



**Upper Tribunal
(Immigration and Asylum Chamber)**

Appeal Number: HU/22042/2018

THE IMMIGRATION ACTS

**Heard at Bradford via Skype
On 20 January 2021**

**Decision & Reasons Promulgated
On 16 February 2021**

Before

UPPER TRIBUNAL JUDGE HANSON

Between

ZB

(Anonymity direction made)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr G Lee instructed by Sabz Solicitors LLP

For the Respondent: Mrs R Pettersen Senior Home Office Presenting Officer.

DECISION AND REASONS

1. By a decision promulgated on the 13 October 2020 the Upper Tribunal set aside the decision of a judge of the First-tier Tribunal which dismissed the appellants appeal against the order for his deportation from the United Kingdom. It was accepted by the respondent's representative that the failure of the judge to have considered the evidence properly amounted to a material error of law.

Background

2. The appellant is a citizen of Pakistan born on the 2 December 1984.
3. The parties were directed by the Upper Tribunal to file a statement of agreed preserved finding which resulted in a joint note being submitted on 23 October 2020 in the following terms:

“Pursuant to the directions made by Upper Tribunal Judge Hanson that by 4pm on the 23rd October 2020, the parties are to agree, if possible, the factual findings of the First-tier Tribunal Judge that are to be preserved, the joint position of the parties is that none of the material findings as to the Appellant and his family’s situation can be preserved in light of the errors of law in the Judge’s approach to the evidence.”

4. The appellant is subject to an order for his deportation from the United Kingdom, served on 20 March 2018, as a result of his conviction at Snaresbrook Crown Court. The appellant made a human rights claim on 21 March 2018 and 10 April 2018 which was refused by the respondent on the basis it was not found the appellant fell within any of the exceptions set out in section 33 UK Borders Act 2007. The date of that decision is 15 October 2018.
5. In his sentencing remarks dated 21 February 2018 HHJ Southern outlined in detail the nature of the appellant’s offending noting communication between the appellant and a neighbour on the evening of 12 October 2017, which initially appeared amicable, and in which the appellant demanded his neighbour apologise to his wife for disturbing her when he called round to see whether his cat was in their garden. The sentencing remarks record:

“Having returned to [the neighbours] home, where you briefly spoke to his partner, you then asked him to return with you once again, to offer a further apology to your wife, which again, he agreed to do. This time your mood was different. You produced a hammer that [your neighbour] describes as having been tucked into your trousers and you struck [your neighbour] twice, once on his face and once on the top of his head.

[Your neighbour] lost consciousness and when he came to he was able to escape by running away to seek help at a local shop where police were called. He was taken to hospital, where a cut was glued and where, fortunately, a scan confirmed that there had not been more serious injury such as a fracture or a bleed to the brain.

Meanwhile, officers attended at your home and in a vigorous and drunken attempt to avoid the inevitable arrest that was to follow, you assaulted two female police officers as you sought to resist being placed in handcuffs by struggling furiously and thrashing about with your arms and legs. The assaults left one officer with painful tendons or tendon and the need to take anti-inflammatory drugs and to wear a form of hand support for a while, and the other officer suffered bruising.

6. Having considered the circumstances of the offence and the mitigation advanced on behalf of the appellant the Sentencing Judge concludes that the appropriate sentence in relation to the offence of unlawful wounding was 15 months imprisonment. In relation to the common assault against the police officers the sentencing judge concludes that for each of the two assaults the appellant was sentenced to three months imprisonment concurrent with each other

but consecutive to the sentence for unlawful wounding, making the overall sentence one of 18 months imprisonment.

7. In relation to the appellants claim to have family life with his children and to be entitled to benefit from the exception to deportation set out in paragraph 399(a) of the Immigration Rules the respondent wrote in the decision to refuse the human rights claim:

You claim to have family life in the UK with four children in the UK. You have provided their detail as follows:

1. SaB, British, born in UK on 3 November 2016.
2. ZB, British, born in UK on 30 January 2013.
3. AB, British, born in UK on 23 December 2010.
4. SB, British, born in UK on 22 May 2009.

...

