Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: DA/00389/2018

THE IMMIGRATION ACTS

Heard at Field House
On 5 March 2020

Decision & Reasons Promulgated
On 23 March 2020

Before

UPPER TRIBUNAL JUDGE ALLEN

Between

DAVID [A]
(ANONYMITY DIRECTION NOT MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellant: Ms J Bond, instructed by Irving & Co Solicitors
For the Respondent: Mr T Lindsay, Senior Home Office Presenting Officer

DECISION AND REASONS

1. This is the remaking of the decision on the appellant's appeal against the respondent's decision of 29 March 2018 to deport him from the United Kingdom. Following a hearing before Mr Justice Dove sitting as an Upper Tribunal Judge and Upper Tribunal Judge Allen an earlier decision of the First-tier Tribunal was set aside and the matter was relisted for remaking of the decision.

2. It does not appear that directions were issued with regard to further evidence, but Mr Lindsay was not put in any difficulty by the further evidence provided and

© CROWN COPYRIGHT 2020

therefore it was possible to proceed. I am grateful to him for his cooperation in this regard.

3. The appellant gave evidence, having signed his most recent witness statement. He lives with his partner [MA] and his stepson and they had been living there for four years now. He had accepted the contents of his earlier witness statement previously and still wished to rely on it. He also relied on the updated statement. There were additional medical records in the new bundle. He had suffered from alcohol dependence from 2004. In 2012 he was treated for psychosis and his medication was increased. He was currently taking medication for high blood pressure and for psychosis. From 2013 onwards he had had ongoing reviews with regard to his mental health. He had not been particularly receptive, as the evidence said, and he had been seen by a psychiatrist every three weeks and had said that it would not be really good to refer him to a mental health hospital. He had his family and his home.

4. There was the reference of 21 May 2013 to him looking for a job. He had always worked previously on and off. He had worked for most of the time. A letter of 19 January referred to him saying there was no evidence of auditory hallucinations but he still had voices in his head. The letter of 11 April 2019 confirmed the medication and it was the same now.

5. With regard to the correspondence concerning his stepson, the child saw his father sometimes. His own relationship with the child was very good, they bonded with each other and did everything with each other and had done so for four years. During that time the child had been unwell and had missed school sometimes because of his illness. He had been diagnosed with ulcerative colitis from the age of 2. Once he had been in hospital for nearly two weeks.

6. In cross-examination the appellant said that his partner was of Portuguese nationality. As to whether the child was also Portuguese he said no, he had been born in the United Kingdom. As to whether he had any evidence that the child was not Portuguese but British he thought he could get the birth certificate. The child did not have a British passport but had a Portuguese passport.

7. He was asked whether there was any reason why his partner and the child could not move to Portugal with him and he said they would not as they lived here and were very close to the school here and she would not take him out of school to go to Portugal. They had discussed that, and his partner had said that she was not going to Portugal. He was asked whether other than not wanting to, was there anything stopping her, any problems for her and the child, and he said he thought so and she had told him she would not go and her mother lived here.

8. He was referred to the letter from the doctor at page 204 of the bundle and the reference to him buying medication on the internet. He said yes it was cheaper and he could not afford to buy from the chemist. He was asked whether he had evidence of a doctor telling him he needed to take those medications and he said yes he thought it was in the bundle. It was put to him that if he did need to take it, it would

be available in Portugal and he said he did not know and he had not been there for 26 years and had no family in Portugal. They all lived here in London. He was asked how well he spoke Portuguese and he said a little but not much. They spoke Portuguese a little bit at home. It was put to him that there was no reason that he would not be able to live in Portugal and find work within a reasonable time and he said he had no-one there and if he went there he would be homeless and would not be able to start a life there. All his family was in London and he did not know how he would start a life there.

9. He was asked whether he had checked as to whether he would be able to obtain state benefits in Portugal and he said that state benefits did not exist in Portugal. It was put to him that he would be able to support himself or have state benefits and he said he did not think so. He did not have a place to start a life in Portugal and he would live on the streets. He had not been involved in crime for quite a while and had been trying to go straight. It was put to him that in the view of the Home Office he would keep committing offences in the United Kingdom and he said no he had stopped for a long time now. He was trying to have a job.

10. There was no re-examination.

11. The next witness was [MA] who continued to rely on her statement of 2019 and also adopted her most recent witness statement of 2020. The contents were all true. As regards the evidence of her son's medical condition and the impact on him he could have a normal life unless he had flare ups and that might involve him going to hospital for a day and up to a month. He had to be very careful with his diet and could not get very stressed.

