



Upper Tribunal  
(Immigration and Asylum Chamber)

Appeal Number: DA/00359/2014

**THE IMMIGRATION ACTS**

Heard at Field House  
On 11 July 2018

Decision & Reasons Promulgated  
On 27 July 2018

Before

**THE HON. MR JUSTICE GOSS  
(SITTING AS A JUDGE OF THE UPPER TRIBUNAL)  
UPPER TRIBUNAL JUDGE KOPIECZEK**

Between

**KERN [G]  
(ANONYMITY DIRECTION NOT MADE)**

Appellant

and

**THE SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Respondent

**Representation:**

For the Appellant: Mr T. Lay, Counsel instructed by Duncan Lewis & Co, Solicitors  
For the Respondent: Ms A. Holmes, Senior Home Office Presenting Officer

**DECISION AND REASONS**

*Introduction*

1. The appellant is a citizen of Trinidad and Tobago, born on 25 August 1983. On 22 September 2014 a decision was made to make a deportation order against him pursuant to section 32(5) of the UK Borders Act 2007 following his conviction, in the

Crown Court sitting at Kingston, for an offence of robbery, committed on 18 August 2010, for which he received a sentence of three years' imprisonment on 6 January 2011.

2. His appeal against the respondent's decision came before First-tier Tribunal Judge Canavan ("the FtJ") on 15 August 2014, following which she allowed the appeal. The respondent appealed against the decision of the FtJ but the Upper Tribunal ("UT") upheld her decision after a hearing before Carr J and Upper Tribunal Judge Conway on 10 December 2014.
3. The respondent was granted permission to appeal to the Court of Appeal against the UT's decision. On 25 May 2017 the respondent's appeal was allowed, with the Court of Appeal ordering that "the case be remitted to the Upper Tribunal with a direction that the First-tier Tribunal erred in law by failing to apply the correct test" and that the UT conduct a rehearing of the appeal.
4. The appellant was given permission to withdraw certain concessions made on his behalf as to the extent to which he could meet certain requirements of the Immigration Rules ("the Rules") and provisions of the Nationality, Immigration and Asylum Act 2002 ("the 2002 Act"). The parties were also given permission to call such further evidence that they wished to rely on.
5. Given that the hearing before us involved a complete rehearing of the appeal, it is not necessary for us to say anything further about the error(s) found to have been made by the FtJ or the UT, or concessions previously made on behalf of the appellant.
6. At the hearing before us we heard evidence from the appellant and his wife, whom we shall identify as SG. Because this appeal involves children, we consider it appropriate to refer to them, and the appellant's wife and former partner, by their initials although we do not consider it necessary to make a formal anonymity order.
7. We set out below a summary of the oral evidence and the submissions made by the parties.

*The oral evidence*

8. In examination-in-chief the appellant adopted his witness statements. In relation to his son (J), born on 24 April 2010 from a relationship with one MD, he said that he lives with his mother in Manchester and he sees him approximately every other week when his mother brings him to London to visit him. He does not stay overnight.
9. In terms of his deportation and the affect on the children, he has concern for all of them, but in particular KD (born on 19 January 2015) as she is his first daughter who is so attached to him. She has grown up with him since when she was a baby. He has more of an attachment with her and with whom he spends more time.
10. His wife works full-time. He takes KD to nursery and puts her to bed. M is his stepson and he calls him Dad. They get on quite well with J.