It is accepted that your four children are under the age of 18 because their birth certificates show their dates of birth and they are all under 18 years. It is not disputed that your four children are in the UK.

It is accepted that SaB, ZB, AB and SB are British citizens because their passports have been provided.

It is not accepted that SaB and ZB have lived in the UK for at least the seven years immediately preceding the date of this decision because they are only 2 and 5 years old respectively.

It is not accepted that you have a genuine and subsisting parental relationship with your children. A genuine and subsisting relationship means more than a biological relationship and more than presence in a child's life. It requires a significant and meaningful positive involvement in a child's life with a significant degree of responsibility for the child's welfare. Your wife in her letter dated 28 March 2018 writes of the support and love you give to the children and how distressed the children are in your absence. However, it is noted that you have an issue with substance abuse and you were under the influence of drugs and alcohol when you committed your latest offence. In addition, your family has been known to the London Borough of Barking and Dagenham (LBBD) Children's Services since October 2008 due to concerns about domestic violence in relation to your verbal and physical abuse of the children's mother. Your battle with substance abuse and your propensity in the past towards domestic violence is not considered as indicators of positive involvement in your children's lives. In 2017 LBBD Children's Services were involved following your son disclosing that you had punched his mother and she was bleeding. Your wife and children were separated from you due to violence and they were moved into a different property. The case was progressed to a Child in Need Plan by the authorities, due to the mother having to care for four children, being visually impaired and to increase her confidence and self esteem as well as to protect her and the children. Therefore there is no evidence that you have a positive involvement in your children's lives and at present your ability to provide physical, emotional and financial support is impaired by the criminal act you convicted which has led to your incarceration.

It is accepted that it would be unduly harsh for your children to live in Pakistan because they are British children who have spent their entire lives in the UK. It is accepted that not seeing you in the short term will be upsetting for them although they will be able to maintain their relationship with you using modern means of communication and visits.

It is not accepted that it would be unduly harsh for your children to remain in the UK even though you are to be deported. As they and their mother are British, they would have the range of benefits and support available to them as British nationals and would continue their relationships with extended family members. They would also not be exposed to domestic violence or witness your substance abuse in the event that treatment you receive is not successful in helping you change your behaviour.

Therefore, having considered all available information, it is not accepted that you meet the requirement of the exception to deportation on the basis of family life with a child.

8. In relation to the appellants claim to have a genuine and subsisting relationship with his wife, NS, it is written in the refusal:

It is accepted that NS is a British citizen and is settled in the UK because passport has been provided.

It is accepted that you have a genuine and subsisting relationship with NS because she has written in support of your relationship with her and the children. However, it is also noted that she has been exposed to domestic violence by you over the years of marriage to you and Social Services have had to intervene on occasions in the past and she and your children have lived apart from you to escape domestic violence at your hands. Your wife claims in her letter of support that she is blind and that you have been her carer as well as a carer for your mother. However, since her registration as partially sighted, she is in receipt of Personal Independence Payment and LBBB Social Services will provide rehabilitation training for her when she is ready to undertake it.

It is accepted that your relationship with NS was formed when you were in the UK lawfully and your immigration status was not precarious.

It is accepted that it would be unduly harsh for NS to live in Pakistan with you due to record indicating that you separated due to domestic violence against her by yourself. If she chose to do accompany you to Pakistan, it is considered that you would be with her and support her to adjust and settle into the way of life in Pakistan. You both originate from Pakistan and therefore you are not totally alien to Pakistani language or culture as you are likely to have integrated in your local Pakistani community where links with the language and culture of Pakistan is maintained.

It is not accepted that it would be unduly harsh for NS to remain in the UK even though you are to be deported. As a British citizen, she is familiar with the British way of life. She would be able to continue to access support from relevant authorities in order to support herself and the children along with assistance from family members so that she is able to lead a normal life in the event that you were deported. It remains upon NS to choose to maintain contact and relationship with you.

Therefore, having considered all available information, it is not accepted that you meet the requirements of the exception to deportation on the basis of family life with a partner.

The evidence

9. Within the appellant's original bundle is a copy email written by a Senior Social Worker, Mr Taylor, dated 25 October 2018 to NS in the following terms:

"As you are aware I attended your house on 08.10.18. The purpose was to complete a Single Assessment.

