was the case that there had been a previously allowed appeal but it was open to the Secretary of State under the Immigration Rules to make a new deportation order although the case was unusual.

17. Ms Solanki relied on her recent skeleton argument. She submitted there were significant obstacles to his return. He had only visited Morocco six times since he had left and he was integrated in line with the test set out in the case of **Kamara**. That underlined that integration was a broad concept and not confined to the mere ability to find a job or to sustain life while living in the other country. The authority of **AS** did not say that the integration test in **Kamara** was incorrect.

18. The appellant had been lawfully resident in the UK for most of his life and this was where his formative childhood years between the ages of 11 to 18 had been formed. He had not lived in Morocco since his entry 44 years ago. All of his family, his mother, father, sisters, brothers, partner, children, grandchildren and friends, uncles and aunts were in the UK and were British and all settled in the UK. Indeed he had continued to pursue his relationships with British nationals.

19. The test for integration as set out in **Kamara** was not limited to the ability to get a job but that said it would be very difficult for this appellant to get work and being able to get work would be very important to his ability to support himself.

20. Ms Solanki accepted that under paragraph 398 the test of very compelling circumstances as set out in **MK (section 55 – Tribunal options) Sierra Leone [2015] UKUT 00223** and **Chege (Section 117D – Article 8 – approach)[2015] UKUT 00165 (IAC)** underlined there needed to be a convincing and/or a strong case.

21. I was referred to **Hesham Ali**, particularly at paragraph 15 such that I should consider the conduct since the offence. In the case of a non-settled migrant it would be rare to allow a case outside the Rules. This was not a non-settled migrant, he was settled and therefore did not fall into the "rare case" category. Ninety percent of his life had been in the UK with lawful leave and **KD (Jamaica) v Secretary of State for the Home Department [2016] EWCA Civ 418** did not say that this could not constitute an exceptional circumstance. It was important to look at the circumstances of the offences and most of the offences had been committed when he was a minor.

The 2009 index offence was for two years and was not for an offence of violence, albeit that the representative did not attempt to diminish the seriousness of the offence. I was invited to consider at what point the public interest was outweighed by the length of his residence in the UK and it should be noted that he had not been imprisoned for the demarcating 'four years'. In terms of his offending, the Crown Court Judge, when sentencing, had not recommended the appellant for deportation and had noted that the offence was for the purposes of his own substance misuse. That had been very clearly addressed and the circumstances of the offence no longer existed. Since 2009 there had been no further offending and indeed in 2010 the Tribunal had found he was low risk. He is now of no risk.

22. Ms Solanki submitted that **KD (Jamaica)** confirmed that where the Secretary of State had delayed in taking effective steps to deport someone, and that period of respite was put to good use, that could be a factor to be taken into account in terms of rehabilitation. The appellant's previous appeal was allowed in 2010 and before the Rules were introduced and he had three years' leave following that previous deportation order on the same index offence. It was submitted that paragraph 399C confirmed that the Secretary of State could serve a second deportation order but the factual scenario had not changed to his advantage. In that case he had split from his partner but had a new partner, all his children were adult and there is now a social worker report confirming that the appellant had good relations with his children. After the appellant had a stroke he chose to rely on his siblings and children rather than resort to professional help. I had heard evidence from Z D, his daughter who had long-term mental health issues and since her father had entered her life he had helped to stabilise her condition. For her removal would be unduly harsh. Reference was made to **AJ (Zimbabwe) v SSHD [2016] EWCA Civ 1012** and there could be no doubt that the public interest had been served by the appellant having to experience two deportation orders and experiencing several court hearings.

Conclusions

23. First I accept that the appellant should be treated as a vulnerable witness under the Presidential Guidelines on vulnerable witness owing to his health conditions. The medical evidence presented showed the appellant had a myocardial infarction (heart attack) in 2009 and also an ischemic attack (stroke) on 24th September 2014. His expert independent social worker, Azra Jabbar gave 'up to date' written evidence, dated 28th October 2017, on the appellant's presentation, which I have no reason to doubt as it was supplemented by medical evidence, and which confirmed that

> "*While communicating with Mr R it became apparent he experiences ongoing difficulties with his memory and verbalising a clear response. I noted Mr R to start speaking and then repeat himself.*"

I also note that Ms H explained that Mr R still experiences problems processing information:

24. Secondly I also find that Ms Z D should be considered a vulnerable witness owing to her severe mental health issues. Much of the evidence however was not contested. It was noted that the appellant had received a prison sentence of two years in 2009

following a conviction for drugs offences and that a deportation order was made in 2010 which the appellant successfully appealed. I will return to this point later in my decision.