12. If the appellant lost his appeal she would not go to Portugal with him. She had everything here, having established a life here with her son being born here and her job was here. It would be very hard to take him to start a new life. It would be very difficult for him to leave the appellant but she had no resources in Portugal. As to whether there were social welfare benefits in Portugal she did not know how it worked. The immediate family life of the appellant was in the United Kingdom, where his parents and siblings were. The appellant took medication on a regular basis, for schizophrenia and high blood pressure. She had been to one of his medical appointments, last year around July to September. That had been before one of the court hearings. The appellant got his medication via the GP on prescription.

13. When she had found out he had health issues after he had come out of jail and they had one of the hearings he had told the solicitor he had a problem. She had known him since 2003 and had met his family. If he had to go back to Portugal with regard to support and benefits and a job she did not know how it worked in Portugal and she would not be able to help him financially there, she was struggling now, there had been a lot of court hearings and she did not have a lot of savings and now had none.

14. On cross-examination the witness was asked whether her son was Portuguese and said he had Portuguese nationality but had been born in the United Kingdom and had always lived here. As regards support from her or the appellant's family she was asked whether she could not send him some money immediately on return and she said she had no money to help him if he went back. She had no savings. They had been paying the solicitors.

15. There was no re-examination.

16. In his submissions Mr Lindsay relied on and expanded on the points in the refusal letter. There might still be an issue about the level of protection for the appellant. In the refusal letter it was argued that even if he had the right of permanent residence there were serious grounds of public policy justifying his expulsion from the United Kingdom. This was relevant to both levels. Quite clearly, it was argued, no right of residence had been acquired by the appellant. It was established law that a period in prison broke continuity as had been held in Onuekwere C-378/12, as referred to in the error of law decision. It could be seen from the HMRC records in the bundle at pages 18 to 21 that there was not a continuous period. He had had periods in prison as could be seen as set out in the refusal letter. There was a period in 2014 to 2015 where no employment was recorded but he received credits. Quite clearly in accordance with Regulation 6 of the EEA Regulations concerning him as a qualified person, status as a jobseeker or a worker who had ceased to work, this only lasted for six months so that would not suffice given the history of his time in the United Kingdom, to enable him to have five continuous years. It was therefore quite plain that he had not acquired any rights of permanent residence. As a consequence he was only entitled to the lowest level of protection.

17. The higher level required a permanent right of residence and if that was not shown then it was the lowest level only. The refusal letter set out the level of threat that existed, so expulsion was justified. Reference was made to paragraph 5 of that decision letter to his criminal history over a twenty year period including fourteen convictions and a number of serious offences over a substantial period of time. He was therefore a persistent offender with a number of convictions and sentences including imprisonment. There was a clear likelihood that he would continue to offend. At all times since his most recent conviction he had been subject to the threat of deportation, so he had not shown that he would not offend without such a threat hanging over him. The test under the Regulations was made out.

18. Paragraph 24 of the refusal letter referred to the appellant's behaviour and paragraph 26 noted the deliberate breach of a court order, which was relevant to the risk of reoffending. Paragraph 27 set out the index offence and that was relevant to the threat his actions posed and the likely ongoing risk. Paragraph 29 referred to the drugs elements and paragraph 30 summarised the effect of his conviction history and was a proper and accurate assessment of his attitude to the criminal justice system. He had a lack of regard for the law and posed a present threat. As a consequence the threat was made out and deportation was justified.

19. As regards proportionality, this was addressed at paragraphs 36 onwards in the decision letter. He was a Portuguese national who could seek help, as set out at paragraph 39. This had been in issue since 2018, but his evidence was not that he had tried and been unable to re-establish connections in Portugal, for example via his Portuguese family in the United Kingdom. It was not said now that the appellant had contacts in Portugal who could help, nor anything about efforts to find out about help from charitable organisations. Nor had it been shown that any proper efforts had been made to show the possibility of state assistance had been investigated. It would be surprising if it were not, as Portugal was an EU member state. It had to be shown that it was true if he claimed to be destitute on return. He could still speak Portuguese including speaking it at home so language would be no barrier to integration.