I observed that the children were extremely affected by the absence of their father as they were crying and asking when their father will return home. There is a likelihood that the children may have long-term psychological effects if their father is deported.

Additionally as discussed during my visit, father is your carer as you are registered blind. The local authority intends to continue working family (CIN Plan) to ensure that appropriate services are made available to provide the support that is required."

10. A further letter written by Mr Taylor dated 13 June 2019 reads:

To whom it may concern

RE; [B] family.

I was allocated the case in November 2018 as the local authority received a referral from Mr [B] Probation Officer reporting that Mr [B] was due to be released from prison on 06.12.2018 and there were concerns that he would be spending a significant amount of time with his family unsupervised. I was required to complete a Single Assessment, assessing the family's need and making a recommendation regarding the level of intervention that the family may require.

I attended my initial home visit on 08.10.2018 and observed clearly distressed, she was crying and expressing concerns about the prospect of Mr [B] being deported back to Pakistan and the negative impact that it would inevitably have upon herself and the children. She explained that extended family members have generally been supportive during Mr [B] imprisonment however say have their own commitments and the support will stop once he is released. Additionally, she explained that she did not want to put too much pressure on her family. During visit, the children were to be distressed and were asking when their father was coming home.

Mr [B] has been attending the family home frequently since his released on 06.12.2018. During all my home visits it has been observed that Mr [B] has interacted with wife and children in an appropriate way. Mr [B] has been observed preparing dinner, cleaning and supporting the children with their homework. The children and mother have appeared happy and relaxed in Mr [B] company during home visits.

I have been liaising with Mr [B] Probation Officer and positive reports have been received about Mr [B] progress which contributed to the local authority closing decision to close the case.

It is evident that Mr [B] support is essential to the family, especially within the context of his wife's disability, it is likely that without support it may be difficult for mother to fulfil her parental duties. His wife and children depend upon him, deporting him may cause the family serious distress.

11. There is also within the bundle a letter from The Surgery (Dewey Road) written by Dr C Ola to the appellant's solicitors, dated the 24 October 2018, in the following terms:

- RE 1. NS
Date of Birth 02-Jun-1989
2. SB
Date of Birth 22-05-2009.

I am the registered General Practitioner of NS, SB and her siblings.

NS is registered as being blind; and her husband [] is currently in prison. She is struggling mentally and physically to care for herself and her children, as her relatives cannot always assist in areas of childcare, cooking and other domestic matters, as they have their own families and lives to live.

I was shown a video of SB wailing on her mother's smart phone and SB's other three siblings express their emotions in a similar fashion.

NS has been depressed since the incarceration of her husband and this has worsened her existing migraines. She has been referred for counselling.

SB and her siblings were born in the UK and have known no other culture than the British one.

There has been a serious negative impact psychologically on NS and her children. They miss their father's presence and cry daily. He would take them to school, take them out and do other things as a loving father would, when he was at home.

SB, I was told would talk to her father's picture and ask when he would be back. She at times throws tantrums stating that she won't go to school unless he is back home.

NS and her children simply will not be able to cope if [] her husband is deported.

I have always known [] to be a caring and loving father and husband. He would bring the members of his family to the surgery appropriately.

Yours sincerely.

12. A further letter from Dr Ola dated 15 September 2020 reads:

Dear Sir/Madam

I am the registered General Practitioner of the above named gentleman, his wife and his four children. I have known them for almost ten years now. [ZB] has always brought his wife and children for their GP appointments. The recent devastating news of his deportation has brought tremendous distress to his wife and children (that ranges from ten years to four years). His wife has been registered as being severely virtually impaired since 2009. His incarceration impacted very negatively on his wife and children. I understand that when he was incarcerated, his oldest daughter would cry whilst looking for her father's picture, smell his clothes and say that life is not worth living, if he did not come back. His wife struggled physically and emotionally to look after the children when he was in prison and her mental health also deteriorated. She was commenced on antidepressants. I have always known [ZB] to be a loving and caring father.