11. In cross-examination he explained that when he said in his witness statement dated 29 May 2018 that neither he nor his daughter KD would be able to cope if he had to leave the UK he meant that he does not know how he would be able to live without his family because of the bond that they have. Words could not explain, he said. He does not see himself without his family.
12. As to whether his parents in Trinidad could offer him moral support on return, even if not material support, the appellant said that they could but he had not seen them for 10 years. Things had changed so much in Trinidad. It would be especially hard for his family to go there. It is totally different from England. His wife went to Trinidad once and said that she would not like it there because of the temperature and the climate. He would not be able to find employment because times have changed from when he was there before, when he knew people who could help him to get a job.
13. From what he had seen on the news and in social media, Trinidad is not safe because there are kidnappings, murders and gun crime.
14. As to whether, when he got married and had two children, he knew that he was at risk of being deported, he said that at that time they thought that they would be ok, having gone to the town hall to apply to get married. They had been in love for so long. When they were told that it was okay for them to marry they did not look at it as a problem.
15. Initially in answer to our questions he said that when they got married and had children he did know that one day he may be in a position whereby he was to be deported. As to whether he had thought that there was a risk that they might have to go to Trinidad he said that he did not think about deportation; he was in love and that was it.
16. SG adopted her witness statements in examination-in-chief. She said that it was not possible that her two children (from her previous relationship) M and A, would be able to go to Trinidad. A lives with them but she is now an adult and would not want to go. A and M have a good relationship and going to Trinidad would mean breaking them up.
17. She (SG) has her 76 year old grandmother here. She brought her up. She does things for her grandmother. There is also her job to consider. She started that job in 2014 and earns £1,300 per month net.
18. M's father is around but he does not contact M often, except when he remembers. He would say no to him going to Trinidad, just to be spiteful although she had not discussed it with him. Their break-up was not good.
19. The appellant does most of the household tasks during the day. It would be a struggle for her with the children, without him. He cares for them whilst she is at work. If the appellant was not around she would have to arrange childcare. KD would have eight hours funded childcare but her son KS (born on 15 June 2017) would not. She could not rely on her daughter, A. She would have to change her hours at work and her

income would drop. That is not a matter she had discussed with her employer. She would then have to support three children on a part-time income.

20. If the appellant left the UK it would have a big impact on KD. He has been with her from 7.30 in the morning until 5 o'clock in the evening since she was eight weeks old.
21. Their family life had developed a lot since he came out of prison. They do everything together. He made a mistake and he has done a lot to try to fix it. At the time he went to prison things were different. He is the centre of their family. When the elder children come home he is the one that is there. Without him she does not think the family would be able to function as they do now. It would break their hearts. It would be very very hard for everybody in the family to "just get on with it".
22. SG accepted that the social circumstances report of Alison Tyrell refers to her having a brother and sister and accepted that they have a close relationship but said that it was not their responsibility to help her constantly. As to whether they would help her, she accepted that they would but only up to a limit. She could not depend on someone to help her constantly because of her working hours.
23. When she and the appellant got married they were not thinking about the question of deportation. They were just happy, in love and wanted to be together.
24. In answer to our questions she said that she met the appellant when she went to Trinidad in 2004. She had been there six or seven times since, when she was seeing the appellant. She stayed there for no longer than two weeks each time.
25. She does everything for her grandmother. Her grandfather is 70 years old and works full-time. They live in the same house but are separated.

#### *Submissions*

26. In his submissions Mr Lay relied on his skeleton argument. He submitted that in principle the appellant was able to satisfy the requirements of paragraph 399(a) of the Rules (unduly harsh to separate from child).
27. Ms Holmes clarified that it was not suggested on behalf of the respondent that the appellant's 'family' could go with him to Trinidad and that the issue was in terms of the undue harshness of their remaining in the UK without him.
28. On the question of undue harshness we were referred by Mr Lay to the decision of the Court of Appeal in *MM (Uganda) v Secretary of State for the Home Department* [2016] EWCA Civ 617, in particular at [25]-[26] in terms of how undue harshness under the Rules is to be considered.
29. It was submitted that it would be unduly harsh for the appellant to be separated from his family, in particular his younger children. It was accepted however, that it was said in *NA (Pakistan) v Secretary of State for the Home Department* [2016] EWCA Civ 662 that the mere fact of separation from a child's father would not be enough. Nevertheless, it

was also pointed out that at [32] the Court in that case said (to summarise) that there may be cases where the factors described in Exceptions 1 and 2 of s.117C of the 2002 Act are not met yet the factors to be taken into account have such force that there were sufficiently compelling circumstances such as to outweigh the high public interest in deportation. As was said in *Hesham Ali v Secretary of State for the Home Department* [2016] UKSC 60, everything needed to be taken into account.

