Upper Tribunal (Immigration and Asylum Chamber)

Appeal Number: HU/13234/2017

THE IMMIGRATION ACTS

Heard at Field House
On 29 November 2021

Decision & Reasons Promulgated
On 24 February 2022

Before

UPPER TRIBUNAL JUDGE BLUNDELL
DEPUTY UPPER TRIBUNAL JUDGE LEWIS
Between

ZAHID HAFEEZ
(ANONYMITY DIRECTION NOT MADE)

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellant: Mr Jafferji, instructed by Lawise Solicitors
For the Respondent: Mr Tufan, Senior Presenting Officer

DECISION AND REASONS

1. On 7 May 2020, the Upper Tribunal issued its first decision in this appeal. The appellant's appeal had been dismissed by the First-tier Tribunal (Judge Widdup) and he had secured permission to appeal against that decision. Following a contested hearing on 20 March 2020, Upper Tribunal Judge Blundell found that the First-tier Tribunal had erred in law and set aside that decision in part. The Upper Tribunal preserved an unchallenged finding that it would be unduly harsh to expect the appellant's children to live with him in Pakistan but directed that the remaining issues in the appeal were to be assessed afresh at a resumed hearing before the Upper Tribunal.

2. There were regrettable delays before and after the resumed hearing. The listing of the matter was rendered more difficult by the fact that it

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was required to be a face-to-face hearing and Mr Jafferji was unavailable on a date in August 2021 when a face-to-face listing was given. In the event, there was a significant delay before the matter came before us in November 2021.

Background

3. The appellant is a Pakistani national who was born on 8 April 1970. He entered the United Kingdom in 2004, holding entry clearance as a student. He subsequently returned to Pakistan and re-entered the UK as a Highly Skilled Migrant, bringing his wife and three of his children with him as his dependants. Three further children were born in the UK whilst the appellant was present in that capacity. The appellant and his family were granted Indefinite Leave to Remain on 22 January 2013. The appellant's children are British citizens but his own application for British citizenship was refused because he had failed to declare that he had an impending prosecution. At the time that he was convicted of the index offence, therefore, the appellant held ILR.

4. On 12 May 2016, the appellant was convicted at Harrow Crown Court of conspiracy to do an act to facilitate the commission of a breach of UK immigration control and of assisting in unlawful immigration into an EU state. The appellant was the proprietor of Universal Training Centre ("UTC"), which was one of the two colleges targeted by the BBC Panorama programme which uncovered widespread cheating in TOEIC English language tests administered by Educational Testing Services ("ETS").

5. In sentencing the appellant to a term of five years' imprisonment, HHJ Barrie noted that he had played a leading role in a well practised operation. He was, she said, 'in control of and running the scam' in relation to the use of 'pilots' at UTC, which was 'routinely running fake tests'. HHJ Barrie rejected a submission made by counsel for the appellant, that this was a relatively small-scale conspiracy within the walls of UTC. She concluded, instead, that there was the clearest of evidence that the appellant had been conspiring with others, including staff at a firm called Bright Consulting Services. The appellant and the other participants in the conspiracy were able to provide what was described as a 'full package' of fake documents, including bank statements and CAS letters, in order to enable those with no intention of studying to obtain leave to remain as a student. The sentencing judge described the conspiracy as a 'well organised, well practised and highly lucrative fraud of the immigration visa system committed over a sustained period of time'.

6. The respondent initiated deportation proceedings and, on 22 June 2016, submissions were made on the appellant's behalf, contending that his deportation would be in breach of Article 8 ECHR. Then, as now, the focus of the appellant's case was on the circumstances of his six children (who were born between 2002 and 2013) and his wife and the effect that his deportation would have upon them. The respondent concluded that it would not be unduly harsh for the appellant's family to live with him in Pakistan or to remain without him in the United Kingdom. She did not consider that the appellant was integrated to the UK or that he would experience very significant obstacles to his re-

integration to Pakistan. She did not accept that there were very compelling circumstances over and above those contained in the statutory exceptions to deportation which outweighed the public interest in that course.

Proceedings on Appeal

7. The First-tier Tribunal dismissed the appellant's appeal. As recorded above, the judge accepted that it would be unduly harsh for the appellant's children to follow the appellant to Pakistan. He did not accept, however, that it would be unduly harsh for them to remain in the UK without him or, critically, that the public interest in the appellant's deportation was outweighed by very compelling circumstances.

8. On appeal, the Upper Tribunal found that the judge in the First-tier Tribunal had fallen into error in failing to consider evidence which was relevant to the individual circumstances of the appellant's six children. In particular, the judge had failed to consider expert evidence in which the three eldest children had been diagnosed as suffering from anxiety and depression. The Upper Tribunal also found that the judge had fallen into error in failing to adopt the structured approach required by the authorities including NA (Pakistan) v SSHD [2016] EWCA Civ 662; [2017] 1 WLR 207. Thirdly, the Upper Tribunal held that the judge had misdirected himself in relation to the weight which was to be afforded to the public interest in the appellant's deportation. The Upper Tribunal rejected the submission made by the respondent's representative (not Mr Tufan) that these errors were immaterial to the outcome of the appeal. It was for those reasons that the Upper Tribunal set aside the decision on the appeal and directed that it should be remade in the Upper Tribunal.

9. At the conclusion of the Upper Tribunal's first decision, it directed that there should be a consolidated bundle filed and served by the appellant's representatives. A consolidated bundle of 746 pages was filed and served in compliance with that direction. As a result of the passage of time, however, the appellant's solicitors also provided a short supplementary bundle of 54 pages. At the start of the hearing, Mr Jafferji provided a skeleton argument, appended to which were two documents which were said to show that the respondent had treated the appellant as having Indefinite Leave to Remain despite the pending deportation proceedings.

10. As Mr Tufan had been given no notice of these additional documents or the submission which they were said to underpin, we required Mr Jafferji to produce an additional witness statement from the appellant, detailing the circumstances in which these documents had been produced. Mr Jafferji complied with that direction. In the meantime, Mr Tufan had taken the opportunity to consider what was said by the appellant with the benefit of the Home Office's Case Information Database. Mr Tufan was able to confirm, therefore, that the appellant's Probation Officer had been informed in January 2020 that the appellant would be able to travel to Saudi Arabia but that his appeal would be deemed withdrawn if he did so. Mr Tufan was content for the

documents to be admitted and for the appeal to proceed, which it then did.

11. Mr Jafferji indicated that he intended to call the appellant, his wife and his two eldest daughters (aged 18 and 19) to give evidence. Mr Tufan indicated that he did not seek to cross-examine the appellant's wife or their two daughters. He was content, in the circumstances, for them to remain in the hearing room whilst the appellant gave his evidence.

12. The appellant adopted the five statements he had made between March 2019 and the date of the hearing before us. Mr Jafferji asked him no further questions.

13. In cross-examination, the appellant confirmed that his two eldest children were both adults. One was at grammar school, the other was at university. They were doing well in their education. The appellant's eldest son was 16 years old and had started studying for his A-levels. He was not doing too well. He had started at Watford Boys Grammar School but had not 'made the grade' to continue his A-levels there. He had accordingly transferred to another school in Rickmansworth.