If [ZB] were to be deported, his wife and children will suffer tremendously in emotional and mental health terms. His visually handicapped wife will not get regular assistance from extended family members as they have their own families and lives to run.

I would be grateful if the above will be taken into consideration in letting [ZB] remain in the UK. He has learned from his past errors.

Yours sincerely
Dr Ola

13. A report of Dr Latif, described as an Independent Psychologist's Report dated 16 October 2019, dealing with the appellants role within the family is also relied upon. Section 8 of the report deals with the appellants wife NS. Section 9 with the elder child, SB, section 10 with SK the appellants mother and section 11 with Dr Latif's conclusions, in which a number of specific questions asked by the appellants solicitors and the replies are set out. As this is key evidence in this appeal, I set out the content of these sections in full.

8.0 Ms NS (wife)

- 8.1 NS explained to me that she is registered with severe blindness and lost her eyesight completely following the birth of her first child. She said the loss of eyesight is gradual and a hereditary condition in her family. She told me that she is also concerned that her children may have inherited this condition, as two of them have poor eyesight and as her mother and one of her siblings is also severely blind.
- 8.2 NS said her permanent blindness early on in life has caused her to experience depression and she told me that she is taking prescribed medication. In addition she experiences a spinal deformity which she said limits her mobility and causes her daily pain. NS takes a range of daily medications to include Amitriptyline 10mg, Metoclopramide 10mg, Naproxen 500mg and Promethazine Hydrochloride 20mg. NS reported great difficulty with her sleep at night due to her blindness and disturbance in sleep/wake cycle and her depressive disorder, which causes her to experience ruminating and intrusive thoughts (medical letters verify this information).
- 8.3 NS said she is fully reliant on her husband for her care and received PIP benefit for this. NS described how her husband dresses her, helps her to wash and shower, undertakes her personal hygiene, undertakes the cooking, domestic duties, cares for the children and take them to school and brings them back.
- 8.4 NS stated that she is emotionally reliant on her husband for support and without him she said she fears her life would come to nothing.
- 8.5 NS said she struggled with the care of her children when Mr [B] was in prison and became heavily reliant upon her eldest daughter who found it very difficult to cope and became emotional. She also described how she was unable to feed the children and take them to school and had to wait for other family members to do this.

9.0 Miss SB (Daughter)

- 9.1 [SB] is a 10 year old girl who appear to be very mature for her age. She attends year 6 of primary school. She stated that she did not like her father not being at home for many months. She said that she would cry every night. She explained that her mother found it very hard to look after them and relied on her a lot. She also stated that her mother relied on her a lot and she was always tired. She said she missed her father's cooking and now that he is back

she does not ever want him to leave and wants him to stay with them as a family.

10.0 **Ms SK**

10.1 Mr [B] mother was also interviewed. She told me that she has severe mental health problems and suffers from depression and is under the care of a psychiatrist. I have noted from medical records that she has been diagnosed with depression and psychosis and has other physical conditions.

10.2 Ms [SK] explained that her son is the only person who really cares for her on an emotional level, although she does have other children who care for her and she explained that she spends most of her time at Mr [B] home, because her other children are in education. Ms [SK] reported a high level of emotional dependency upon her son. She explained that her son provides her with practical and emotional support and takes her out. She explained that without him she would *'kill myself'*.

11.0 **CONCLUSION**

11.1 In reviewing this case through psychological interview, psychometric measures and supporting documentation. I have considered all the relevant sources of information and issues with great care and my answers to the instructions from the instructing solicitors:

1 **What level of role is our client playing in the lives of his children and his wife who is registered as blind?**

Mr [B] has a close attachment and bond with his children and he has been a part of their lives and the main care giver since their birth and since his release from custody. He is their full time carer and undertakes all of the tasks and duties of daily care for them. He also undertakes all daily care for his wife who is registered as severely permanently and blind and qualifies and received PIP benefits to allow him to do this.