30. It was also contended that the case before First-tier Tribunal Judge Canavan was a strong one, and is all the more so now. However, as we pointed out to Mr Lay, the Court of Appeal had found that the FtJ had applied the wrong test and we indicated that we were not at all persuaded that there was any merit in a submission that relied on the First-tier Tribunal's decision.
31. It was submitted that the factors set out in the skeleton argument at page 8 were such as to mean that a proportionality assessment of the type required in this case, would mean that the appeal fell to be resolved in the appellant's favour, particularly bearing in mind that there is now a functioning family. Those factors, to summarise, are the strength and length of the appellant's relationship with his wife, the position of the children and the complex network of family relationships, SG's relationship with her mother and the barriers to relocating to Trinidad, and the likelihood of SG having to give up work if the appellant is deported with the risks of deterioration in family wellbeing and conditions as explained in the social circumstances report.
32. Ms Holmes in her submissions argued that the appeal quite simply boiled down to a question of whether it was unduly harsh for the appellant to return to Trinidad, with his family remaining in the UK. She submitted that the hurdle was a high one. Whilst such separation may be 'harsh' it was not *unduly* harsh.
33. As regards the social circumstances report, the author of it only saw the family for about two hours and does not therefore really know the family. Furthermore, it was not clear as to how she could make the comments that she does about SG's mental health based only on that meeting. SG came across as a very capable and competent person who had been able to deal with difficulties that she had faced in the past.
34. Furthermore, SG has a very sound family background. From her witness statement it is apparent that she has a lot of support in her life, although it was not suggested that her family would be able to help all the time and in all circumstances.
35. Ms Holmes referred to various paragraphs of *Hesham Ali* in support of the contention that the appellant's circumstances are not such as should lead to his appeal being allowed. It was submitted that there was nothing about the appellant's case that made the circumstances exceptional.
36. In reply, Mr Lay accepted that the appellant would need to show strong/very compelling circumstances, especially in a case where immigration status is precarious. However, as was said at [77] of *Hesham Ali*, there was a danger of the issue of exceptional circumstances being misunderstood.

*Assessment and Conclusions*

37. We should say at the outset that we are grateful to the parties for their very clear and concise written and oral submissions. In terms of the written arguments, we are, in particular, very grateful to Mr Lay for the clarity and focus of his skeleton argument.
38. It is helpful at this point to set out the details of the children to whom reference has been made in the course of the proceedings:
- KS is the appellant and his wife's son, born on 15 June 2017.
  - KD is the appellant and his wife's daughter, born on 19 January 2015.
  - J is the appellant's son from his relationship to a previous partner, MD.
  - M is the appellant's wife's son, born on 10 August 2004.
  - A is the appellant's wife's daughter, born on 22 January 1999.
39. The appellant has a son, NG, in Trinidad who was born on 23 September 2003 and where, according to the appellant's witness statement, he lives with his mother and her other two children. The appellant further states that he has weekly contact by phone or Skype with him. There was no dispute about this aspect of the appellant's evidence. NG's circumstances are however, not relevant to the assessment of the effect of the appellant's deportation on family members in the UK. That he has a son in Trinidad is not irrelevant however.
40. So far as the applicable Rules are concerned, they are paragraphs 398 and 399. The term of imprisonment that the potential deportee received often (but not always, for example in cases of persistent offenders) determines what particular provision of the deportation Rules applies in his or her case. This appellant received a sentence of three years' imprisonment and therefore he comes within paragraph 398(b). That provides that the deportation of a person from the UK is conducive to the public good and in the public interest where 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.
41. Paragraph 399 provides as follows:
- "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."

42. Lastly, in terms of the Rules, paragraph 398(c) states that:
- “...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.”
43. The phrase “that claim” is a reference to the opening words of paragraph 398 in terms of a person’s claim that their deportation would be contrary to Article 8 of the ECHR.
44. It is also necessary to refer to the deportation provisions of the 2002 Act. S.117A-C provides as follows:

