Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: HU/03759/2019

THE IMMIGRATION ACTS

Heard at Birmingham Justice Centre
On 17th February 2020

Decision & Reasons Promulgated
On 14th April 2020

Before

UPPER TRIBUNAL JUDGE MANDALIA

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

TAPIWANASHE KADANGO
(Anonymity Direction Not Made)

Respondent

Representation:

For the Appellant: Mr A McVeety; Senior Home Office Presenting Officer
For the Respondent: Mr A Barnfield, Counsel instructed by Genesis Law

DECISION AND REASONS

1. The appellant in the appeal before me is the Secretary of State for the Home Department ("SSHD") and the respondent to this appeal is Mr Kadango. However, for ease of reference, in the course of this decision I adopt the parties' status as it was before the FtT. I refer to Mr Kadango as the appellant, and the Secretary of State as the respondent.

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2. The appellant is a national of Zimbabwe. He arrived in the UK in December 2001 when he was 11 months old, with his mother. Following an unsuccessful claim for asylum that was made in December 2001, on 8th October 2007, the appellant, his mother and his sister were granted indefinite leave to remain in the UK under the legacy programme. On 5th December 2017, the appellant was convicted at Wolverhampton Crown Court of Robbery and possessing an offensive weapon in a public place. He was sentenced to a 41-month term of imprisonment.

3. Between 26th April 2017 and 21st November 2018, the appellant has received five criminal convictions for eight offences. On 16th October 2018, the appellant was served with a 'Decision to Deport' pursuant to the Immigration Act 1971, and informed that the respondent deems his deportation to be conducive to the public good under s3(5) of the Immigration Act 1971. The appellant was invited to set out any reasons why he should not be deported to Zimbabwe. The appellant made representations dated 8th January 2018. The appellant was served with a decision to refuse the human rights claim dated 1st April 2019. The appellant's appeal against that decision was heard by First-tier Tribunal Judge Howorth and allowed for reasons set out in a decision promulgated on 11th September 2019.

<u>The decision of the First-tier Tribunal</u>

4. The background to the appeal is set out at paragraphs [2] to [8] of the decision. It is uncontroversial that the appellant has received a sentence of over 12 months and a series of other sentences such that he is a foreign criminal liable to deportation. As to the appellant's offending, the judge stated at paragraph [32]:

> "The appellant's criminal history is serious. The appellant's incarceration appeared to have no effect on his offending behaviour, and he continued to offend whilst in detention. There is a public interest in deporting serious criminals and the appellant's offending is of the type that is particularly abhorrent, that is violent offending involving weaponry."

5. In assessing the Article 8 claim, the decision maker was required to consider whether paragraph 399 or 399A of the immigration rules apply. If 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. As the appellant does not have children or a partner, paragraph 399 does not apply. At paragraph [11], the judge sets out paragraph 399A of the immigration rules.

6. It was accepted that the appellant has been lawfully resident in the UK for most of his life and paragraph 399A(a) is met. For reasons set out at paragraphs [34] to [37] of her decision the judge found the appellant is socially and culturally integrated in the UK, and thus paragraph 399A(b) is met. The judge then went on to consider whether there would be very significant obstacles to the appellant's integration into Zimbabwe.

7. The judge accepted, at paragraph [36], that the appellant has been on holiday to Zimbabwe in 2010 or 2011. She also found the appellant does not speak the Shona language and speaks only English. At paragraph [38], she found the appellant may have some knowledge of traditional customs or cultural knowledge. The judge found it unlikely that neither the appellant's mother nor stepfather have any surviving family members or friends in Zimbabwe that would assist at any level with the appellant's integration to Zimbabwe. The judge referred to the conflicting evidence given by the appellant's mother and his stepfather as to whether his stepfather had returned to Zimbabwe in 2015. The judge preferred the evidence of the appellant's stepfather who claimed that he returned to Zimbabwe in 2015 to accompany a colleague to a funeral. The judge found it is likely that the appellant's stepfather met with friends or relatives in Zimbabwe whilst there. At paragraph [42], the judge found it more likely than not that the appellant's mother and stepfather have some family members or friends in Zimbabwe who may be able to provide some support to the appellant. The judge found the appellant, whilst now an adult, has never started living an independent life without his mother and stepfather. The judge found it would be a significant barrier to integration in Zimbabwe if the appellant were to live alone without his mother and stepfather.