2. **Can the role that he is playing be dispensed with by him and if so, what impact would it have on his children and his wife?**

In my opinion it would not be in the best interests of the children if Mr [B] was removed from the UK and it is most likely that there would be an enormous impact upon the psychological, emotional, social and educational development of the children. It is difficult to say whether this could ever be recovered, because it may be recovered and has seen to be, in some cases, however, it may also deteriorate and never be recovered to the same levels as before (psychological health). It is not correct to assume though that children are young and can always adapt and adjust well to changes in their lives, of course, they can at times, but as childhood can be impressionable and a vulnerable and fragile time, any influence can cause deterioration in physical and psychological health quite easily. It would also mean that the children's education would be detrimentally impacted upon as his wife would rely on them, particularly [SB], to provide her with care and for the rest of the children.

3. **Can the children be expected to relocate with the client in Pakistan and the impact on their mental, social and educational development?**

NS and the children are British Citizens and it would be unfair for them to give up her future in Britain as they are entitled, in order to live in Pakistan. They

also have a private life and are integrated into British society and would find relocation difficult, not to say that this would also impact on their education and learning.

4. **What, in your professional opinion would constitute as being in the best interests of the children?**

In my professional opinion (sic), it is the best interest of the children to remain in the UK and in the care of their father, who has been their main caregiver from birth. It would be unfair to remove them from the UK or to remove Mr [B] from the UK.

In my professional opinion and on balance and I have looked at the pros and cons of both sides of the argument, I consider that to deport Mr [B] to Pakistan expecting him to live there without his children and also expecting them to live in Pakistan with him, would not be in their best interests at all as both scenarios have a number of factors which would significantly impact on the children's development and well-being to cause deterioration rather than an improvement.

5. **What impact would there be on the client if he was now required to leave his children and relocate to Pakistan?**

If Mr [B] is removed to Pakistan, he is unlikely to be involved daily in the development and progression of his children's life and being able to watch them grow up and this would come as a large blow to him and would only contribute to further deterioration of his already affected mental health and well-being, which has improved considerably.

6. **What impact there would be on the family unit in terms of their well-being, if the client was deported from the United Kingdom?**

If Mr [B] is deported, the children would lose their father and main caregiver, there would be a disruption to the attachment process for the younger children, which is most important from the years of 1 to 5, as research has shown that a disruption in the early years can cause significant impact on development and later life in adolescence and adulthood. NS would be unable to work due to her disability and she would have to raise the children as a single parent and in poverty. This would no doubt impact upon her own mental health and well-being. In addition, the children would be at risk of being removed from their mother's care as she has severe blindness and would experience difficulty in caring for them.

7. **What impact would there be on the client's mother if he was now deported from the United Kingdom?**

Mrs [K] is also heavily reliant on Mr [B] for emotional and practical support and she is likely to experience a detrimental blow to her emotional well-being if her son is removed to Pakistan. She has a history of self-harm and she may possibly act impulsively increasing risk to herself.

14. [ZB] and his wife have filed witness statements and [ZB] was cross examined by Mrs Petterson. That evidence has been noted.

15. There is also within the bundle a letter dated 16 November 2020 written by the child SB in the following terms:

Dear Judge/Home Office

My name is [SB] and I am the daughter of [ZB]. I am 11 years old and I'm currently in year seven at [] secondary school. I am writing this letter in support of my father who I know is under deportation. My dad is one in a million and I cannot imagine a day without him. Since I have been told this devastating news I have been unable to sleep at night, I sometimes cry that if my dad was to be separated from us, who will look after us, who will cook for us, help us in our home work and love us the way he does. It at all times I need my father's support and from the time of my childhood my father has always been with us. My little brother won't eat if dad is not around. I fear sometimes that I might be the unlucky one with no dad, my friends and cousins will have their dad and I went. My father is very close to me I can share all my feelings with him. I feel very secure when he is around me. I really love my dad, don't take him away from us. I won't be able to live, we don't have nobody apart from him. If my dad goes to Pakistan how will I meet him I have never been to Pakistan this is my country, I love my school and I want to be here. I want to become a lawyer and I am working hard towards it and I don't want anything affecting my education. Please whoever is reading the letter please help me to save my dad my family will break please support us in any way possible. Nobody deserves to be without a father and I will cry a lot if you take my dad away. I will become depressed I will never be able to move on in life and achieve my dreams. My dad is my dad I am my daddy's girl and he is my love and means everything to me in the world. I will never have him in any circumstances. Please help me to save my dad. Can you please pass this letter on to who that can help me to save my dad.