**“PART 5A**

ARTICLE 8 OF THE ECHR: PUBLIC INTEREST CONSIDERATIONS

**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..."

45. One can see that s.117C is of particular relevance in this appeal. S.117D defines the phrase "qualifying child". It is not disputed but that J, KD, KS and M are such qualifying children (for these purposes, being under the age of 18 years and British Citizens). The 2002 Act in this respect is in harmony with the Rules (paragraph 399(a)) and it was only paragraph 399(a) (under the Rules) that was relied on on behalf of the appellant.
46. We do not understand the respondent's case to be that the appellant does not have a "genuine and subsisting parental relationship" with those children, and the evidence in any event leads us to conclude that he does have such relationships.
47. As is apparent from our summary of the parties' submissions, it is similarly not contended on behalf of the respondent that the appeal should be dismissed on the basis that the appellant's wife and the minor children should be required to leave the UK and live in Trinidad with him.
48. We must decide whether the appellant's deportation would be unduly harsh within the scheme of the Rules and if not, whether there very compelling circumstances over and above those described in the Rules such as to outweigh the public interest in deportation.
49. In her submissions, if we understood her correctly, Ms Holmes seemed to suggest that because SG said that she would not go to Trinidad with the appellant, that was the basis upon which she accepted that it would be unduly harsh to expect the family to go there with him. We doubt very much that this could amount to a reason for concluding that it would be unduly harsh for a partner and children to return to the country of deportation with an appellant. However, we do not need to explore the matter any further in that context because quite apart from the respondent's position on that aspect of undue harshness, there is the important fact that M is not the appellant's son and the unchallenged evidence is that his father would not allow him to go to Trinidad. That would mean that he would be separated from his mother, SG, and from his step-siblings if they left the UK and he remained. That is not the only consideration in relation to this family in this context, but it is enough.

50. In *MM (Uganda)* in relation to the expression “unduly harsh, at [26] the court said that:
- “The expression ‘unduly harsh’ in section 117C(5) and Rule 399(a) and (b) requires regard to be had to all the circumstances including the criminal’s immigration and criminal history.”
51. In his skeleton argument Mr Lay argues that *MM (Uganda)* was wrongly decided in its assessment of the approach to be taken to the question of undue harshness. As in the skeleton argument, we were informed that the Supreme Court has granted permission to appeal on that point. However, as we also indicated, *MM (Uganda)* is binding authority regardless of the fact that the case is to be considered on appeal to the Supreme Court.
52. The offence of which the appellant was convicted was a serious offence of robbery, as the sentence he received indicates. He was aged 27 when he was sentenced and almost 27 when the offence was committed. To summarise the sentencing remarks, the offence involved the appellant and others in a group who “targeted” a single, lone male on his way home in a darkened area. He was “attacked and hit, punched and robbed in a very nasty and unpleasant way by the group”. Others in the group then ran off but the appellant “hung around” the area and was arrested with the passports and other property in his possession. The appellant pleaded not guilty but was convicted by the jury.
53. The sentencing judge said that the aggravating features of the case were that it was a group attack, the injuries to the victim which, although not grave, were certainly unpleasant. In addition, it was considered that the appellant would have hung on to the stolen property that he had in his possession, being of some value, i.e. passports.
54. As regards the risk of reoffending, it is important to note that the offence was committed on 18 August 2010. The appellant was convicted and sentenced on 6 January 2011. He has not offended since and the robbery was his first offence.
55. As regards the risk of reoffending, in the appellant’s bundle there are three OASys reports, all with a date of 4 July 2018 at the top of each page, but each being stated to be for a different purpose, being “Termination of Community Supervision”, “Start Licence” and “Other”. Notwithstanding the date on those reports, it cannot be that that is the date upon which the assessments were made since in each case there is a “Date Assessment Completed” on page 2, with the latest being 19 August 2013 on the Termination of Community Supervision version. Nevertheless, the significant point is that the risk of reoffending was said at that time to have been low, with a ‘medium’ risk of harm to the public (presumably in the event that an offence is committed).
56. That then, was the expert assessment of the risk of reoffending in 2013, notwithstanding that at that time the appellant still maintained his innocence, as is clear from the OASys report. Given that he has not reoffended in the years since his release after serving his sentence, and then from immigration detention on 21 March 2012, and taking into account the 2013 assessment of the risk of reoffending, we are satisfied that there is a low risk that the appellant will reoffend.