8. The judge considered the general situation in Zimbabwe and refers to the report of Professor Aguilar that was relied upon by the appellant. Overall, the judge found the report to be of little assistance but considered it helpful in respect of the general economic position the appellant would face in Zimbabwe. She noted the economy is in a poor state and the appellant would be returning to a country that has a very high level of unemployment. At paragraph [50], the judge concluded as follows:

> "The threshold to show significant obstacles is high. It cannot just be inconvenience to the appellant; difficulty or hardship itself will not suffice. I do however find the threshold and Article 399A(c) is met. I note that at least the appellant's immediate family are in the UK. Also, that the appellant's biological father has not ever had contact with the appellant and there is no suggestion he would provide support. Whilst I do not accept that there is absolutely no-one to provide support, I do note that even the immediate family are here in the UK, and any support given is likely to minimal *(sic)* and not include accommodation,

> for example. Whilst I except *(sic)* the appellant's mother will arrange for accommodation for the appellant in the short-term, this is not a long-term solution and I find that the appellant ultimately will have to find work. The lack of language skills in a country with such high unemployment is likely to make this difficult. I am also mindful of the fact that the appellant has not lived alone previously and this in itself would in my view amount to a significant obstacle to integration in Zimbabwe."

9. The judge concluded that paragraph 399A of the immigration rules applies. The judge went on to consider the public interest considerations set out in s117 of the Nationality, Immigration and Asylum Act 2002, noting the appellant is a foreign criminal and the deportation of foreign criminals is in the public interest. The judge noted, at paragraph [52], that the *".. Offending of the appellant is extremely serious and therefore the public interest in relation his heightened".* At paragraphs [54] to [57], the judge stated:

> "54. If I am found to be incorrect in respect of 399A I would also find that there are very compelling circumstances as to why the appellant should not be deported. These are that the appellant committed all offences both outside and whilst serving his sentence, as a minor. Prior to turning eighteen the appellant ceased being poorly behaved in prison and has earnt a number of positive endorsements, particularly from the Diamond report.
>
> 55. I must put at the forefront of my mind that the circumstances must be very compelling and even when considering the guidance in Maslov v Austria (application no. 1638/03). I do bear in mind the additional weight in which the UK puts on the public interest in deportation. In Maslov, reasoning given stated that *'a settled migrant who has lawfully spent all or the major part of his or her childhood and youth in [this] country very serious reasons are required to justify exclusion'.* The appellant has done all of his offending as a child whilst lawfully resident in the UK. There has been a dramatic change in his behaviour since prior to becoming an adult and this is outlined by the Diamond report.
>
> 56. I also find that the appellant's family are tight knit and whilst they were unable to stop him from offending in the first instance, I believe their support in him leaving a crime behind *(sic)* will be invaluable. I find it would be extremely difficult for the appellant to continue to sustain these relationships on deportation from the UK.
>
> 57. I accept that the appellant was found in September 2018 in the Youth Justice Board report to be a high risk of reoffending, however, I find that the appellant has subsequently addressed his offending behaviour with considerable success, and I find it unlikely that were he reassessed now, that would remain the reported outcome. I sincerely hope the appellant is able to continue his good behaviour into adulthood."

The appeal before me

10. The respondent advances three grounds of appeal. First, in concluding that there would be very significant obstacles to the appellant's integration into Zimbabwe, the

judge confined her consideration to the appellant's ability to find a job or sustain life in Zimbabwe without making a broad evaluative judgement. Second, in considering whether there are very compelling circumstances to outweigh the public interest in deportation, the judge erred in attributing great weight to the fact the appellant was a child at the time he committed his offences. That is a factor that would have been reflected in the sentences he received and without more, youth could not amount to a very compelling circumstance. Third, the judge fails to provide adequate reasons for her conclusion that the appellant is socially and culturally integrated in the UK and why the appellant's conviction is insufficient to demonstrate very serious reasons to justify the appellant's expulsion, where previous convictions, incarceration and the presence of family did nothing to stop him from further offending.

11. Permission to appeal was granted by Upper Tribunal Judge Kekic on 16th October 2019. The matter comes before me to determine whether the decision of the First-tier Tribunal is vitiated by a material error of law, and if so, to remake the decision.