14. Mr Tufan noted that the appellant's eldest son had been said by Dr Emma Gray in 2019 to have moderate anxiety and depression. He asked whether there was any up-to-date evidence of the appellant's eldest son's diagnosis. The appellant confirmed that the most recent report of Dr Labinjo dealt purely with the pandemic. He noted that both Dr Labinjo and Dr Gray had in the past considered the situation of his eldest son. Mr Tufan asked where the appellant's oldest daughter was living. He stated that she was living at home.

15. There was no re-examination. The appellant answered two clarificatory questions from the Bench, stating that his oldest daughter was studying at London Royal Holloway and that he drove her there and back from Watford. There were no questions arising from our questions.

Submissions

16. Mr Tufan submitted that the issue on the appeal was whether there were very compelling circumstances, over and above those in the statutory exceptions to deportation, which sufficed to outweigh the public interest in the appellant's deportation. He reminded us that the proper course was to consider the statutory exceptions even if the appellant, as a serious offender, was unable to satisfy them.

17. Mr Tufan submitted that the Private Life exception to deportation clearly did not apply and that the first focus must be on the Family Life exception. It was therefore for the Tribunal to consider whether the appellant's deportation would give rise to unduly harsh consequences for the appellant's wife or children. There were various reports which were relevant to that question. Dr Labinjo had produced three reports and Dr Gray had produced one. The FtT had failed to engage sufficiently with Dr Gray's findings. Those findings included a conclusion that the appellant's three eldest children were each suffering with recognised mental health problems in the form of

anxiety and depression. Dr Gray's conclusions had been expressed in November 2019, however, and had not been updated. It was apparent that these three children were doing well in their education. Dr Gray had concluded that there would be devastating consequences for the appellant's family in the event of his deportation but that was mere speculation. The appellant's wife was also said to be suffering from mental health conditions but it could not properly be said that the appellant's deportation would be unduly harsh on her, given the threshold described in MK (Sierra Leone) [2015] UKUT 223 (IAC); [2015] INLR 563, as approved in KO Nigeria v SSHD [2018] UKSC 53; [2018] 1 WLR 5273.

18. Mr Tufan accepted that the children would be adversely affected by the appellant's deportation. He accepted that the consequences would be harsh but not that they would be unduly harsh. Even if, contrary to that submission, the consequences would be harsh, they would not be 'extra unduly harsh', as required by s117C(6) of the Nationality, Immigration and Asylum Act 2002: SSHD v JG (Jamaica) [2019] EWCA Civ 982. Given how well the family coped when the appellant was incarcerated, they would be able to cope in the event of his deportation. They could call upon the assistance of social services if required and it was to be assumed that the local authority would provide such assistance: BL (Jamaica) v SSHD [2016] EWCA Civ 357.

19. It was quite clear, and accepted by the respondent, that the appellant was now rehabilitated but the weight to be given to such rehabilitation was limited: HA (Iraq) v SSHD [2020] EWCA Civ 1176; [2021] 1 WLR 1327.

20. It was accepted, in summary, that there would be devastating consequences for any family faced with the deportation of a parent but the circumstances as a whole, including any mental health conditions suffered by the older members of the family, were not such as to cross the 'extra unduly harsh' threshold. Asked about the opinion expressed by Dr Labinjo at p37 of the supplementary bundle (that the appellant's deportation would have disastrous consequences for this family), Mr Tufan submitted that this was speculative but that it was understandable that the doctor would be concerned. It remained in dispute that such consequences could meet the threshold in s117C(6), given the seriousness of the offending in this case.

21. Mr Jafferji referred to MI (Pakistan) v SSHD [2021] EWCA Civ 1711 and AA (Nigeria) v SSHD [2020] EWCA Civ 1296; [2020] 4 WLR 145 at some length before turning to the circumstances of the appellant and his family. He reminded us that there were four children under the age of 18. He submitted that two of those children were particularly vulnerable. It was necessary to consider the circumstances of the family during the appellant's imprisonment. What was clear from the evidence was that the wellbeing of the children had deteriorated significantly because the mother had been unable to cope. It was to be recalled that the separation brought about by the appellant's imprisonment was time-limited but that would not be the case in the event of deportation. If anything, the family had been more able to cope when he was in prison than they were now, as was apparent from

the mental and physical health problems now experienced by the family as a whole. Dr Labinjo's report spelt out the consequences of covid-19 for the appellant's wife.

22. The children had a range of health conditions and the asthma suffered by one of them was of particular concern. The appellant's wife worked night shifts in the NHS and the appellant is the primary care giver for the children. That relationship would be extinguished in the event of his deportation. The appellant's wife would, in reality, be required to give up work so that she could care for the children. We asked Mr Jafferji whether there was any evidence of the family's financial circumstances. He said that there was none. The appellant had looked for work and had been unable to find any. The appellant's wife was able to work and was employed in a frontline position within the NHS. One of the children had expressed a fear that he would not receive proper care at home in the event of his father's deportation. One of the children suffered from Stevens-Johnson syndrome which required regular treatment and check-ups. The appellant principally relied on the mental health problems suffered by the family, however, and the likely effect of the appellant's deportation on those conditions.

23. We asked Mr Jafferji whether there was any evidence that any of the mental health conditions had been treated since they were identified in advance of the hearing before the FtT. He referred to evidence which showed that one of the children had been treated somewhat unsuccessfully by a counsellor at her school. There was also evidence that the appellant's wife had been prescribed medication. It was to be recalled, he submitted, that the appellant had returned to the family home and that matters had improved as a result. There had undoubtedly been a deterioration in the family's health when he was imprisoned. That included a deterioration in the hearing of one of the children, brought about by a lack of care on the part of the appellant's wife. It was not suggested by the Secretary of State that this account was untrue. Nor was there any dispute over the worsening of another child's Stevens-Johnsons syndrome during that time. It was clear that the appellant's deportation would bring about particularly stark difficulties for two of his children and that the whole family would be seriously affected. Considering the cumulative impact, Mr Jafferji submitted that the appellant's deportation would be unduly harsh on his wife and children and that the consequences were such that they would meet the admittedly high threshold in s117C(6) of the 2002 Act.

24. We reserved our decision.

Statutory Framework

25. Part 13 of the Immigration Rules makes provision for deportation but it is to Part 5A of the Nationality, Immigration and Asylum Act 2002 ("the 2002 Act") that we must turn. That is primary legislation which directly governs decision-making by courts and tribunals in cases where a decision made by the Secretary of State under the Immigration Acts is challenged on Article 8 ECHR grounds. The provisions of that Part of the 2002 Act, taken together, are intended to provide for a structured approach to the application of Article 8 which

produces in all cases a final result which is compatible with Article 8: NE-A (Nigeria) v SSHD [2017] EWCA Civ 239; [2017] Imm AR 1077.

26. Section 117B contains public interest considerations applicable in all Article 8 ECHR cases. 117C of the 2002 Act provides the following additional considerations in cases involving foreign criminals:

(1) The deportation of foreign criminals is in the public interest.

(2) The more serious the offence committed by a foreign criminal, the greater is the public interest in deportation of the criminal.

(3) In the case of a foreign criminal ("C") who has not been sentenced to a period of imprisonment of four years or more, the public interest requires C's deportation unless Exception 1 or Exception 2 applies.

(4) Exception 1 applies where—

(a) C has been lawfully resident in the United Kingdom for most of C's life,

(b) C is socially and culturally integrated in the United Kingdom, and

(c) there would be very significant obstacles to C's integration into the country to which C is proposed to be deported.