57. However, as is clear from authority, the risk of reoffending is not the only, or even the most important factor, to be taken into account in terms of the public interest. Whilst Lord Wilson in *Hesham Ali* disavowed the phrase “public revulsion” that he used in *OH (Serbia) v Secretary of State for the Home Department* [2008] EWCA Civ 694, the depth of public concern about the facility for a foreign criminal’s rights under article 8 to preclude his deportation is a significant factor to be taken into account (see [70] of *Hesham Ali*).
58. The best interests of the minor children in the UK must be taken into account. Their interests are a primary consideration. In that context we proceed on the footing that if the appellant is removed from the UK, they will remain behind. In each case they will remain with their mothers.
59. We have no difficulty at all in accepting that the best interests of the children lie in the maintenance of the status quo in terms of KS, KD and M continuing to live with the appellant and his wife, and in J continuing the contact that he currently enjoys with the appellant.
60. We accept the evidence of the appellant’s involvement in the daily lives of KS, KD and M, and the emotional bond that there is between him and them. Likewise in terms of his relationship with J.
61. We are also of the view that their best interests will be adversely affected by the appellant’s removal because inevitably the contact that they presently have will be severed. Contact could no doubt be maintained by letters, phone calls, Skype or similar, and by the occasional visit to Trinidad. Financial constraints are likely to mean that the visits could only be occasional. The sort of contact and communication that could be maintained in the circumstances of the appellant being in Trinidad would of course be no substitute for the face-to-face contact that every child needs and is entitled to for so many obvious reasons.
62. We have no difficulty in accepting that all of the children would be significantly adversely affected by the appellant’s removal to Trinidad. We are similarly satisfied that Ms Tyrell is right when she says in her report that she anticipates that A (although now an adult) and M would experience feelings of loss if their contact and relationship with the appellant were severed. Likewise, as we have already intimated, we agree that neither KS nor KD would be able to maintain meaningful contact with the appellant if they are separated by his deportation, at least not as meaningful as their contact at present.
63. The appellant’s removal, with the family remaining behind, is likely to have a very significant impact on the appellant’s wife. She would plainly not have the direct physical and emotional support that he currently provides in relation to the family as a unit. She says in her witness statement that she would not be able to work if he were not there as she would not be able to afford childcare. In oral evidence however, she said that she would have to change her hours at work and her income would drop and she would then have to support three children on a part-time income.

64. We consider it more likely that what SG said in oral evidence is the actual position, being her evidence in answer to direct questioning, i.e. that she would have to reduce her hours of work and would therefore have less income. We nevertheless accept that there would be adverse financial consequences in the appellant's removal.
65. Quite apart from all the above, it is important to recognise the relationship between the appellant and his wife. There is no reason not to accept their evidence of their commitment to each other and the strength of their relationship. Ms Holmes took exception to what is said in Ms Tyrell's report at paragraph 2.9, namely that SG's "mental health and wellbeing would be negatively impacted as she is accustomed to the stability and security that her efforts have afforded the family". However, this was said in the context of her going to Trinidad with the appellant. Nevertheless, we conclude that there would be an adverse emotional impact on SG if the appellant was removed; that is inevitable. In this context we also note the difficulties that are described in Ms Tyrell's report in relation to SG's own upbringing and her family relationships in terms of her parents and siblings.
66. In addition, we note what is said about the caring responsibilities that SG has for her 76 year old grandmother (who lives with her husband, although they are 'separated') whom she regards as her mother, and who is registered disabled. She lives two streets away and SG visits her every day, and the appellant is also said to visit her when SG is at work. The absence of the appellant would be likely here again to have an adverse effect, not only on SG's grandmother but on SG who would have to manage those caring responsibilities without the appellant's help. We also note however, that in Ms Tyrell's report at 17.3 it states that SG's grandmother helps by cooking meals for the family on occasion which SG takes home.
67. The matters we have referred to above do not stray beyond a consideration of the question of undue harshness in relation to the minor children; they are interrelated matters.
68. We must also bear in mind however, that the appellant's relationship with SG was developed, although it existed before, at a time when his immigration status was precarious. The appellant arrived as a visitor in April 2009 and overstayed. They married (in June 2013) and had two children in those circumstances. We have reminded ourselves of what they both said in evidence in answer to that point, but the precariousness of the appellant's status is a significant factor to be taken into account in considering whether it would be unduly harsh for him to be separated from his family in the UK, even accepting that the children cannot be held responsible for the actions of their parents.
69. We also note the evidence that SG has two siblings with whom, according to her oral evidence, she has a close relationship, albeit that she said that it was not their responsibility to help her "constantly". It is reasonable to conclude that she could turn to them for at least some assistance.