Discussion

16. The existence of a "genuine and subsisting parental relationship" between the appellant and the children or such a relationship between the appellant and his wife is a question of fact. It was not disputed before the Upper Tribunal that a genuine and subsisting relationship exists between both groups of individuals and ZB.
17. It was also not disputed that it will be unduly harsh for the appellant's wife and children to relocate to Pakistan with ZB if he is deported.
18. It was not disputed that the core issue in this appeal is whether it will be unduly harsh for the appellant's wife and children to remain in the United Kingdom if ZB is deported to Pakistan.
19. In relation to the assessment of whether the appellants deportation will result in "unduly harsh" consequences for the children, the matter is to be evaluated only with reference to the child him or herself. To weigh the impact of deportation on the child against the criminality of the parent would be to offend against the 7th principle in *Zoumbas v Secretary of State for the Home Department* [2013] UKSC 74 that a child cannot be blamed for matters for which he is not responsible: *KO (Nigeria) & Ors v Secretary of State for the Home Department (Respondent)* [2018] UKSC 53.
20. It is therefore not permissible to weigh the impact of deportation against either the offences for which the appellant was sentenced, which it is accepted arose as a result of ZB's substance abuse of alcohol and cannabis taken at home, or the further more recent act of criminality disclosed in reply to a question put to him in cross examination and in his witness statement of November 2020, which shows the appellant was arrested in July 2019 and charged with the offence of dangerous driving. The appellant confirmed he pleaded

guilty and that his case had been adjourned to 26 February 2021 for sentencing before the Crown Court.

21. I do not find the appellant has established that the impact of removal on his mother will be unduly harsh, for although I accept that it is likely to be something she does not want, the evidence is that there are family members in the United Kingdom, including ZB's brothers and a sister who also live in London, and it was not made out they will be unable to provide the necessary support, together with the medical professionals, she requires as they do at this time.
22. In relation to the appellant's wife and children, Mrs Pettersen accepted in her submissions that the impact of the appellant's removal from the United Kingdom will be harsh and possibly result in very harsh consequences for them but submitted that the required threshold of unduly harsh had not been met.
23. The MK (Sierra Leone) formulation stating that unduly harsh "is an elevated threshold denoting something severe or bleak" was approved in KO (Nigeria) (*supra*) although in HA (Iraq) v Secretary of State for the Home Department (Rev 1) [2020] EWCA Civ 1176 the court cautioned against conflating "undue harshness" with the far higher test of "very compelling circumstances". The underlying concept is of an "enhanced degree of harshness sufficient to outweigh the public interest in the medium offender category" [44-56].
24. Whilst a lot of the evidence related to what previously might have been categorised as the normal distress caused by separation of a partner or children from the appellant, it is no longer correct for the respondent to rely upon this and to claim that such distress is insufficient to meet the test, as it could be. The correct focus should be on the emotional impact on the individual child: HA(Iraq) (*supra*) [Underhill LJ 44-56, Peter Jackson LJ 157-159].
25. In HA (Iraq) it was found that in evaluating undue harshness for a child, decision makers should take into account the *Zoumbas* principles [55, 84, 114, 153], the best interests of the child [55], emotional as well as physical harm [159], relationships with other family members in the UK [120] and where applicable "the very significant and weighty" benefits of British citizenship [112-116 cf. Patel (British citizen child - deportation) [2020] UKUT 45 (IAC)].
26. There has been specific focus in this case upon the impact upon the older child SB if the appellant is deported. It is not disputed that NS is registered with severe blindness and nor is it claimed before the Upper Tribunal that her evidence regarding the extent of her dependency upon the appellant to meet her personal needs and to provide care for both her and the children was exaggerated.
27. NS was registered as of 1 July 2005 with the London Borough of Barking and Dagenham as disabled on the basis of the diagnosis of being partially sight impaired and there is evidence NS receives an advanced rate of PIP and the appellant a carers allowance payment as a result of her disability.
28. Whilst there are organisations such as the Royal National Institute for the blind, RNIB, who can provide guidance and assistance for blind or

partially sighted to attain the many helpful benefits and support available to make life for them, the appellant's evidence was not challenged before the Upper Tribunal that although some care provision could be made by Social Services, 24-hour social care was not available.