12. Before me, Mr McVeety adopts the grounds of appeal and submits the judge accepts the seriousness of the appellant's offending that is described as being *"particularly abhorrent, that is violent offending involving weaponry"*. The judge noted at paragraph [32], that the appellant's incarceration appeared to have no effect on his offending behaviour, and he continued to violently offend whilst in detention. At paragraph [57], the judge noted the appellant was found in September 2018 to be a high risk of reoffending. However, in the same paragraph, the judge irrationally found the appellant has subsequently addressed his offending behaviour with considerable success.

13. He submits the judge was required to consider whether there would be very significant obstacles to the appellant's integration into Zimbabwe and that required a broader evaluative exercise than that completed by the Judge. He refers to the decision of the Court of Appeal in SSHD -v- Kamara [2016] EWCA Civ 813, in which Sales LJ said, at [14]

> "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."

14. Mr McVeety submits the judge refers to the appellant's age at the time the offences were committed, but failed to have regard to the fact that the sentencing judge had said that the Robbery was well-planned and not only were their disguises used, but there was the production of not just a bladed article, but an imitation firearm, to threaten and to seek compliance. The sentencing judge noted that the starting point for an adult convicted of a carefully planned Robbery jumps to 9 years with a range of 7 to 14 years. Bearing in mind the appellant's age, the judge treated it as a less sophisticated robbery and bearing in mind the guidance on sentencing of children and young people, noted the main principle to be the prevention of re-offending and the need to have in mind the welfare of the child. The judge noted that if the appellant had been an adult, the very least sentence imposed would be in the region of six years imprisonment. That was reduced by one third, to reflect age, reducing the sentence to one of 48 months. The judge further reduced the sentence given to the appellant to 41 months, to reflect the change of plea by the appellant on his trial date.

15. Mr McVeety submits that at paragraph [35] of her decision, the judge refers to the lack of evidence regarding the appellant's integration in the UK. Although the appellant may have attended school in the UK and later college, there was no evidence regarding the private life established by the appellant, and no evidence upon which the judge could rationally conclude that the public interest in deportation of the appellant is outweighed by the private life established by him. The judge noted the appellant has never lived away from his family, but they were plainly unable to have any influence over him and prevent his offending.

16. In reply, Mr Barnfield submits the grounds of appeal amount to a disagreement with the weight attached to the evidence, and findings made that were open to the judge. He submits the judge clearly had in mind, at paragraphs [32] and [52] of her decision, the strong public interest in the deportation of foreign national criminals. Mr Barnfield submits that on the evidence, it was open to the judge to find that the appellant would be incapable of finding a job or accommodation and so the most basic requirements for integration could not be met. He submits that in reaching her decision, the judge carefully considered not only the age of the appellant at the time of his offending, but also the progress that he has made since becoming an adult. At paragraphs [56] and [57] of her decision, the judge acknowledges the offending, but in looking at the matter overall, the judge was entitled to consider that the appellant

comes from a tight knit family and to consider the support of the family to be invaluable.

Discussion

17. Section 3(5) of the Immigration Act 1971 Act provides that a person who is not a British citizen is liable to deportation from the United Kingdom if, among other things, "*the Secretary of State deems his deportation to be conducive to the public good*". The Immigration Rules set out the approach to be followed by the Secretary of State where a foreign criminal liable to deportation claims that the deportation would be contrary to the United Kingdom's obligations under Article 8 ECHR. So far as relevant to this appeal, the immigration rules state:

> "390A. Where paragraph 398 applies the Secretary of State will consider whether paragraph 399 or 399A applies and, if it does not, it will only be in exceptional circumstances that the public interest in maintaining the deportation order will be outweighed by other factors.
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> …
>
> **Deportation and Article 8**
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> A398. These rules apply where:
>
> (a) a foreign criminal liable to deportation claims that his deportation would be contrary to the United Kingdom's obligations under Article 8 of the Human Rights Convention.
>
> (b) a foreign criminal applies for a deportation order made against him to be revoked.
>
> 398. Where a person claims that their deportation would be contrary to the UK's obligations under Article 8 of the Human Rights Convention, and
>
> (a) the deportation of the person from the UK is conducive to the public good and in the public interest because they have been convicted of an offence for which they have been sentenced to a period of imprisonment of at least 4 years.
>
> (b) the deportation of the person from the UK is conducive to the public good and in the public interest because they have been convicted of an offence for which they have been sentenced to a period of imprisonment of less than 4 years but at least 12 months; or
>
> (c) the deportation of the person from the UK is conducive to the public good and in the public interest because, in the view of the Secretary of State, their offending has caused serious harm or they are a persistent offender who shows a particular disregard for the law,
>
> the Secretary of State in assessing that claim will consider whether paragraph 399 or 399A applies and, if it does not, the public interest in deportation will only be outweighed by other factors where there are very compelling circumstances over and above those described in paragraphs 399 and 399A.
>
> …
>
> 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.