(5) Exception 2 applies where C has a genuine and subsisting relationship with a qualifying partner, or a genuine and subsisting parental relationship with a qualifying child, and the effect of C's deportation on the partner or child would be unduly harsh.

(6) In the case of a foreign criminal who has been sentenced to a period of imprisonment of at least four years, the public interest requires deportation unless there are very compelling circumstances, over and above those described in Exceptions 1 and 2.

(7) The considerations in subsections (1) to (6) are to be taken into account where a court or tribunal is considering a decision to deport a foreign criminal only to the extent that the reason for the decision was the offence or offences for which the criminal has been convicted.

Analysis

27. The appellant was sentenced to five years' imprisonment, as a result of which he is a 'serious offender' who cannot fall within the statutory exceptions to deportation in s117C(4) and (5). It is nevertheless sensible to adopt the structured approach envisaged by the statutory scheme and to consider, firstly, whether the appellant would be able to meet those statutory exceptions to deportation if they were available to him: NA (Pakistan) v SSHD, at [37].

28. It is not contended by Mr Jafferji that the appellant would be able to meet the first statutory exception. We should nevertheless consider the tripartite test in that exception briefly, since our conclusions in that respect will be of relevance at a later stage.

29. The appellant is 51 years old and he has been in the UK for 17 years. He cannot therefore contend that he has been lawfully resident in this country for most of his life, since ‘most’ in this context means more than half: SSHD v SC (Jamaica) [2017] EWCA Civ 2112; [2018] 1 WLR 4004, at [53]. Had it been necessary to do so, we would have been inclined to conclude that the appellant is socially and culturally integrated into the UK, notwithstanding his conviction. Having considered all that the appellant says, alongside the expert evidence, we do not consider that the appellant could establish that he faces very significant obstacles to integration to Pakistan. He is older than the average returnee; his conviction precludes him re-entering the banking sector; he has limited connections with the country and he is in receipt of medication for mental health problems. We note that Dr Smith describes the appellant’s prospects as ‘undeniably grim’ upon return. Nevertheless, the appellant is a resourceful and very well qualified man who spent the first decades of his life in Pakistan. Taking into account what was said about the threshold in Parveen v SSHD [2018] EWCA Civ 932, we do not accept that the obstacles which he will encounter can properly be described as *very significant.*

30. The focus of argument before us was therefore upon the second statutory exception to deportation. It was submitted by Mr Jafferji, firstly, that the effect of the appellant’s deportation on his wife and children would be so harsh as to satisfy that exception (had it been available) and, secondly, that there were very compelling circumstances over and above those described in the exceptions, so as to meet s117C(6).

31. As Popplewell LJ observed at [9] of AA (Nigeria) v SSHD, there has been a proliferation of case law on the application of the ‘unduly harsh’ test in section 117C(5) and the ‘very compelling circumstances’ test in s117C(6). We do not intend to attempt a comprehensive review of those authorities but we have had particular regard to KO (Nigeria) v SSHD, NA (Pakistan) v SSHD and HA (Iraq) v SSHD [2020] EWCA Civ 117; [2021] 1 WLR 1327.

32. We have also carefully considered Simler LJ’s review of the authorities on ‘undue harshness’ at [18]-[27] of MI (Pakistan) v SSHD. At [25] of her judgment, Simler LJ noted that Underhill LJ had remarked in HA (Iraq) v SSHD that a fact-finding tribunal would make no error of law if it undertook a ‘careful evaluation of the likely effect of the parent's deportation on the particular child’ and then considered whether ‘that effect is not merely harsh but unduly harsh’. Our focus is on what has been described as the ‘stay scenario’, it having been concluded in the FtT that it would be unduly harsh on the appellant’s family to relocate to Pakistan with him. As noted, that finding was not challenged and was accordingly preserved, without objection from the respondent, at the first hearing.

33. In order to conduct that analysis in the most thorough possible way, we propose to analyse the evidence in respect of each member of the appellant’s family. In doing so, we obviously recognise that the ‘undue harshness’ test in s117C(5) could only apply to the appellant’s wife and minor children. In order to understand the consequences of the

appellant's deportation upon them, however, it is necessary to have an understanding of the family's circumstances as a whole.

34. As we have noted, the appellant and his wife have six children. Before we turn to consider the family situation, it will assist to identify the children and their ages:

FZ (daughter) - British - born in Pakistan on 28 August 2002 - aged 19

WZ – British - born in Pakistan 17 September 2003 – aged 18

MDZ – British - born in Pakistan on 12 March 2005 – aged 16

AZ – British - born in the UK on 18 May 2009 – aged 12

MHH – British - born in the UK on 22 August 2011 – aged 10

MZ – British - born in the UK on 8 September 2013 – aged 8

The Appellant

35. The appellant has made four witness statements in connection with the appeal. In the first (dated 25 March 2019), he sets out his family and educational background, highlighting that he achieved four degrees in Pakistan. He had a career in the financial sector before coming to the UK. He married his wife in 1999 and they had six children together. The appellant came to the UK in 2004. His wife and three older children came to the UK in 2008. The three younger children were born in the UK. He has a strong relationship with his wife and children. The family is fully integrated into the UK and their youngest daughter has never been to Pakistan.

36. The appellant states that he has been a self-employed IT Consultant since his release from prison. He worked at supermarkets in the UK before he set up UTC in 2008. The centre offered a range of courses and just under 10,000 students were educated there. Only 8% of the students at the centre were there for a TOEIC test. The centre was investigated by Edexcel Pearson after the Panaroma documentary was aired. It concluded that there was no evidence of malpractice in ESOL provision at the centre and resinstated the centre's approval for those courses.

37. The appellant highlighted that he had made a positive contribution to society through the provisions of education to students and that he had received positive references from members of the community as a result. He had had a stressful time in prison but had managed to complete many courses. He had also been involved in education in the prison. He had been detained under immigration powers on release from custody but was released on bail after a year, on 15 November 2018[1].

38. The appellant explained that he very much regretted his actions. He accepted that he had been motivated by greed and that he had damaged himself, his family and society. He wanted to make

[1] The statement actually gives the date as 15 November 2019 but this is clearly incorrect with reference to the other evidence.

reparation to society by setting up a charity to work with the youth and with vulnerable people and past offenders.

39. The appellant states that his family suffered the most whilst he was in prison. It was extremely hard if not impossible for his wife to look after the children on her own. Their health conditions had deteriorated. That was particularly so in respect of the appellant's wife, MDZ and AZ. There had at least been some hope that things would return to normal, however. The family had visited him regularly. Things had improved significantly since his return to the family home.

40. From [57] in his statement, the appellant describes the various health conditions suffered by the family. He states that he suffers from ongoing strees, anxiety and insomnia and had lost a significant amount of weight. His memory and concentration are impaired. He had been taking medication for a problem with his prostate and was attending his GP every 6-8 weeks 'in order to asses my condition so that it doesn't progress into prostate cancer'. The appellant then focusses on the situation of his wife, MDZ and AZ. We consider their situations below.

41. The appellant refers to the risk assessments undertaken during and after his time in prison. The risk of reoffending and of harm to the public was stated on both occasions to be low. Those statements are supported by OASys and other assessments before us.