25. The starting point for my decision under **Devaseelan [2002] UKIAT 00702** is the decision of Judge Lobo. Judge Carroll set out these sections in his decision and I set out the relevant sections of his decision verbatim:

> *"18. The evidence of the appellant and his witnesses may be summarised as follows:-*
>
> *(a) The appellant is a Moroccan national... and has been living in the United Kingdom since 1974 when he was aged 11.*
>
> *(b) Prior to the most recent offence, the appellant last offended in 1980s and had not re-offended for 27 years. He had never previously received a custodial sentence.*
>
> *(c) The appellant was in a longstanding relationship with S T, a British national. The couple have six children all born in the United Kingdom and British nationals.*
>
> *(d) The appellant lives with his parents, who are elderly. The appellant helps them on a day-to-day basis, by practical support.*
>
> *(e) The appellant has siblings living in London, who also form part of his family network.*
>
> *(f) The appellant is currently assessed as being of low risk to the public and low risk of re-offending. The appellant is currently working with his brother in his business.*
>
> *(g) The appellant is no longer a substance misuser and is on probation supervision, the terms of which he has complied with since release.*
>
> *(h) The appellant has an important role in the life of his six children and continues to do so, not only in respect of those below the age of majority whom he calls every day, but also in respect of those who are over 18.*
>
> *(i) The appellant is still close to the mother of the six children, S T.*
>
> *20. On the evidence we find these facts:-*
>
> *(a) The appellant is Moroccan and came to the United Kingdom at the age of 11 and has lived here for the last 36 years.*
>
> *(b) The appellant had a relationship with S T from before 1987. They began living together in 1987. They have six children...*
>
> *(c) In the United Kingdom the appellant has his parents, uncles and aunts, grandparents and siblings. He has no relations in Morocco.*

(d) The appellant has six criminal convictions in the period from October 1980 until July 2009 when he was sentenced to prison for the supply of drugs. The first five convictions were between 1980 and 1987 when the appellant was 17 to 24 years of age. He never received a custodial sentence until the sixth offence 22 years later. The appellant acknowledges his previous addiction to drugs and alcohol which caused him and S T to separate and led him into bad company, resulting in the drug offences of 2009 and a two year prison sentence.

(e) Notwithstanding his drug and alcohol problems and his separation from S T:-

(i) The appellant has performed his parental duties as evidenced by the testimonies of his children and S T.

(ii) The appellant continues to be an important influence and factor in the lives of all of his children even though most are now grown up.

(iii) The role of the appellant in the lives of his two youngest children is much greater. He spends recreational time with them and offers them advice.

(iv) None of the appellant's children were born in Morocco and those that have been there have only travelled there on holiday.

(f) The appellant lives with his elderly parents (his mother is 71, his father is 72), who suffer ill-health, and speak little English. The appellant assists them with visits to the doctor and hospital, performs shopping duties for them and generally looks after them and acts as a translator for them as they do not speak English.

(g) The appellant has been employed in unskilled jobs for most of his adult life. He is now employed by his brother who has replaced the appellant as the manager of one of his two grocery shops.

(h) The appellant has passed voluntary and mandatory tests in prison to establish that he is alcohol free. The appellant is no longer a substance misuser as confirmed by his probation officer, with whom he is on licence until 16 April 2011. The appellant's brother and employer confirm that the appellant does not take drugs or alcohol. The appellant's brother sees him every day and would not risk his business by having a substance misuser in charge.

21. As the appellant is an integrated alien his family life and private life are intertwined and he enjoys mutual relationships with his children, including those who have reached majority, his parents, his siblings and his former partner, a British citizen. To remove the appellant to Morocco would interrupt those lives in a manner which engages Article 8. The interference would be within the law as it would have the objective of immigration

control and protecting society. The question is whether the interference is proportionate or not.