20. As regards rehabilitation, reference was made to the skeleton argument Ms Bond had put in at the previous hearing. In the absence of integration and a permanent right of residence rehabilitation was unlikely to carry significant weight. There were no strong reasons as to why his partner and stepson could not relocate to Portugal. Both were Portuguese nationals. Even the most recent witness statements were silent on this. Put at its highest the reasons were preference rather than anything strong in the proportionality evaluation.

21. As regards the appellant's partner's son, it was not argued that he had family life with him, as the child had a father who played a role in his life including attending appointments. The appellant considered the relationship to be close. If the Tribunal agreed that he posed a threat to the interests of the United Kingdom that was a very weighty matter in regard to the proportionality evaluation. It outweighed the issue of the child's best interests or other rights.

22. As regards the child's illness and stress there would be stress if the appellant was deported, but during the four years of the relationship the appellant had been in prison and if it would be stressful for the child for him to be deported, prison would be also. If the Tribunal agreed about ongoing future risk including prison, then clearly in any event this would be an additional source of stress to the child. Taken altogether the difficulties for the child were not strong matters in the proportionality assessment. The appellant could work on return and the Tribunal had not been told that he could not get the necessary medication in Portugal, treatment and medication. The decision was therefore proportionate.

23. As regards Article 8, he was a persistent offender so section 117D of the 2002 Act applied. He was a foreign criminal, and none of the exceptions to deportation were open to him on the facts or evidence. The submissions made earlier were adopted in the context of undue harshness. It would not be unduly harsh for the appellant's stepson if the relationship was engaged, for the purposes of the exceptions. It would not be disproportionate. There were not very significant obstacles to the appellant's integration into Portugal. There was no likelihood of destitution. Within a reasonable time he would be able to establish a private life on return and there were not very compelling circumstances also.

24. In her submissions Ms Bond relied on the earlier skeleton argument with regard to the legal framework. It was not accepted that prison broke integration. There was an important distinction as set out in cases such as Vomero. It was a question of whether you could count periods of custody for the purpose of the ten year period and that had not been decided and it was unclear what the impact of a period of imprisonment was, but it was clear that the clock reset to zero during the five year period with regard to the issue of acquisition of permanent residence. It was argued that there were very short sentences, there was a five year work history and it would be troubling if the clock reset to zero after each period, but in Hussein [2020] EWCA Civ 156 the Court of Appeal had said that that was the case. The matter was not formally conceded. It was argued that between 2007 and 2012 the appellant acquired permanent residence. There was a unique feature in that the appellant's offending history was because of his mental health condition. Psychosis had been diagnosed in 2011 and before then he had alcohol and drug problems. It was incorrect to preclude someone who could not show a full five years' work history on the basis that they had a mental health condition. This had an impact on ability to work and to show continuous residence. Other cases were similar when the Secretary of State had taken a holistic view and decided it was not right to deport the person.

25. The Secretary of State had been unaware when she had decided to deport the appellant that he had mental health difficulties. This mitigated the effects of his offending behaviour. It should not be sought to deport him on that basis. It was clear that he had been experiencing ongoing therapeutic treatment back to 2012 and page 199 of the bundle referred to 2013. The Secretary of State had been unaware of this background to the offending behaviour as it had come in late in the day and it was not a new development in the case and partly explained the appellant's offending behaviour and was relevant to proportionality.

26. The letter of 11 April 2019 at page 204 of the bundle was the most recent medical evidence. The appellant's partner confirmed he was seeing a GP and getting prescriptions. There was no evidence about the child's father's nationality but it was clear that he had a Portuguese passport and ID so he was to be treated as Portuguese. But the child had been born in the United Kingdom and lived here thereafter and that was very significant for the appeal. He was now nearly 13 and was likely to be very strongly integrated into the United Kingdom.

27. There was now evidence of the appellant's relationship with his stepson including a letter from the child. It was not accepted that there was not family life. It could be seen from the child's letter that he saw the appellant as a father figure. The child's mother had explained that they had not told him about what had happened when the appellant went to prison but had said that he was working abroad so it did not have the same impact on him as removal to Portugal would. It was necessary to take account of the appellant's and his partner's views of the huge impact there would be on the child if he were removed and there would be impact on the appellant also, given his health problems. With regard to his partner her evidence was quite clear that her life and her son's life was in the United Kingdom and she could not afford to

relocate or to help the appellant, and the child had a relationship with his father also and that was a very significant feature of the case and relevant to proportionality.