42. The appellant states that his parents are in Saudi Arabia and that his ties with extended family members were 'almost cut off'. He had a sister, uncles and aunts in Pakistan but there was limited contact and they made no effort to support his wife when he was in prison. It would be unduly harsh for his wife and children to join him in Pakistan. They had nowhere to live and no family to turn to. He would be unlikely to find work as a result of his age and his conviction. It was in the best interests of the whole family if he remained in the UK and his children would not reach their full potential if they did not have his support.

43. In the appellant's second statement (4 September 2019), he provides an update on the family's circumstances. His wife was working as a Healhcare Assistant at an NHS Hospital. Her shifts were long and the appellant ran the household. It was he who took the children to school, prepared their meals and put the younger children to bed. He helped the children with their homework. He spent time designing his own website and he volunteered at the British Heart Foundation. He had received advice from doctors in Pakistan that the medical conditions of MDZ and AZ could not be managed in Pakistan. He continued to take MDZ to his dermataology appointments. He continued to pose a low risk of reoffending and his enquiries confirmed that he would be unlikely to secure work in Pakistan.

44. In the appellant's third statement (25 May 2020), he provided an update after the inception of the pandemic. He had been advised by the NHS to exercise caution and to stay at home at all times but he had nevertheless continued to take MDZ to all of his dermatology appointments because he would have been 'severely compromised and damaged' if those appointments had been missed.

45. In the appellant's fourth statement, which was filed and served in a supplementary bundle on 26 November 2021, the appellant explains how six of the eight family members had contracted Covid-19, with his wife being infected twice. The appellant was extremely vulnerable and his wife had long covid symptoms. MHH and AZ had suffered asthma attacks since having Covid-19. AZ had mental health problems and was continuing to suffer from hearing loss. It was possible that she might need further ear surgery.

46. There is a range of supporting evidence about the appellant's situation before us. There is an expert report from Dr Francis Labinjo, which considers the circumstances of the family as a whole.

47. Dr Labinjo is a Consultant Psychiatrist (not a psychologist, as suggested in the index to the appellant's bundle) with nineteen years' experience in the field. He is approved under section 12 of the Mental Health Act 1983. He has been preparing reports for the criminal courts for many years. He has been an adviser to the prison service and became the Lead for Clincal Governance for Prison Healthcare. He has also undertaken specialist investigations on behalf of the Care Quality Commission. It is apparent that he has wide-ranging expertise in psychiatry and Mr Tufan took no issue with his ability to provide expert evidence on the matters in his reports. It is equally apparent from the report that Dr Labinjo had before him all relevant documents including the respondent's decision and the medical records of the whole family.

48. On assessing the appellant in March 2019, Dr Labinjo noted that he complained of stress, anxiety and insomnia and that he had been losing weight. He noted that the appellant had been taking 'native and herbal remedeies' to help him sleep but that he had been advised to see the GP. The appellant was tired during the assessment and had poor eye contact. He was tearful on occasion. His speech was low and monotonous and his mood was low. No thought disorder was apparent. He fulfilled the criteria for a mixed anxiety and depressive disorder. Dr Labinjo recommended psychotherapeutic intervention including Cognitive Behavioural Therapy. Concern over his immigration status was having a negative impact on the appellant's mental health. He was at medium risk of self-harm or suicide. Dr Labinjo opined that the appellant 'would be considered an asset to the United Kingdom'.

49. Dr Labinjo wrote a further report on 29 October 2019, although its focus is on updating the circumstances of other family members. There is a third report from him, dated 13 September 2021, dealing with the impact of Covid-19 on the health of the family and the ability of the appellant's wife to manage the family on her own. That report does not consider the appellant's health in any detail.

50. We note that the appellant was referred for counselling in November 2019.

51. There is further mental health evidence in the form of a report from Dr Emma Gray. Dr Gray is a Consultant Clinical Psychologist and the Lead Psychologist at the British Cognitive Behaviousral Therapy and Counselling Service. She has a doctorate in Clinical Psychology and has been working in the mental health field for 27 years. As with Dr

Labinjo, Mr Tufan took no issue with Dr Gray's ability to provide expert evidence on the subjects considered in her report.

52. Dr Gray's report was prepared after permission to appeal to the Upper Tribunal was granted. She had been instructed to review Dr Labinjo's report and to provide any relevant additional information. She met with the members of the family in October 2019. She considered the appellant to suffer from severe anxiety and to meet the criteria for a diagnosis of mixed depression and anxiety. She noted that he had recently been prescribed mirtazapine to manage his symptoms. She agreed with what Dr Labinjo had said about treatment. She considered, as we shall set out in more detail below, that the appellant's deportation would cause a devastating impact on the family and that his absence whilst he was in prison had compromised the care of the children.

53. There are also two reports from Independent Social Workers. The first is by Nicole Louis, who is a Social Worker and a Systemic Practitioner, with a Post Graduate Certificate in Child Focused Systemic Practice. She has 15 years' experience in the public, private and voluntary sectors. She has provided reports for family law and immigration proceedings. Mr Tufan took no issue with her ability to provide expert evidence on the subject matter of her report. Ms Louis interviewed all eight members of the family on 20 March 2019. She did so in one and a half hours.

54. Ms Louis' 38 page report focused on the circumstances of the appellant's family rather than his own circumstances and we will return to it below. The same is true of the report written by Independent Social Worker Maswood Ahmed, which is titled 'Children's Best Interests Report' and dated 4 November 2019.

The Appellant's Wife – Ishrat Zahid ("IZ")

55. The appellant's wife has made four witness statements during the life of the appeal. In the first (25 March 2019), she explains that she achieved a Master's degree in Education and Political Science from the University of the Punjab before she married the appellant in 1999. She and the children had integrated well into British life and she took part in various events in order to strengthen her fluency in English, build relationships and experience the traditions and customs of British society. She had developed many close friendships across society and she was proud to be British.

56. IZ stated that she would never forget the day on which her husband was convicted: 12 May 2016. She learned of her mother's death on the same day. She had been unable to travel to Pakistan for the funeral because there was no one else to care for the children. Her father passed away shortly thereafter. Again, she was unable to attend the funeral. She was grieving whilst she cared for the children and made arrangements for the family to visit the appellant in prison. She was caused extreme stress, anxiety and insomnia by these events.

57. IZ documents the events of February 2017, when MDZ suffered a reaction to medication and developed Stevens-Johnson syndrome. AZ

had an inner ear infection and was also under the care of the hospital. She states that she was 'broken and shattered due to to unbearable and unsustainable circumstances' and that MDZ and AZ missed healthcare appointments and medication because she was overstretched. She felt that AZ would continue to miss appointments in the event that the appellant was deported. AZ was very close to her father and had been distressed and upset when he was in prison. She had been referred for counselling at this time. The other children also suffered various ailments. IZ considered that it would be in the best interests of all the children for the appellant to remain in the UK. The appellant had made a material difference since being released from custody. He had taken the children to medical appointments and had assisted with their education. Their grades and their behavour had improved since he had returned. The appellant had also been the main breadwinner and it was difficult to pay the bills and survive without him. IZ opined that the appellant's deportation would have unduly harsh consequences on her and the children and that it would be in the best interests of the children and the British public if the family remained together.