…

18. Section 117Ain Part 5A of the Nationality, Immigration and Asylum Act 2002 NIAA 2002 provides that, when a court or tribunal is required to determine whether a decision made under the Immigration Acts breaches a person's right to respect for private and family life under Article 8, and, as a result, would be unlawful under section 6 of the HRA 1998, the court, in considering the public interest question, must (in particular) have regard to the considerations listed in section 117B and, additionally, in cases concerning the deportation of foreign criminals, to the considerations listed in section 117C.

19. The law relating to the deportation of foreign criminals was considered by the Supreme Court in Ali v Home Secretary [2016] UKSC 60. Lord Reed JSC, with whom the other members of the Court agreed, referred to the Strasbourg jurisprudence and said, at paragraph [26]:

> "In a well known series of judgments the [European Court of Human Rights] has set out the guiding principles which it applies when assessing the likelihood that the deportation of a settled migrant would interfere with family life and, if so, its proportionality to the legitimate aim pursued. In Boultif v Switzerland (2001) 33 EHRR 50, para 48, the court said that it would consider the nature and seriousness of the offence committed by the applicant; the length of the applicant's stay in the country from which he or she is to be expelled; the time elapsed since the offence was committed and the applicant's conduct during that period; the nationalities of the various persons concerned; the applicant's family situation, such as the length of the marriage, and other factors expressing the effectiveness of a couple's family life; whether the spouse knew about the offence at the time when he or she entered into a family relationship; whether there are children of the marriage, and if so, their age; and the seriousness of the difficulties which the spouse is likely to encounter in the country to which the applicant is to be expelled. Two further factors were mentioned in Üner v The Netherlands (2006) 45 EHRR 14, para 58: the best interests and well-being of the children, in particular the seriousness of the difficulties which any children of the applicant are likely to encounter in the country to which the applicant is to be expelled; and the solidity of the social, cultural and family ties with the host country and with the country of destination. In Maslov v Austria [2009] INLR 47 , paras 72–75, the court added that the age of the person concerned can play a role when applying some of these criteria. For instance, when assessing the nature and seriousness of the offences, it has to be taken into account whether the person committed them as a juvenile or as an adult. Equally, when assessing the length of the person's stay in the country from which he or she is to be expelled and the solidity of the social, cultural and family ties with the host country, it

> makes a difference whether the person came to the country during his or her childhood or youth, or was even born there, or whether he or she only came as an adult. Some of the factors listed in these cases relate to the strength of the public interest in deportation: that is to say, the extent to which the deportation of the person concerned will promote the legitimate aim pursued. Others relate to the strength of the countervailing interests in private and family life. They are not exhaustive."

20. Lord Reed explained (at paragraph 38):

> "The implication of the new rules is that paragraphs 399 and 399A identify particular categories of case in which the Secretary of State accepts that the public interest in the deportation of the offender is outweighed under article 8 by countervailing factors. Cases not covered by those rules (that is to say, foreign offenders who have received sentences of at least four years, or who have received sentences of between 12 months and four years but whose private or family life does not meet the requirements of paragraphs 399 and 399A) will be dealt with on the basis that great weight should generally be given to the public interest in the deportation of such offenders, but that it can be outweighed, applying a proportionality test, by very compelling circumstances: in other words, by a very strong claim indeed, as Laws LJ put it in the SS (Nigeria) case [2014] 1 WLR 998 . The countervailing considerations must be very compelling in order to outweigh the general public interest in the deportation of such offenders, as assessed by Parliament and the Secretary of State. The Strasbourg jurisprudence indicates relevant factors to consider, and paragraphs 399 and 399A provide an indication of the sorts of matters which the Secretary of State regards as very compelling. As explained at para 26 above, they can include factors bearing on the weight of the public interest in the deportation of the particular offender, such as his conduct since the offence was committed, as well as factors relating to his private or family life. Cases falling within the scope of section 32 of the 2007 Act in which the public interest in deportation is outweighed, other than those specified in the new rules themselves, are likely to be a very small minority (particularly in non-settled cases). They need not necessarily involve any circumstance which is exceptional in the sense of being extraordinary (as counsel for the Secretary of State accepted, consistently with the Huang case [2007] 2 AC 167 , para 20), but they can be said to involve 'exceptional circumstances' in the sense that they involve a departure from the general rule."