22. *In assessing proportionality the test for an Appellate Immigration Authority is to strike a fair balance between the rights of the appellant on the one hand and the interests of the community... on the other.*

23. *The appellant committed a serious offence and was sentenced to two years' imprisonment. However, the sentencing judge remarked that the offence was not committed to gain subsequent financial advantage, but was related to the appellant's own substance misuse. The appellant is seeking to address his own misuse of drugs and alcohol. Despite the appellant having committed previous offences, he is currently assessed as being at a low risk of re-offending and was not recommended for deportation. He holds indefinite leave to remain, has been living in the United Kingdom since the age of 11, which is the entire formative period of his life. There are six children to his relationship with his partner. He maintains a good relationship with his children, who are all British, and the youngest two are minors. The appellant lives with his elderly parents, and their evidence in this case indicates a level of close support to them. The appellant has no significant or meaningful level of connection with Morocco. The appellant has not breached the terms of his licence and wishes to address the underlying cause of the original events.*

24. *It is for these reasons, coupled with the length of his presence in the United Kingdom and other circumstances, that we find the offence was not so serious in itself, as to justify expulsion of the appellant and we therefore allow the appeal*."

26. I preserved the following paragraphs of Judge Carroll's decision, which had been set aside, with the proviso that it was open to the appellant to provide further evidence on which findings would be made:

"*19. In September 2015 the appellant formed a relationship with L H. She has known him as a friend for more than 30 years. They do not live together.*

20. Since mid-2016 the appellant has been in touch with Z D, a British citizen born on 6 October 1983 following a relationship between the appellant and the mother of Z D. The appellant and Ms D are now in touch on a regular basis. She suffers from bipolar and has found the relationship with the appellant to be very valuable and beneficial to her health. There is no medical evidence to support this aspect of the appellant's appeal.

21. Contrary to the evidence that was before Immigration Judge Lobo, the appellant (and his family members in the UK) do have relations in Morocco with whom they are in touch. The appellant's parents who are resident in the United Kingdom also have a house in Morocco. I attempted to clarify with the appellant the extent to which he has visited Morocco in recent years. Much of the evidence given by

him was characterised by evasiveness and there is incomplete passport evidence before me. In his oral evidence the appellant said that he has visited Morocco approximately six times since he first came to the United Kingdom. Three of these visits took place in 2013 and a further 2 or 3 in 2014. The appellant said also that he had visited Morocco approximately twice in 2012 and that he had first returned there, having arrived in the United Kingdom in 1974, in 1981. The appellant also has a bank account in Morocco (see page 58 contained in the respondent's bundle).

22. *It was found by Immigration Judge Lobo that the appellant assists his elderly parents with visits to the doctor and hospital, performs shopping duty for them and generally looks after them. Whilst I am satisfied that the appellant lives in an annex next to his parents, the oral evidence he gave at the hearing of this appeal as to his role in the lives of his parents differed very substantially from the evidence in 2010. The appellant said in this appeal that he did not take his parents to hospital and he demonstrated only a very vague idea of their various health issues. I heard evidence also from the appellant's brother who lives in London and he confirmed that he, together with the appellant's sister who also lives nearby, plays an active role in helping to look after the appellant's elderly parents.*

23. *It is claimed that the appellant also plays an important role in supporting S T who is a full-time carer for her 86-year old mother who suffers from dementia and that he also plays a significant role in the lives of his children and grandchildren. The appellant, however, claims also that he has a job offer and that, if successful in his appeal, he plans to work as an assistant chef from 8 until 5 six days a week. If so, he would clearly be unable to provide the level of support he claims to have provided to family members and his ex-partner.*