58. IZ's second statement reflects the appellant's account of his role in the family home, caring for the children and maintaining the household whilst she is at work. She adds that she has long term gynaecological problems for which she had been advised to have surgery in 2017 but she had not been able to do so for want of childcare whilst the appellant was in prison. An attempt to have the surgery in 2019 had been frustrated by AZ requiring ear surgery. MDZ's behavour had worsened whilst his father was in prison but had improved subsequently. AZ had suffered the most from the appellant's absence. She had attended counselling sessions but she still had an overwhelming fear of her father's deportation, as confirmed in the counsellor's report. AZ frequently woke in the night, crying. AZ's ear infection had worsened because she had been unable to manage when her husband was in prison. She had been suffering gynaecological problems and stress and had been unable to cope with all the tasks presented. There had been an improvement in AZ's circumstances since the appellant's return and she had achieved good grades in the 11+ with her father's assistance. AZ wanted to become a doctor. WZ, one of the other children, had an appointment with a physiotherapist to treat musculoskeletal tension and stiffness.

59. In her third statement, IZ details the impact of the pandemic on the family. She had first contracted the virus in May 2020 and had been badly affected. The appellant had managed the household whilst she isolated. As a frontline NHS worker, she had witnessed the death of patients and colleagues from the virus. She continued to have a continuous pain in her chest, fatigue and difficulty in breathing. She had been damaged physically and psychologically by the virus and she did not consider that she would be able to manage without her husband. His role in the family was 'pivotal and fundamental'.

60. IZ's final statement is dated 25 November 2021. She describes her declining health and her GP's advice that she has symptoms of 'long Covid'. She exhibited a number of text messages from her GP. She

had been referred for x-rays on her chest and knee and had also been given exercises by a physiotherapist. She was also experiencing unbarable stress and anxiety. She was unable to look after the children or even to undertake ‘day to day matters’ without the help and support of her husband. The children continued to suffer from physical and mental health problems.

61. Dr Labinjo concluded that IZ had experienced extreme trauma when the appellant was imprisoned. She had suffered from clinical depression and profound anxiety at that time and her sleep and appetite had both diminished. Her ability to care for the children had reduced. The threat of the appellant being deported had perpetuated these problems. Dr Labinjo noted that IZ had suffered from gynaecological problems (heavy menstrual bleeding and possible fibroids resulting in anaemia) since the birth of her youngest child in 2013 and that surgery had only recently, at that stage, been rearranged. He also took into account the bereavement she suffered shortly after the appellant was imprisoned. Dr Labinjo concluded that she was suffering from features of anxiety and depression which would be likely to worsen in the event of the appellant’s deportation. The burden of caring for all six children on her own in that event would be too much and there would be a ‘strong possibility of the family unit disintegrating’. Dr Labinjo’s did not amend his opinion in his second report.

62. In his third report, Dr Labinjo noted that IZ had been very distressed when talking about the family’s experiences of the pandemic. She had described pain in her limbs, shortness of breath, dizziness and fatigue and other symptoms which were consistent with long covid. There had been no change in her levels of anxiety, which disclosed the highest possible levels on the Trauma Symptom Inventory. Nor had there been any change in her very high levels of depression since his previous assessment. IZ also returned very high scores in respect of flashbacks and dissociation. Having considered the literature concerning the impact of covid and long covid, Dr Labinjo expressed the opinion that the virus had ‘ravaged the family’. He expressed serious concern about the likely effect of the appellant’s deportation on IZ’s physical and mental health and her ability to care ‘for the six young children’. He considered that a ‘mental relapse’ was ‘highly probable’.

63. Dr Gray’s report post-dated Dr Labinjo’s first and second reports. Dr Gray noted that IZ had been taken aback by the suggestion at the hearing before the FtT that she had ‘coped well’ during her husband’s time in prison. Her version of events was, instead, that she had barely survived. She remained extremely anxious about the hardships which the appellant’s deportation would cause the family. She suffered from severe anxiety and moderate depression and had been prescribed Citalopram by the GP. Dr Gray considered that CBT would be beneficial. She fully agreed with Dr Labinjo that it would be ‘catastrophically destabilising’ for the family to relocate. The Home Office had, in her opinion, ‘massively underestimated’ the challenges IZ would face in the event that she remained in the UK without the appellant. That scenario would, she considered, bring about disastrous consequences for IZ and the children.

64. Ms Louis noted in her report that IZ had experienced depression and that her physical health had 'exasperated' during the appellant's time in prison. IZ told Ms Louis that there were times when she had felt like abandoning the children. IZ had been unable to manage the children's health issues whilst the appellant was in prison. Mr Ahmed's report is to similar effect. He additionally expressed the view that IZ would be unable to maintain her job in the event that the appellant was no longer available to run the household. It would be devastating for the family to lose the appellant's practical and emotional support. IZ would be completely broken and she would struggle to attend to the children's needs. That suggestion was supported by documents 'from school and health' which suggested that she had struggled previously. Like Ms Louis, Mr Ahmed considered that IZ's physical and mental health difficulties were likely to be 'exasperated' by the appellant's deportation, which would in turn have an impact on her ability to meet the needs of the children.

65. In addition to the expert evidence about IZ, we have medical records about her gynaecological conditions and other matters. These confirm that she suffers from heavy and prolonged menstrual bleeding and that she was unable to have surgery in 2016 due to her personal circumstances. A letter dated 1 May 2019 confirms that she had failed to attend two appointments and that surgery which was booked for that date had been cancelled accordingly. A radiology report from April 2020 suggested 'mild Covid-19'. A letter from earlier that month shows that IZ had expressed concern to her employer about suffering from Covid-19. We note also a more recent letter (25 November 2021), inviting IZ for x-rays on her chest and right knee.

66.

FZ

67. FZ has made four statements during this appeal. In her first (4 March 2019), she noted that she was studying four A-Levels at Watford Grammar School and that she wanted to go to university. As the eldest, she was the most aware of all the children about the effect of her father's imprisonment. She had a vivid recollection of the date on which the family home was raided when the appellant was arrested. The events which followed she described as 'two anxiety-filled years' and stated that her father had been imprisoned 'for an offence that was both unrelated to violence or the public's safety'. His removal from the family had damaged them significantly. She had struggled greatly with her education, physical health and mental wellbeing. She had struggled to maintain her grades without her father's support and had worked late into the night in an attempt to do so. She had to cut out all extraneous activities in order to keep her education on track. She had nevertheless fallen behind in Physics due to her father's absence.

68. FZ stated that her performance had 'vastly improved' since the return of her father. Her average test result in Physics had gone from grade D to grade A. She was concerned that she would not achieve her full potential in the event of her father's deportation. She had developed an 'unhealthy relationship with food' whilst he had been in prison. Her

friends and teachers had also noticed a deterioration in her mental health at that time. She attributed this to the fact that she had been unable to socialise and pursue her hobbies because she had to assist her mother in looking after her siblings. She was conscious of the financial difficulties which had been caused by her father's imprisonment. She had experienced 'severe long-lasting psychological effects' which were worsened by the inability to go on trips and holidays. She still carried trauma from the past and fear for the future due to the pending deportation proceedings.

69. In her second statement (1 November 2019), FZ reiterated what she had said in her first statement about the effect of her father's imprisonment and the improvement since his return. Her education had suffered hugely, she said, whilst he was in prison. Her grades had improved significantly since his return but the continued uncertainty around his deportation was having an adverse impact on her education and mental health. She had wanted to apply to Edinburgh University but she had chosen to apply for a place closer to home, so that she would be available to assist her mother in the event of her father's deportation. Attempting to study whilst being a carer would be extremely burdensome and strenuous and would place her under remarkable pressure. After all that she had been through, she considered that this would cause her irrecoverable damage to her mental health.