21. As Lord reed recognised, in Maslov -v- Austria, the Grand Chamber stated that "when assessing the nature and seriousness of the offences committed by an applicant, it has to be taken into account whether he or she committed them as a juvenile or as an adult". However, in SSHD v Olarewaju [2018] EWCA Civ 557 the Court of Appeal allowed the SSHD's appeal against the UT's decision upholding the decision of the FtT allowing the appeal of an appellant whose offences had all been committed as a juvenile. O had entered the UK aged 9 as a visitor (but remained illegally until he was given DLR with his family until his 18th birthday the respondent informing him he still remained liable for deportation). The FtT found he

had been rehabilitated (he not having committed any offending for 2 years – *in fact he had offended significantly post FTT decision, but the Court of Appeal put that out of its mind*). The Court of Appeal noted that O would have received a lighter sentence as a juvenile, noted the significance of rehabilitation was limited as it was only one factor of the public interest, noted that the judge had described returning to Nigeria as a "very real culture shock" rather than in terms of "very significant obstacles" and considered that youth without more could not amount to "very compelling circumstances" as otherwise it would hardly ever be possible to deport someone whose offences had been committed under the age of 18. However, O accepted before the FtT that he did not bring himself within paragraph 399 or 399A of the Rules and, hence, that he had to show that there were "very compelling circumstances" over and above those described in those paragraphs 399 or 399A. In the appeal before me, FtT judge Howorth found that paragraph 399A applies, and by extension, Exception 1 set out in s117C(4) of the 2002 applies. Thus for all intents and purposes, the public interest in the deportation of the appellant is outweighed under Article 8 by countervailing factors.

22. I reject the claim that the judge erred in her consideration of whether the appellant is socially and culturally integrated the UK. The question is whether having regard to his upbringing, education, employment history, history of criminal offending and imprisonment, relationships with family and friends, lifestyle and any other relevant factors, the appellant was at the time of the hearing socially and culturally integrated in the UK. Given that the appellant has lived all but the first 11 months of his life in the UK, was educated here, and has no ties with Zimbabwe, other than knowledge of traditional customs or cultural knowledge, it was open to the judge to conclude that his entire social and cultural identity has been formed in the UK. The judge's finding that, at least as a child, he was socially and culturally integrated in the UK therefore seems inevitable.

23. In Akinyemi -v- SSHD (No 2) [2019] EWCA Civ 2098, the Court of Appeal held that the correct approach to the balancing exercise is to recognise that the public interest in the deportation of foreign criminals is a flexible one, and that there would be a small number of cases where the individual circumstances reduced the legitimate and strong public interest in removal. The Court of Appeal held the Upper Tribunal had attached insufficient weight to the fact that the appellant had been lawfully in the UK his whole life. The appellant in that case was born in the UK in 1983 and had never left. His parents were Nigerian nationals who had come to the UK lawfully. Due to the legislation in force at the time of his birth, the appellant did not acquire British nationality automatically; nor did he acquire it subsequently, despite having

been entitled to it for many years. Since his teenage years, the appellant had been convicted of 42 offences, including causing death by dangerous driving and drug offences. In January 2015, a deportation made against him was upheld by the UT on the basis of the 2002 Act. In reaching its decision, the Upper Tribunal took into account the appellant's repeat offending and expert psychological evidence that he was at medium risk of reoffending. Other factors included his moderate risk of suicide, his social and cultural integration into the UK and his lack of family connections in Nigeria. At paragraph [39] Sir Ernest Ryder set out the correct approach:

> "… The correct approach to be taken to the 'public interest' in the balance to be undertaken by a tribunal is to recognise that the public interest in the deportation of foreign criminals has a moveable rather than fixed quality. It is necessary to approach the public interest flexibly, recognising that there will be cases where the person's circumstances in the individual case reduce the legitimate and strong public interest in removal. The number of these cases will necessarily be very few i.e. they will be exceptional having regard to the legislation and the Rules…"

24. At paragraph [40], Sir Ernest Ryder held that *"one has to be careful to identify as a relevant fact that the appellant was in the UK lawfully for the whole of his life".* The question which Sales LJ was addressing in Kamara, was the third limb of section 117C(4)(c). That is, whether there would be very significant obstacles to the claimant's integration into the country to which he is proposed to be deported.