24. *I begin by considering the appellant's appeal by reference to paragraph 399A of HC 395. It is not in dispute that he has been lawfully resident in the United Kingdom for most of his life. Immigration Judge Lobo found the appellant to be 'an integrated alien' and I am satisfied, in the light of all of the evidence, that the appellant is socially and culturally integrated into the United Kingdom. The evidence does not, however, demonstrate that there would be very significant obstacles to the appellant's integration into Morocco. As I have noted above, he has visited that country frequently in recent years, his family has a property there and he also has family members there. I asked the appellant, by way of clarification, the purpose of recent visits to Morocco and he said that he was trying to get used to the country to see if he could live there."*

27. Under paragraph 399A(a) it is clear that the appellant has been lawfully resident in the United Kingdom most of his life. It was accepted by Mr Tufan and I agree that under paragraph 399A(b) the appellant is socially and culturally integrated into the UK. That is evidenced by the extent of his family connections, and that he has worked here and been educated here. The real question is whether there would be very significant obstacles to his integration into the country to which it is proposed he is deported.

28. I make these departures from the preserved findings of Judge Carroll bearing in mind the evidence before me. Not least I had the benefit of the independent social worker report dated 28th October 2017 from Azra Jabbar, who was a qualified social worker with a range of professional experience and qualifications. I accept his evidence because of his expertise and because he made a careful, detailed and thorough assessment of the personal circumstances and family background of the appellant and commented on the possible consequences of removal.

29. First-tier Tribunal Judge Carroll's findings acknowledged that the appellant had a relationship with Z D which was found to be very valuable. Although Judge Carroll stated there was no medical evidence, with regard her mental health condition that was rectified by the report of Dr Sharpe from the [Surgery], who, in a written report dated 26th September 2017, confirmed that Z D had a complex history of mental health problems. I accept the evidence of Z D who attended court and gave consistent oral evidence in this regard and with regard her father. Z D's doctor from the [Surgery] confirmed that 'her father being deported is likely to be a trigger that could lead to her mental health worsening'.

30. Judge Carroll found the appellant's evidence to be characterised by evasiveness [21]. As can be seen from the reports the appellant suffers with memory loss and his oral evidence should be considered in that light. With regards paragraph 24 of the previous decision, I do not accept that the appellant has visited the country 'frequently' in recent years. The passport evidence was recorded as incomplete and it was suggested that the appellant had returned a total of only six times since he first came to the United Kingdom aged 11 years old. He was now nearly 55 years old. The last of his said visits took place in February 2014. I note that the appellant experienced a stroke in September of that year and after the last visit. Further, visiting six times since coming to the UK at a very young age and prior to his ill health, is very different from living in Morocco. That he has a bank account in Morocco does not indicate to me that he will have no difficulties in integrating there.

31. At paragraph 22 Judge Carroll found that his evidence differed substantially from that found by Judge Lobo in terms of the assistance he gave to his parents because of their health issues. What is clear is from the medical evidence presented to me at this appeal is that the appellant himself has suffered myocardial infarction in 2009 and also an ischemic attack on 24th September 2014. His expert social worker gave written evidence, which I have no reason to doubt as it was supplemented by medical evidence which confirmed that the appellant had memory difficulties and that

> "*Memory loss is something that everyone experiences at times, increasing with age, or following a stroke. It is estimated that approximately one-third of cerebrovascular accident survivors will develop memory problems*."

32. It is not surprising, if the appellant is struggling with memory loss, that his evidence might have appeared evasive and it was noted that his brother was now instrumental in the parents' care.

33. Nor does this undermine the evidence given that the appellant affords support to his daughter Z D particularly as it consists of emotional support.

34. **Bossade** sets out in the head note

> *'…By requiring focus on integration both in relation to a person's circumstances in the UK as well as in the country of return, the new Rules achieve a much more* ***holistic assessment of an appellant's circumstances****. Thereby they bring themselves closer to Strasbourg jurisprudence on Article 8 in expulsion cases which has always seen consideration of both dimensions as requiring a wide-ranging assessment: see e.g. Jeunesse v Netherlands (GC) App.No. 12738/10, 31 October 2014, paragraphs 106-109'.*

35. The appellant has an extensive family life in the United Kingdom and this is evidenced by the expert social worker report which I accept in full. The expert not only confirmed having interviewed two of the six children but also obtained written information from them and effectively confirmed the very close relationship that the appellant's children had for him and their care and concern for him. I find that the appellant would not be able to replicate his relationships with his family when in Morocco and which is a significant factor for his health.