28. The appellant and his partner were both employed and his partner had a good job and did shifts and relied on the appellant for help and his working pattern enabled him to do that. The child would lose one of his primary carers. Also in the bundle there was confirmation that all of the appellant's immediate family lived in the United Kingdom and he had no current connections in Portugal. He had been born in Mozambique not Portugal. His time in custody was a total of fourteen months over a sixteen year period and his mental health problems explained that at least in part. He had almost completed five years' work history albeit there were short periods of custody during that period. Whichever standard was applied it was a singular case. A present threat to public security had not been shown. The decision was not proportionate.

29. I reserved my decision.

30. The details of the appellant's criminal history are set out at paragraphs 5 to 8 of the decision letter. He received a conditional discharge for theft – shoplifting on 27 July 1998. Between 28 July 1998 and 3 January 2018 he received fourteen convictions for 24 offences in the United Kingdom, including fraudulent use of a vehicle licence, possession of a controlled drug of class B (cannabis), failing to surrender to custody at the appointed time, driving a motor vehicle with excess alcohol, driving whilst disqualified, using a vehicle whilst uninsured, possessing a controlled drug with intent to supply, possessing a controlled drug of class A (MDMA), use of uninsured vehicle, possessing or controlling article for use in fraud and possessing and controlling identity documents with intent. He received various fines, community punishment orders and suspended sentences and various sentences of imprisonment. Particular reference was made to his conviction on 3 January 2018, the most recent offence, of using a vehicle whilst uninsured and possessing or controlling identity documents with intent. He was sentenced to eight months' imprisonment. He has also received three cautions for offences, 3 August 1998 for theft – shoplifting, a similar offence on 5 June 1999, on 23 February 2002 for possessing a class A controlled drug – MDMA. It is, I think, common ground that the total amount of time spent by the appellant in prison is fourteen months.

31. Under Regulation 23(6)(b) of the Immigration (European Economic Area) Regulations 2016 ("the EEA Regulations 2016"), the Secretary of State may deport an EEA national where it is decided that the person's removal is justified on the grounds of public policy, public security or public health. Any such deportations are required to be in accordance with Regulation 27 of the EEA Regulations, which states that an EEA national who has a right of permanent residence in the United Kingdom may only be deported on serious grounds of public policy or public security and that an EEA national who has resided in the United Kingdom for a continuous period of at least ten years prior to the deportation decision may only be deported on imperative grounds of public security.

32. Under Regulation 15 of the EEA Regulations 2016, an EEA national acquires the right of permanent residence if they have resided in the United Kingdom in accordance with the EEA Regulations 2016 for a continuous period of five years. It is clear from Regulation 3(3) that time spent in prison does not constitute residence for the purpose of the 2016 Regulations.

33. The appellant claims to have arrived in the United Kingdom in 1994. He was issued with an EEA residence permit on 23 April 2002 and was later issued with an EEA national registration certificate on 8 February 2008. The decision maker noted that it was accepted that at the time when the appellant was issued with the EEA residence permit in 2002 he provided evidence to show he was in employment but there was no evidence as to how long that employment continued. He subsequently applied for a document certifying that he had acquired a permanent right of residence, on 15 March 2007, and produced a letter showing employment between 4 April and 26 November of that year. In view of the limited evidence provided he was issued with a further EEA registration certificate as he had not provided evidence that he had acquired a permanent right to reside.

34. The appellant has provided evidence relating to employment. This shows that for the year 2007–08 he earned £6,025, for the year 2008–09 a total of nearly £24,000, for the year 2009–10 £18,000, for the year 2010–11 £20,000 and for the year 2011–12 £163. In the subsequent year he showed earnings of over £6,300 and in 2013–14 over £20,000. Subsequently he was in receipt of employment support credits and no employers were recorded.

35. This is of relevance to the question of whether he was entitled to enhanced protection under Regulation 27(4) of the 2016 Regulations. On this evidence I do not consider that he has shown that he has resided in the United Kingdom in accordance with the Regulations for a continuous period of five years. His employment record does not show that he was a worker for a continuous period of five years, bearing in mind the very low earnings in 2011–12. As the decision letter states, the evidence prior to then was thin. The subsequent evidence does not show that he satisfied the requirements of Regulation 5 which is concerned with workers or self-employed persons who have ceased activity or that the period after 2013–14 when he was in receipt of employment and support credits could enable him to satisfy the criteria of being a qualified person under Regulation 6.