29. If the appellant is deported, even with the assistance from family members in the UK, it is highly likely that NS will be forced to call upon SB to meet both her needs and to assist with the care of her siblings.
30. The child was born on the 22 May 2009 and is therefore 12 years of age at the date of the hearing.
31. It cannot be disputed that parents, whether they are disabled or not, need to feel in control of their families, and children need to perceive them as being in control in a normal balanced family environment. Whilst the evidence indicates this is the situation prevailing whilst the appellant remains in the family home it is clear that if he is deported and NS is the only remaining parent, she does not have the capacity or ability to be in control of the family unit.
32. Studies have also shown that social exclusion can be a significant issue for a disabled parent who may find it difficult to access the type of support required to enable them and their families to live "normal" lives. NS is not the parent who currently assists the children with their homework or attends school or deals with educational matters to the extent that the appellant does, as evidenced by the material in the appellant's bundle.
33. Dr Latif raises the issue of the impact of the standard of care NS is able, or more likely unable, to offer the children leading to a loss of custody of the children, through child protection proceedings. It is not made out it will be in the best interests of the children if the appellant is deported, especially if there is a real risk of them losing not only the family unit that he has provided for them but also the family they know with their mother.
34. There are a number of studies by organisations such as the Children's Commissioner that recognises that the mental health of a young person providing care for a disabled parent is affected by their caring role without the required support they need being available.
35. The Children's Commissioner in a report records: "68% of young carers told us they are bullied in school, so it is essential we give them the support they need to feel safe and achieve their goals. And yet we know there is a support gap. We estimated that approximately 4 out of 5 young carers are not receiving help from their local authority, and not all local authorities are taking steps to provide support for the children who may be carers in their area". The evidence provided from the local authority in this case says nothing about the support that will be made available to the family and ,in particular, SB if she has to take on this role.
36. Young carers often take on their caring role with love and without complaint, as I am sure SB does, but can pay a price in poor health coupled with lower school results and long-term life chances. Even if SB accepts her situation with a sense of duty and compassion, there is

a real risk she will be denied the chance to enjoy her childhood with a risk of related adverse developmental issues.

37. Studies show that not only are young carers more likely to fall behind in education and experience mental health issues, their caring role can sometimes prevent them from making and maintaining friendships. This isolation can easily be exacerbated: young carers often won't ask for help for fear of being taken into care.
38. If this was a case in which NS did not suffer the extent of the disability she suffers, which has a material impact upon her ability to care for the children, which will clearly result on the evidence in an enhanced degree of harshness, this appeal is likely to have been dismissed. But she does.
39. I find that such enhanced degree of harshness resulting from NS's inability to care for the children and impact upon the children within this family unit following the loss of the main caregiver, who cannot realistically be replaced within the immediate or extended family sufficient to meet the needs of the children, is sufficient to outweigh the public interest in the medium offender category; based in particular upon the impact upon SB of having to become a child carer responsible for meeting the unmet support need of her mother and in trying to replicate the role of her father by having to deliver both the physical and/or emotional care to her mother and three younger siblings in place of that currently provided by ZB. The report of Dr Latif highlights SB being mature for her age which I find is indicative of the impact of her having to take on responsibility to date when the core provider of care and support within the family, her father, was imprisoned.
40. On that basis I find the appellant is entitled to rely upon an exception to the order for his deportation from the United Kingdom at least during the time the children remain dependent upon parental care and support and assistance. Whilst this may not be the case as the children become older and more independent it is clearly the situation that prevails at the date of this hearing.

Decision

41. I allow the appeal.

Anonymity.

42. The First-tier Tribunal made an order pursuant to rule 45(4)(i) of the Asylum and Immigration Tribunal (Procedure) Rules 2005.
43. I make such order pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008.

Signed.....
Upper Tribunal Judge Hanson

Dated 25 January 2021