36. As set out at paragraph 4.04 of the expert report Mr R would be returning to an environment where he would have to start from scratch and rebuild his support networks. The home in Morocco was in fact a holiday home used by various members of the family and it would not be available on a permanent basis. I note that he can speak some Arabic but a key factor will be whether he can support himself financially and access support in Morocco. Employment opportunities in Morocco are said to be based on contacts already established and thus limited given his long absence from Morocco; he was likely to be very disadvantaged. His access to employment opportunities would therefore be considerably hindered although in reality, owing to his poor health, there was a high possibility of him being unable to find suitable employment. That he has worked in this country in apparently unskilled work would not, at his age assist him in finding, unskilled work in Morocco.

37. Not having the financial means to support himself was also likely to impact on his ability to engage in healthcare in Morocco as "all healthcare in Morocco must be paid for". The expert social worker found that:

> *"Given Mr R's age and health complaints it is more than likely that he will continue to require regular medical monitoring and support, hence it is of some concern that Mr R would be relocated to a country where none of his support networks reside."*

38. I am required to look at the focus on integration both in relation to a person's circumstances in the UK as well as in the country of return and a holistic assessment of an appellant's circumstances in relation to 399A. I also note that the partner, although she has expressed support for the appellant and that she would be prepared to support the relocation to Morocco, has her own family here with children one of whom is still in college.

39. It is quite clear from the expert social worker that the family life enjoyed by Mr R with his children, albeit that they are adults, provides a very effective protective factor and bearing in mind his ill-health and his length of time in the UK. I do indeed accept that there would be very significant obstacles to his return both under Section 399A and Section 117C(4)(c), not least his memory loss would hinder his employment prospects.

40. This is not a case where somebody as in the case of **Bossade** is young, able-bodied and of an adaptable age. There was evidence of both a mental and physical disability and bearing in mind the relatively weak family connections that he might experience in Morocco I am satisfied that although his long residence would not be enough simply by itself to prevent his removal, it is an important element and he would be forced to leave his protective factors behind in the form of his family. This would persuade me that he has indeed reached the exacting standard required under paragraph 399A and Section 117C.

41. I have taken into account the authority of **Kamara** which identified an elevated threshold confirmed at paragraph 14 that

> *'In my view, the concept of a foreign criminal's "integration" into the country to which it is proposed that he be deported as set out in section 117C(4)(c) and paragraph 399A, is a broad one. It is not confined to the mere ability to find a job or to sustain life while living in the other country. It is not appropriate to treat the statutory language as subject to some gloss and it will usually be sufficient for a court or tribunal simply to direct itself in the terms that Parliament has chosen to use. The idea of "integration" calls for a broad evaluative judgment to be made as to whether the individual will be enough of an insider in terms of understanding how life in the society in that other country is carried on and a capacity to participate in it, so as to have a reasonable opportunity to be accepted there, to be able to operate on a day-to-day basis in that society and to build up within a reasonable time a variety of human relationships to give substance to the individual's private or family life'.*

42. The appellant may speak some Arabic and have working skills but save for some visits his life has been centred in the United Kingdom over many many years. Overall there would be very significant obstacles to the appellant's integration in Morocco.

43. Even if the claimant could not benefit from paragraph 399A I would need to consider whether there are any very compelling circumstances. As set out in **Hesham Ali** at paragraph 50:

> "*In summary, therefore, the tribunal carries out its task on the basis of the facts as it finds them to be on the evidence before it, and the law as established by statute and case law. Ultimately, it has to* ***decide whether deportation is proportionate in the particular case before it***, ***balancing the strength of the public interest in the deportation of the offender against the impact on private and family life***. *In doing so, it should give appropriate weight to Parliament's and the Secretary of State's assessments of the strength of the general public interest in the deportation of foreign offenders, as explained in paras 14, 37-38 and 46 above, and also consider all factors*

relevant to the specific case in question. The critical issue for the tribunal will generally be whether, giving due weight to the strength of the public interest in the deportation of the offender in the case before it, the article 8 claim is sufficiently strong to outweigh it. In general, only a claim which is very strong indeed - very compelling, as it was put in MF (Nigeria) - will succeed."