36. In addition there is the point to which we adverted in the error of law decision with regard to the appellant's periods of imprisonment. It is clear, as noted above, that Regulation 3(3)(a) provides that continuity of residence is broken when a person serves a sentence of imprisonment. It is clear from what was said by the Court of Justice in Onuekwere that periods of imprisonment cannot count when assessing whether a person has qualified for a permanent right of residence by demonstrating a five year continuous period of residence as a qualified person. The various periods of imprisonment which the appellant served are properly to be taken as breaking continuity of residence. As a consequence of my conclusions in this regard, the appellant is a person who is entitled only to the lowest level of protection under

Regulation 27. The test therefore is one of public policy, public security or public health rather than serious grounds of public policy and public security as set out in Regulation 27(3) as he is not a person with a right of permanent residence.

37. It is clear from Regulation 27(5) that where a relevant decision is taken on grounds of public policy or public security it must also be taken in accordance with the principles set out at subparagraphs (a) to (f) of Regulation 27(5). That is to say:

"(5)

(a) the decision must comply with the principle of proportionality;

(b) the decision must be based exclusively on the personal conduct of the person concerned;

(c) the personal conduct of the person must represent a genuine, present and sufficiently serious threat affecting one of the fundamental interests of society, taking into account past conduct of the person and that the threat does not need to be imminent;

(d) matters isolated from the particulars of the case or which relate to considerations of general prevention do not justify the decision;

(e) a person's previous criminal convictions do not in themselves justify the decision;

(f) the decision may be taken on preventative grounds, even in the absence of a previous criminal conviction, provided the grounds are specific to the person.

(6) Before taking a relevant decision on the grounds of public policy and public security in relation to a person ("P") who is resident in the United Kingdom, the decision maker must take account of considerations such as the age, state of health, family and economic situation of P, P's length of residence in the United Kingdom, P's social and cultural integration into the United Kingdom and the extent of P's links with P's country of origin."

38. I consider that it can properly be said that the appellant's personal conduct does represent a genuine, present and sufficiently threat affecting one of the fundamental interests of society in that he is properly to be regarded as a persistent offender, as can be seen from his history of offending up to and including the conviction of January 2018. It is not a matter of taking into account purely and simply the past history of convictions but the convictions are indicative of an attitude to the law which are such and particularly bearing in mind the most recent conviction as to demonstrate that the level of threat identified at Regulation 27(5)(c) is met. I agree with the comments set out at paragraphs 24 to 31 of the decision letter which set out in some detail why it is that the various offences are significant and indicative of the appellant's attitude to the laws of the land and his willingness to depart from those laws. I consider it has been properly shown that the evidence indicates that he has a

propensity to reoffend and the level of threat is such as to show that, as I say, the relevant criteria in the Regulations are made out.

39. As regards the requirement that the decision must comply with the principle of proportionality, it is necessary to take account of the factors in Regulation 27(6). The appellant was born in February 1978 and is therefore now 42 years old. Though the decision maker had no evidence of adverse health problems, it is clear from the evidence before me that the appellant has in fact experienced mental health problems for a number of years, including, as is summarised in the letter from Dr Hugh-Jones of 11 April 2019, that he was diagnosed with alcohol dependence syndrome in around 2004, heroin and crack cocaine misuse since about 2001, chronic paranoid psychosis since about 2011, episode of severe depression with psychosis in 2016 and hypertension in 2017. His family situation is that he has been living with his partner for about four years and also living with them is his partner's son. He clearly has a close relationship with both of them. In addition he has his mother and father and sisters in the United Kingdom and indeed it seems from his evidence that he has no immediate family members in Portugal. His wife is in steady employment and it seems that he is working now and that his work enables care to be maintained for the child who lives with them as his work fits in with his partner's work pattern. As regards to the length of time he has been in the United Kingdom it seems he has been here since 1994. I accept his evidence in that regard.

40. With regard to his links with his country of origin, according to his first statement he was born in Mozambique, moved to Portugal when he was around 9 years old and lived there for some seven years, including attendance at primary and secondary school, until 1994 when he moved to the United Kingdom. He said in his witness statement that he speaks Portuguese but cannot write in Portuguese fluently and would be unable to find employment there. His social and cultural integration into the United Kingdom has been severely disrupted by his criminal offending and his periods of imprisonment.