70. In her third statement, FZ set out the considerable impact that the family had experienced as a result of the pandemic. Her mother had been working in the NHS, doing twelve hour shifts in the hospital. The family had been required to keep 2 metres away from IZ when she returned from her shifts. FZ had struggled to adapt to the lockdown. Her A-Levels had been cancelled and the ambiguity over grading had caused her anxiety in addition to the threat of her father's deportation. She recalled her mother contracting Covid-19 and the concern experienced by the family over her worsening symptoms. This had been an additional stressor in addition to all those she had described previously. She felt that there had been permanent damage to her mental health and that she would not be able to recover without support from both of her parents. She was to start her degree at Royal Holloway University and she required their support. It would have been 'impossible' for her to get through her recent experiences without support from both parents.

71. FZ's most recent statement (25 November 2021) recalls the 'countless hardships' that the family had suffered during the past year. The major hardship had been four of the siblings and the appellant falling ill with Covid-19. The appellant had been instrumental in dealing with this. She was in her second year of a degree in Accounting and Finance at Royal Holloway University in London and it was hard for her to manage her studies whilst at the same time worrying about her family and her father's deportation. She would not have been able to manage the annual exams without her father's support. Nor would she have been able to attend university without her father driving her to and from university, which would otherwise have necessitated a four hour commute.

72. In his first report, Dr Labinjo noted that FZ came to the UK when she was young and that she had only a ‘sparse and diminutive’ knowledge of Pakistani culture. She had little recollection of Pakistan and no friends there. She had a small group of close friends in Watford. They had been supportive when her father was imprisoned but had noticed a change in her behaviour. They recognised that she had been required to take responsibility for caring for her siblings whilst her father was in prison but this had affected her social life.

73. Dr Labinjo noted that FZ is ‘extremely family orientated’ and that she spends time caring for and playing with her younger siblings, especially MZ. She helped them in their studies but she had missed the support of her father in her GCSEs and A-Levels and had fallen behind and had, for example, received an orange indicator in Year 11 Biology as her work ethic had displayed occasional lapses. FZ told Dr Labinjo that she enjoyed sport, baking and art.

74. Dr Labinjo opined that FZ continued to be traumatised at the prospect of being separated from her father. Her education had suffered whilst he was in prison. She was able to give a vivid account of her father’s arrest and was tearful for days after the raid on the family home. She lived in fear of such an event happening again. Attempting to resettle in Pakistan or being separated from her father would run the risk of her being retraumatised.

75. Dr Labinjo did not supplement or alter his opinion on FZ in his second report. In preparing the third report, he did not interview FZ and made no reference to her.

76. Ms Louis made reference to FZ having asthma and to her father not being able to come to school to give her an inhaler. (There is no reference to this in FZ’s statements.) She also noted FZ’s close bond with her father and the support he provided her with her studies. FZ had told her that she had been required to look after her younger siblings when her father was in prison. Her mother had not been able to do it by herself. Her grades had suffered. When the family had visited her father in prison, they had not all been able to go together and her mother had had to make arrangements for someone to look after the children who had stayed at home.

77. Ms Louis opined that all of the children had suffered emotionally, socially and academically when the appellant was in prison but that matters had been improving since his return. The eldest three children were in adolescence and there would be a rapid growth moving from the safety of the parental home to adulthood and the adult self. They would be exploring and taking risks but needed to know that the home environment was a place of safety. It was of the utmost importance that they should have that stability. All of the children had not coped well or adapted to the appellant being in prison and IZ had struggled to meet their basic needs. The children would be vulnerable in the event of his deportation. There was a concern that other areas of the children’s development would be ‘negatively impacted’, including their social and psychological development. Ms Louis considered the risks to the children in the event of relocating to Pakistan but, as we have already noted, the FtT found that this would be unduly harsh and we

say no more about this part of the assessment as a result. As for separation from their father, Ms Louis opined that the risk to the children would be 'pervasive and their overall development would be impaired'. It was therefore in their best interests for the whole family to remain together in the UK. To do otherwise would have a significant impact on their emotional, social and psychological development.

78. Mr Ahmed's conclusions were to substantially similar effect. He considered that the children's education and health would suffer if they did not have the consistent support they were receiving from their father after his release from prison. IZ had found it very difficult to cope without the appellant's support and it would be very difficult for her to manage all of the children's needs without him in the future. He opined that it would be in the best interests of the children (FZ was still, at that stage, a child) to remain with the entire family in the United Kingdom.

79. We have no medical records for FZ. There are school records in the consolidated bundle, including her final report for year 11, in 2017/2018. In that report, her form tutor commented that she was 'unfailingly polite, punctual and well-behaved' and was 'always willing to participate in any classroom activity'.

WZ

80. WZ has made two statements during the life of the appeal. She was aged 15 and studying at Watford Grammar School for Girls when she made the first of those statements. She stated that her father's imprisonment had immensely affected her emotional wellbeing as there was what she described as 'a noticeable increase in anxiety, anger and a heightened sense of fear'. This had affected her day to day life and they had experienced a very difficult time at home. They had also experienced financial hardship as her father was the main breadwinner. She thought that she had the right, as a British citizen, to live with both of her parents in order to achieve in her education.

81. In the second statement (8 June 2020), WZ noted that she had been under immense pressure whilst preparing for her GCSEs. She had experienced 'drastic anxiety and panic attacks' which had disturbed her sleep and damaged her social relationships. This was worsened by the lockdown, the cancellation of the exams and her mother contracting Covd-19. She had been worried that she would lose her mother at this time and that anxiety continued as a result of her mother continuing to suffer from chest pain, tiredness and shortness of breath. Her father had cared for the family whilst her mother was unwell and the ongoing uncertainty over his deportation caused her stress and anxiety.

82. Dr Labinjo noted in his first report that WZ had only lived in Pakistan for four years before coming to the UK. Like her sister, she had a 'diminutive' knowledge of life in Pakistan. She had been given awards in primary and secondary school but her performance had been affected significantly whilst her father was in prison. She had been catching up since her father's return. She had a strong interest in sport. She was concerned about relocating to Pakistan and found it

hard to communicate with distant relatives as she spoke no Urdu or Punjabi. Dr Labinjo expressed a range of concerns about WZ relocating to Pakistan. He opined that there was every likelihood that the problems she experienced in her education would reoccur in the event of her father being deported.

83. Dr Labinjo did not augment his opinions about WZ in his second report. His third focused particularly on the effect of Covid-19 on IZ and the three younger children and did not comment on WZ.

84. Dr Gray agreed with Dr Labinjo's analysis. She also concluded that WZ suffered from severe anxiety and severe depression, thereby meeting the criteria for a diagnosis of mixed anxiety and depression. She concluded that remaining in the UK without her father would have devastating consequences for WZ and other members of the family. Similar conclusions were reached by the Independent Social Workers, Ms Louis and Mr Ahmed.