44. **Hesham Ali** also rejected as a mistaken interpretation that the Rules and the Rules alone govern appellant decision-making when considering whether they constitute a complete code. The policies adopted by the Secretary of State and the Rules are nevertheless a relevant and important consideration for Tribunals determining appeals both on Convention grounds and because they reflect the assessment of the general public interest. It remains, however, for the Tribunals giving due weight to the strength of public interest in deportation and the factors brought into account on the other side as to whether deportation would be disproportionate.

45. In my analysis I must also have regard to Section 117 of the Nationality Immigration and Asylum Act 2002**.** **Akinyemi v SSHD** [2017] EWCA Civ 236 discussed the approach taken to Section 117C (in relation to foreign criminals) which reads:

> "(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 appellant does not need to satisfy the exceptions under Section 117C in order that a finding of compelling circumstances be made. This approach was considered to be too literal in **Akinyemi** and it was underlined moreover that the Tribunal must only 'have regard' to giving weight to these factors in an Article 8 consideration.

47. When considering the public interest it is clear that the majority of the offences committed by this appellant - five convictions secured by him were at a very young age - and as the sentencing judge remarked in 2009 he had not committed an offence for 26 years and there was no recommendation for deportation made. His drug offences were related to his addiction which has since been resolved. This is not to undermine the seriousness of the offence. As advanced by Ms Solanki, **Hesham Ali** specifically states that the record of offending should be taken into account. In 2010, the appellant as being low risk to the public and low risk of reoffending. He was also considered no longer to be a substance misuser and had complied with the terms of his probation supervision. It is clear that in the last eight years, since that conviction, the appellant has not reoffended.

48. **AJ (Zimbabwe)**, however, emphasises the force of the public interest in deportation and the relationship with children is not considered, without more to amount to a compelling reason, let alone a relationship with an adult child albeit she has mental health problems. Emotional damage was considered to be inevitable when a parent is deported and that would not justify a conclusion that interference with Article 8 rights was disproportionate.

49. I recognise that parliament in the United Kingdom has chosen to put a 'heavy premium on the removal of foreign criminals' and that it is for each state to determine what weight to give to the public interest in deporting foreign criminals. Further I recognise it is a mistake to view the public interest '*principally in terms of the potential damage caused by the particular individual re-offending, whereas that is merely an element - and by no means even the most important element – of the relevant public interest as perceived in the UK'* **AJ (Zimbabwe).**

50. I take into account the factors cited in relation to the very significant obstacles which I do find to be relevant, not least his family connections and the length of time that he had spent in the UK and his health but there are two further and particular issues which I consider to be of specific relevance in my consideration of this appeal as to whether there are very compelling circumstances.

51. The first is that I was invited to balance the length of time that the appellant had spent in the UK against the length of his imprisonment and to note that the four years' demarcating sentence had not been reached. To that end I find that paragraph 38 of **LW (Jamaica)** is relevant. This confirms that the length of residence *is* a relevant factor in concluding whether there are compelling reasons for not deporting someone although not necessarily determinative. I note that the appellant was not sentenced to four years in prison but I proceed under this limb of the Rules as if he had not fulfilled the exception under paragraph 399C and thus whether the four years is reached or not is not necessarily relevant. The test of compelling circumstances remains the same. However the circumstances *overall* must be

considered including the proportion of sentence compared with the length of residence. The appellant was sentenced to 2 years in prison as compared with his 40 years' lawful residence. The proportion of this sentence in relation to the length of time he has been resident in the United Kingdom and integrated here is a factor to be considered in relation to compelling circumstances.

52. Even if the factors under 399A were not sufficient to reach the exception under that Rule (which in this case I do not accept) those factors would still need to be taken into account in the overall assessment. The Supreme Court in **Hesham Ali v SSHD** [2016] UKSC 60, while emphasising the importance of the Immigration Rules has departed from the view that the Immigration Rules are a 'complete code'. All relevant factors should be taken into account including giving great weight to the public interest in deportation.