70. In addition, A, although still only 19, is an adult, is in employment and lives with SG and the appellant. It is reasonable to conclude that she would be able to provide practical support to SG in the appellant's absence even though she has her own life to lead. In Ms Tyrell's report at 15.7 it states that she contributes financially to the household income.
71. So far as the appellant is concerned, the purely practical consequences for him of his return to Trinidad we do not consider to be of much significance. He has his parents there with whom he appears to be in contact. He has a son there who is now aged 14. He would be able to have greater contact with him than is presently the case, which we consider must surely be to the benefit of both of them. The appellant raises the question of the difficulty he would have in finding employment, but we do not consider that that is a matter of great significance whether considered alone or in combination with any other factors, when set against the significant public interest considerations in play.
72. 'Mere' separation of a deportee from his spouse and/or children is manifestly not a sufficient basis from which to conclude that deportation would be unduly harsh. To decide otherwise would be to neutralise the effect of the Rules and the deportation provisions of s.117 of the 2002 Act (see also [34] of *NA (Pakistan) v Secretary of State for the Home Department* [2016] EWCA Civ 662).
73. The appellant is step-father to M who is 13 years old and to A who is 19. M's father appears not to have much involvement in M's life according to the evidence of SG, which we accept. That evidence is reinforced by M's letter dated 8 June 2018. He speaks of his close father/son relationship with the appellant in contrast with his relationship with his natural father. The evidence suggests that M's father lacks commitment, engagement or much active interest in M's life.
74. J, who is 9, lives with his mother. His mother's letter dated 11 June 2018, apart from referring to the closeness of the relationship between J and the appellant, refers to the appellant as the only "father role model" that he has. Her letter suggests that there is no other father figure in his life. We bear in mind that she did not attend to give evidence, and this is a matter that could have been more fully explored in oral evidence. On the other hand, there was no challenge to her evidence.
75. We consider that Ms Holmes' point about SG obviously being very capable and competent is well made. We too have that impression. We are of the view that she would be able to 'manage' in a practical sense without the appellant, by calling on assistance from family (her siblings), and from her eldest daughter A.
76. The ages of M and J are significant. M, in particular, is of an age when he will increasingly need greater emotional and practical support and guidance. J is approaching that age. Nevertheless, they will continue to have the daily contact and support of their mothers, and the ability to maintain contact with the appellant, even though at a distance.

77. It is to be remembered that the appellant was convicted of a serious offence, albeit about eight years ago. The very strong public interest in deportation is manifest. Considering all the circumstances, we are not satisfied that it would be unduly harsh for him to be separated from the minor children with whom he has a parental relationship. Contact would not cease between them. It could be maintained, albeit in very different and limited circumstances. There would be a greater burden placed on SG in bringing up the three minor children that live with them but she is not likely to have to manage alone, without any help from any other family member. There would probably be financial hardship, but no evidence was put before us to suggest that such financial hardship would have any, or any significant, detrimental effect on the children. We have taken into account all the other circumstances. As explained above, in the assessment of the issue of undue harshness.
78. We accept that removing the appellant would be harsh. We are not satisfied that it would be *unduly* harsh in relation to the children.
79. We have considered whether there are very compelling circumstances over and above those described in paragraph 399(a), as well as the parallel provisions of s.117C of the 2002 Act. In order for the public interest to be outweighed there would have to be “a very strong claim indeed” ([38] *Hesham Ali*). We cannot see that there are such circumstances in this appeal, reflecting again on all the matters that we have considered and there being no additional relevant factors to be taken into account.
80. Accordingly, the appeal must be dismissed.

*Decision*

81. The decision of the First-tier Tribunal involved the making of an error on a point of law. Its decision having been set aside, we re-make the decision by dismissing the appeal.

Upper Tribunal Judge Kopieczek

20/07/18