MDZ

85. MDZ is an A-level student who attends school in Rickmansworth. He has made three statements in connection with the appeal. He described in his first statement the shock and bewilderment he experienced when his father was sent to prison. He states that his father's imprisonment had a very bad emotional and social impact on him. He describes suffering from Stevens-Johnson syndrome in 2017. He describes the condition as serious and rare and necessitating treatment as an inpatient at Watford General Hospital. He witnessed the 'extreme hardship' which this caused his mother, who had to manage the remaining household tasks alone whilst providing him with care and attention in the hospital.

86. MDZ felt that he had improved since his father had returned to the family home. He stated that he is close to his father and that he provides the children with support in their education and day to day life. He felt that there would be a severe emotional impact upon him in the event of his father's deportation. He was also concerned about the family's ability to survive on only one income. He worried about the continuous stress and anxiety it would cause his mother.

87. MDZ's second statement was made six months later and charted the improvements in his life since the return of his father. He felt that there had been significant improvements. His school results, behaviour and health had all iimproved and he would not have achieved this without his father's help. His mother had not been able to manage the household when his father had been in prison and he had missed appointments to do with his skin condition. When his father returned, his skin was very bad but he was now 'bank on track' with the help of his father, who had arranged the necessary appointments. It is a long terms condition requiring regular treatment. He had recently started UVB therapy, which required attendance at hospital twice a week. His father took him to the appointments. He had been told that he could not receive this treatment in Pakistan and it would be 'impracticable' for him to relocate there. He had enjoyed engaging in leisure activities

with his father and he was stressed and unsettled by the prospect of his deportation.

88. In his final statement, MDZ recounts his mother contracting Covid-19. She was in isolation in a separate bedroom but they were still required to share a bathroom, which meant that he and his siblings were at risk of contracting the virus. His father continued to take him to his UVB appointments and he would be unable to attend those without a parent until he was sixteen. He was worried about his health and his education in the event of his father's deportation.

89. In the consolidated bundle, there are emails from MDZ's former school to his parents, documenting detentions for incidents of rudeness or insolence, for example. There is then another email from the Head of Chemistry to the appellant, noting that MDZ's behaviour had improved 'hugely' since their last meeting, and thanking the appellant for his help in achieving that improvement.

90. In addition to the material above, there is medical evidence in respect of MDZ. That evidence takes three forms. Firstly, there are expert reports from Dr Francis Labinjo and Dr Emma Gray. Those reports cover the whole family, with specific sections dedicated to each member. Secondly, there are medical records detailing his diagnoses and treatment in the UK. I consider the material in that order. Thirdly, there are reports from Dermatolgists about MDZ's conditions and the likelihood of it being treated in Pakistan.

91. Dr Labinjo's first report was finalised on 18 March 2019, following interviews with the whole family which took place on 1 March 2019. In respect of MDZ, he concludes that he is the most likely to be traumatised by Separation Anxiety Disorder. He notes that MDZ suffered a serious reaction to penicillin in 2017 resulting in Stevens Johnson syndrome. He was still receiving follow-up treatment for the condition, which could cause a number of serious and potentially fatal conditions, including serious eye problems.

92. Dr Labinjo concluded that it would be 'severely damaging' for MDZ to relocate to Pakistan, given his familiarity with the UK and the need for him to access treatment which would not be available there. There would be 'hugely adverse psychological effects' if he was required to stay in the UK without his father. He recommended a 'thorough multidisciplinary risk assessment' to consider the impact of separation. There was a risk of mood and behavioural disorders developing. He recommended family and systemic psychotherapy. Dr Labinjo concluded, at [24]:

> "It will be exceptionally harsh, in my expert opinion, for [MDZ] to be forced to relocate to Pakistan at the risk of serious visual impairment or blindness. It will also be extremely harsh on [MDZ], as the eldest son [sic]. To grow up in the UK without his father, mentor and dominant role model and with an increased risk of long term separation anxiety or any other associated anxiety and phobic states, as a pivotal and sensitive time in his young life when he is forming an identity. Without his family, especially his father,

his ability to have a sense of what kind of person he is or would like to be, can be severely affected."

93. Dr Labinjo's second report provides further commentary on the risks of MDZ relocating to Pakistan, with the benefit of Dr Labinjo having considered what was said by the Pakistani doctors about their ability to treat him in that country.

94. Dr Labinjo's third report was prepared on 13 September 2021, following remote interviews which took place on the same day. He noted that the appellant's wife had caught Covid-19 twice (in March and June 2020) and that four other members of the family, including MDZ, had also caught the virus. This had resulted, he concluded, in 'significant physical and mental health problems on the entire family'. MDZ had found it stressful to stay at home during lockdown and that his stress and anxiety were 'toped up [sic]' as a result of Covid-19. He had felt better since returning to school. The bulk of the report concerned the appellant's wife, in respect of whom Dr Labinjo expressed serous concern about her physical mental state and her ability to care for the children in the event of the appellant's deportation.

95. Dr Emma Gray spent twenty minutes with MDZ on 11 October 2019. MDZ stated that things were much happier and easier now that his father had returned to the family home. She noted the behavioural improvements which had been described his school. MDZ scored 24 on the Beck Anxiety Inventory, which put him in the moderate symptom range. His score for depression put him in the mild range. He therefore met the criteria for a diagnosis of mixed anxiety and depression despite significant improvement since the return of his father. Dr Gray fully endorsed Dr Labinjo's conclusions and stated that the separation of the appellant from the other family members would bring about a 'devstating impact' on each. She expressed the view that the Home Office had 'massively' underestimated the challenges which the appellant's deportation would present to his wife. She had suffered serious mental health problems and chronic and ongoing physical health problems. Dr Gray disagreed with the respondent's assessment that the care of the children had not been compromised by the appellant's absence, asking what evidence was required of this if the 'development of significant mental health problems, behavioural problems and declining academic performance' was insufficient. She also disagreed with the suggestions that the children were not dependent on their father and that they would adjust to his deportation with time. Dr Gray opines that the family would not receive adequate treatment for their conditions in Pakistan. At section 5 of her report, she reiterates her conclusion that there would be 'devastating consequences' for the whole family in the event of the appellant's deportation. He was 'undeniably a pivotal part of this family and vital in the healing and ongoing mental and physical health, wellbeing, progression and development' of each family member.

96. The consolidated bundle contains MDZ's medical records from April to October 2019. These refer to his having suffered with eczema since 2011 and to the episode of Stevens-Johnson syndrome following a

reaction to flucloxacillin in 2017. The later material confirms his ongoing treatment for eczema, including UVB therapy, topical treatments and regular reviews.

97. The additional material from dermatologists, which appears at pages 380-394 of the consolidated bundle, confirms that chronic ocular changes may occur in people who have suffered from Stevens-Johnson syndrome and that it would be unadvisable to travel to Pakistan when in receipt of treatment in the UK. One of the Pakistani doctors (Dr Imran) noted, amongst other matters, the likelihood of MDZ’s condition worsening in Pakistan as a result of the hot and dry weather there.