25. Here, the FtT judge accepted that there would be significant obstacles to the appellant's integration into Zimbabwe. Here, the fact that the appellant had arrived in the UK when he was 11 months old was plainly a relevant consideration. The judge found the appellant does not speak the Shona language and speaks only English, although he may have some knowledge of traditional customs or cultural knowledge. The evidence before the Tribunal was that the appellant has always lived with his mother and stepfather up until the point of his incarceration and he would return to that environment on release. The judge found that the appellant has not started living an independent life without his mother and stepfather and living alone without his mother and stepfather would be a significant barrier to his integration in Zimbabwe. The judge referred to the evidence concerning the general economic position in Zimbabwe noting the economy is in a poor state and the appellant would be returning to a country that has a very high level of unemployment. The judge noted the appellant's immediate family are all in the UK, and any support that may be available to him is likely to be minimal and would not include accommodation. The judge noted the appellant will ultimately have to find work but his lack of

language skills in a country with such high levels of unemployment, is likely to make this difficult.

26. In my judgment, given the undisputed facts that the appellant has only visited Zimbabwe for a short holiday in 2010 or 2011, since he left when he was 11 months old, knows no one in Zimbabwe and would have no financial support from any family members or friends if sent there, it was open to the judge to find that there would be very significant obstacles to the appellant's integration into Zimbabwe. The judge also accepted that the difficulties that the appellant would face in obtaining accommodation, and employment are relevant given the evidence accepted by the tribunal that the economy in Zimbabwe is in a poor state and the appellant would be returning to a country that has a very high level of employment.

27. In my judgement, the judge undoubtedly considered all matters in the round. The public interest in the deportation of a foreign criminal is not set in stone and must be approached flexibly. In my judgement, the judge had proper regard *inter alia* to the appellant's length of residence in the UK, the ties that he retains with his family, his immigration and offending history, and the family circumstances described in the evidence and the matters set out in the experts report.

28. As the Court of Appeal said at [18] of Herrera v SSHD [2018] EWCA Civ 412, it is necessary to guard against the temptation to characterise as errors of law what are in truth no more than disagreements about the weight to be given to different factors, particularly if the judge who decided the appeal had the advantage of hearing oral evidence. The assessment of such a claim is always a highly fact sensitive task. The FtT judge was required to consider the evidence as a whole and she plainly did so, giving adequate reasons for her decision. If the Tribunal judge applied the correct test, and that resulted in an arguably generous conclusion, it does not mean that it was erroneous in law. I have carefully considered the grounds of appeal advanced by the respondent but in my judgement, the decision was one that was open to the judge on the evidence before her and the findings made.

29. It follows that I dismiss the appeal.

Decision:

30. The appeal is dismissed and the decision of First-tier Tribunal Judge Howorth, stands.

Signed V. Mandalia Date 31st March 2020

Upper Tribunal Judge Mandalia

NOTIFICATION OF APPEAL RIGHTS

1. A person seeking permission to appeal against this decision must make a written application to the Upper Tribunal. Any such application must be **received** by the Upper Tribunal within the **appropriate period** after this decision was **sent** to the person making the application. The appropriate period varies, as follows, according to the location of the individual and the way in which the Upper Tribunal's decision was sent:

2. Where the person who appealed to the First-tier Tribunal is **in the United Kingdom** at the time that the application for permission to appeal is made, and is not in detention under the Immigration Acts, the appropriate period is **12 working days (10 working days, if the notice of decision is sent electronically).**

3. Where the person making the application is in detention under the Immigration Acts**, the appropriate period is 7 working days (5 working days, if the notice of decision is sent electronically)**.

4. Where the person who appealed to the First-tier Tribunal is **outside the United Kingdom** at the time that the application for permission to appeal is made, the appropriate period is **38 days (10 working days, if the notice of decision is sent electronically).**

5. A "working day" means any day except a Saturday or a Sunday, Christmas Day, Good Friday or a bank holiday.

6. The date when the decision is "sent' is that appearing on the covering letter or covering email