53. The second point is this. I accept the Secretary of State was entitled to issue a further deportation order and indeed Paragraph 399C sets out the following:

> "*Where a foreign criminal who has previously been granted a period of limited leave under this part applies for further limited leave or indefinite leave to remain his deportation remains conducive to the public good and in the public interest notwithstanding the previous grant of leave*."

That provision was introduced into the Immigration Rules on 28th July 2014.

54. The policy guidance on criminality: Article 8 ECHR cases published on 22nd February 2017 also states that:

> "*Where a foreign criminal has previously been granted limited leave on the basis of Article 8 they will only be granted further leave if they qualify under the Article 8 provisions set out in paragraphs 398 to 399A, even if their first period of leave was granted before those provisions came into force or before the previous private and family life Rules were introduced on 9 July 2012*."

I accept that as confirmed in **DB (Jamaica) [2017] EWCA Civ 440** in order to avoid deportation a foreign criminal must advance "a very strong case indeed" and that the Tribunal "*have emphasised the need not merely the need to deter*" but also "*the need to express the ... revulsion at the serious crime*". The fact is however that the appellant appealed his deportation order in 2010 and following an extensive examination of his circumstances that deportation order was found to be in breach of his human rights. Since that appeal was allowed the appellant has committed no further offending. With the public interest nonetheless in mind, **Nguyen V SSHD [**2017] EWCA Civ 258 confirms that a significant passage of time – five years or more since the commission of an offence can diminish the public interest in deportation. Clearly this will depend of the facts but is relevant in this case. I find his health has *deteriorated* and his links to Morocco minimal, which I accept bearing in mind the length of time spent there, such that I have found there are significant obstacles to his reintegration in Morocco. Notwithstanding the previous decision by the First-tier Tribunal Judge in 2010 the Secretary of State saw fit to use the same index offence when the

appellant applied for further leave to remain to generate and sign a further deportation order.

55. I accept that the rules have changed and that they are a 'starting point' and thus the goal posts have changed but, as set out in **Hesham Ali**, it remains for a judge on the facts as they are found, giving due weight to the strength of public interest in deportation, to conclude whether that deportation would be disproportionate. I give weight to paragraph 399C, and the current Rules but the fact is that this appellant has had his case explored extensively by the Immigration Tribunal, and now on three occasions and his appeal has been allowed each time. I acknowledge that the decision of Judge Carroll was set aside and the preserved findings from his decision have been modified. The public interest as Ms Solanki submitted has been sharply brought home to the appellant and little is served in terms of public resources by further expression of revulsion through a signing of a second deportation order on exactly the same index offence.

56. In the intervening period since 2010 and the first Tribunal decision allowing the appellant's appeal his health has deteriorated and he has forged even closer bonds with his adult children (and indeed there were adult children when the appeal was allowed in 2010). I find that there would be very significant obstacles to the appellant's integration in Morocco. He has never lived there as an adult and now would find very significant difficulties in financially supporting himself. As such I consider that all these are relevant factors when considering the strength of his case as against the public interest. As the social worker found the impact on the appellant in terms of his future life and health would be severe and it would be questionable what support he would be able to access in Morocco. The appellant is however in the 'high risk category' for a further cerebrovascular accident or heart attack. There has been a significant time since his last offence. Even if I am incorrect about the very significant obstacles, overall the factors cumulatively and as cited above constitute very compelling circumstances, such that the appellant's appeal should be allowed.

Notice of Decision

Mr R's appeal is allowed on human rights grounds.

Direction Regarding Anonymity – Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008

Unless and until a Tribunal or court directs otherwise, the appellant is granted anonymity. No report of these proceedings shall directly or indirectly identify him or any member of his family. This direction applies both to the appellant and to the respondent. Failure to comply with this direction could lead to contempt of court proceedings.

Signed *Helen Rimington* Date 6th December 2017

Upper Tribunal Judge Rimington

TO THE RESPONDENT
FEE AWARD

As I have allowed the appeal and because a fee has been paid or is payable, I have considered making a fee award and have decided to make no fee award because of the complexities involved in the case.

Signed *Helen Rimington* Date 6th December 2017

Upper Tribunal Judge Rimington