41. Regulation 27(8) requires the court or Tribunal considering whether the requirements of this Regulation are met to have regard in particular to the considerations in Schedule 1 to the Regulations (considerations of public policy, public security and the fundamental interests of society etc.). There it is said at paragraph 3 that where an EEA national who is a persistent offender the more numerous the convictions the greater the likelihood that his continued presence in the United Kingdom represents a genuine, present and sufficiently serious threat affecting the fundamental interests of society. Also it is said that little weight is to be attached (paragraph 4) to the integration of an EEA national within the United Kingdom if the alleged integrating links were formed at or around the same time as the commission of a criminal offence. If such a person has been shown to have successfully reformed or rehabilitated then the removal is less likely to be proportionate, under paragraph 5.

42. At paragraph 7 of Schedule 1 there is a list of matters which are to be included in the fundamental interests of society which include maintaining public order and tackling offences where there is societal harm such as offences relating to the misuse of drugs.

Also in this list is the combating of the effects of persistent offending. Taking all these matters together, I consider that the decision under challenge has been shown to be proportionate. Although I bear in mind the factors that favour the appellant such as his health problems and the close family links he has, his degree of social and cultural integration into the United Kingdom is at best weak given the extent and amount of his offending, and bearing in mind the considerations in Schedule 1. Clearly there will be an impact on his stepson of his removal bearing in mind the closeness of the relationship they are said to have and also his stepson's health problems, and clearly also there will be an impact on his partner. She has made it clear that she and her son would not go to Portugal if the appellant were to be removed there given the closeness of their connections to the United Kingdom and to that must be added the fact that the appellant's stepson maintains a relationship with his father and clearly that would be adversely affected were he to move to Portugal. Bringing all these matters together I consider that the decision is a proportionate one in accordance with the provisions of Regulation 27(5)(a) and bearing in mind the other principles in subsection (5) also. The EEA decision is lawful.

43. As regards the relevant Article 8 issues, the appellant is a foreign criminal and therefore the Article 8 claim has to include in its consideration the matters set out in section 117C of the Nationality, Immigration and Asylum Act 2002.

44. As regards Exception 1, this will apply given that he is a foreign criminal who has not been sentenced to a period of imprisonment of four years or more and is applicable as relevant in this case if he has been socially and culturally integrated in the United Kingdom and there would be very significant obstacles to his integration into Portugal.

45. As regards the former, I do not consider that it has been shown that he is socially and culturally integrated into the United Kingdom, bearing in mind the significant criminal record of persistent offending to which I have referred above. Although he has lived in the United Kingdom for a good number of years, his criminal conduct is such particularly bearing in mind the most recent offence in 2018 as indicative of an ongoing lack of integration into the United Kingdom, to satisfy the requirements of that provision.

46. As regards the latter, although there would be obstacles to integration into Portugal, he speaks Portuguese, he lived there for several years and has an employment history in the United Kingdom. He appears to have been able to work for a number of years despite the mental health and other problems from which he suffered during the times when he was in employment in the United Kingdom, and although I accept that his partner would be extremely financially stretched in his absence, he does have family members in the United Kingdom and it has not been shown that they could not assist him and nor has it been shown that he could not obtain assistance from the social security system of Portugal which has not been shown not to exist. There is no evidence to show that his health and other problems could not be effectively addressed in Portugal as they are in the United Kingdom. Accordingly the very significant obstacles criterion is not met.

47. Exception 2 applies where he 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 his deportation on either would be unduly harsh.

48. Again I do not consider this criterion is met. The undue harshness test is a high one, as was made clear by the Supreme Court in KO (Nigeria) [2018] UKSC 53. There is reference to the question of a level of harshness which goes beyond that which could normally be expected, and though I accept that the impact on the appellant's partner would be problematic given the support he provides her and their relationship, the harshness would not extend to the level of undueness. I also consider that this is the case with regard to the impact on his relationship with his stepson. I accept that they are close and that there would be an adverse impact on the child but that, as has been said, on high judicial authority, is what deportation does. It does damage family relationships and impacts adversely on children and that can only be a matter of regret and sympathy. But the test is a high one and in my view it is not met in this case.

49. Nor do I consider there are any factors that could enable this claim to succeed under Article 8 outside the Rules. The various points that I have set out above are equally applicable in this context, and there is nothing to show that the circumstances are such as to enable a successful claim under Article 8. Accordingly this appeal is dismissed on all grounds.

No anonymity direction is made.

Signed   Date 16 March 2020

Upper Tribunal Judge Allen