98. Ms Louis, the Independent Social Worker, was told about MDZ’s health issues. He said that he would be miserable if his father was deported and expressed his concern about how the family would cope in that event. The family described to her how MDZ required support, particularly from his father. Ms Louis highlighted the importance of stability for the family after the appellant had returned from prison. MDZ’s behaviour had deteriorated when his father was in prison, as evidenced by his detentions and his rudeness towards teachers. His mother had struggled to meet the children’s basic needs at that time. The appellant’s return had brought about positive changes. Ms Louis expressed serious concern about the appellant’s wife’s ability to meet the family’s needs on her own in the event of the appellant’s deportation. This would have an impact on the children’s social and psychological development and would ‘impair their outcomes in later life’. There would also be a risk of the appellant’s wife not being able to get the children to all of their appointments, thereby causing them a risk of harm. She expressed the view that it would not be in the children’s best interests to separate them from their father and that it would be unduly harsh. Nor was it in their best interests to relocate to Pakistan with their father

99. There is a second report by a different Independent Social Worker, Maswood Ahmed. This was prepared in November 2019, following the grant of permission to appeal. It adds nothing to the reports we have considered above, in that it highlights the difficulties experienced by the family whilst the appellant was in prison and the likely difficulties which would be faced in the event of his deportation. Mr Ahmed’s conclusions largely replicate and repeat those reached by Ms Louis, as is apparent from the summary at the conclusion of the report:

> “Having carefully completed this independent social work assessment, I respectfully recommend that the children and their family are allowed to continue their establish [sic] private and family life, that Mr Zahid Hafeez the children’s father is allowed to remain in the UK and not deported to Pakistan as this will seriously disrupt their lives. It is my professional opinion that the deportation of Mr Hafeez to Pakistan will be contrary to the best interests of all six children. Any forceful deportation will negatively impact on the welfare of the children and would not be in their best interests.”

100. We have also been provided with a number of school reports for MDZ. We note the difference between the first report he received on attending Watford Grammar School for Boys and the reports which he received after the appellant's imprisonment. The former notes MDZ's 'impressive start' at the school and described him as a 'quiet member of the form' who was well regarded by his teachers. The report for the year 2017-2018, in contrast, notes that MDZ had become a 'particularly vocal member of the form who does not seem to realise when it is inappropriate to speak'.

AZ

101. AZ is now twelve. She was seven when the appellant was sentenced. Her wellbeing has been placed at the forefront of Mr Jafferji's argument before us. She has made three witness statements, the first of which was handwritten on 16 March 2019, when she was soon to reach her tenth birthday.

102. In that first statement, AZ said that she had felt sad and upset when her father was sent to prison six days before her birthday. She missed him when he was in prison and it had been hard to get appointments to visit. She had been pleased when he returned but had been upset to learn that his deportation was in contemplation.

103. In her second statement, which was made six months after the first, AZ said that they were stronger as a family since the appellant had returned and that she would be extremely sad and upset if he went away again. As a family, they just wanted to forget about prison, deportation and court. She felt sick and stressed when she thought about the appellant being deported and she felt unsure about her future. He father had helped her with her health and her education. She had had ear surgery in May that year and she had been required to attend many follow-up appointments. MDZ also had appointments for his skin condition and IZ had ben unable to take them both to these appointments and look after the other children. That had changed upon the return of her father. She also noted that she had had six weeks of counselling and her counsellor had recommended that she should have therapy. She hoped that the letter had explained the 'vital role' of her father in the family.

104. AZ's third statement was made shortly before the hearing before us. She explained how her father had looked after the family whilst they had Covid-19 and how he had taken her to follow-up appointments in connection with her ear. The time in hospital had taken a toll on her mental health and her father had been a major support in this respect. She had recently been told that she might require another operation and she was concerned about how her mother would manage, given that she was in full time work for the NHS. On 30 September 2021, she had suffered a serious asthma attack. Her mother was on a night shift so her father took her to A&E. She was told that she had a chest infection and 'would likely suffer long-term health issues with my heart and lungs'. She was given an inhaler and steroids and asked to note her breathing three times a day. She would often forget to do so and her father had reminded her about this.

105. Dr Labinjo noted that AZ had been born in the UK. She was very close to her father and suffered stress and anxiety when he was in prison. This was evident, he said, from the child protection online management system (CPOMS) which he had considered. She had been a happy and cheerful child but she had changed dramatically. She has few friends and mostly keeps quiet and avoids social activities. Dr Labinjo noted entries from the CPOMS system from 2018. We will return to those notes below.

106. Dr Labinjo also made reference to the difficulties EZ had suffered with her left ear. It had become infected in 2016 after a school swimming lesson. Ear drops would not cure the condition and the GP had referred her to the hospital. Her tympanic membrane had been ruptured by the infection. She had been referred for surgery on the ear at the start of 2019. Dr Labinjo considered that she had suffered stress and anxiety at the time when her father was in prison. She had been noted by the school to suffer episodes of crying and distress. Relocation to Pakistan would remove the treatment she was entitled to receive on the NHS and there was a risk of 'mood and other behavioural disorders developing were [AZ] to be separated from her father by deportation'.

107. As for AZ's ear, Dr Labinjo considered that there might be long term complications including meningitis or further hearing loss if it was not fully resolved. This was because she had an active cholesteatoma (an invasive cyst) which produced 'very active discharge'. AZ felt at ease when her father was with her and he had attended pre-operative appointments with her. It was important that she should continue to have a father figure in her life and, without her father, there was 'a high risk of mental disorder'.

108. Dr Labinjo did not alter or supplement his opinion about AZ in his second report. In his third, he noted that AZ's treatment continued and that her next appointment with an ENT surgeon was on 12 January 2022. He expressed his concern about the appellant's deportation whilst his wife was suffering symptoms associated with long covid.

109. Dr Gray met with AZ and her younger siblings together, so as to minimise their distress. They were happy and playful and discussed their interests and their school life with Dr Gray. AZ had suffered significant stress and anxiety whilst her father was in prison but that had improved after his return. Separation of the father from the family would have a devastating impact on each family member. The reports of the Independent Social Workers, Ms Louis and Mr Ahmed, also underlined the close bond between AZ and her father and the concerns they shared with the doctors about their separation and IZ's ability to manage without her husband.

110. We have various medical records for AZ, confirming what was said by Dr Labinjo about her ear infection and the surgery which was undertaken in May 2019 to address that problem after the discharge which she had experienced for one and a half years had become foul-smelling and resulted in hearing loss in the left ear. The Consultant Surgeon who carried out the operation confirmed that the surgery had been necessary due to AZ's cholesteatoma, which he described as a 'complex and serious medical condition which requires major middle

ear reconstructive surgery and may well require revision surgery over the next few years'. He confirmed that she would require regular outpatient visits to check on her clinical progress every 4-6 months for the next five years. Subject to recurrence of the problem and other such imponderables, the consultant (Mr Pratap) considered there would be a very high chance of a full recovery.

111. More recent medical records about AZ show that she continues to attend the audiology department at Watford General Hospital for follow-up appointments on her left ear. The most recent appointment showed hearing loss in that ear of 40 decibels. The ear was full of wax but was otherwise healthy and free of infection. In addition, there is a discharge summary showing that she was admitted to hospital for a few hours on 30 September 2021 suffering from asthma.

112. The CPOMS reports from Laurence Haines School in Watford shed further light on AZ's wellbeing whilst her father was in prison and thereafter. Notes made on the system between January 2017 and May 2018 show that concern was repeatedly expressed about AZ's distress in school and the inadequacy of the packed lunches she was provided by her mother. She was frequently given cold chicken nuggets, fish fingers or pizza in place of a proper lunch. The school repeatedly stepped in to provide her with a school lunch so that she did not go hungry. She was burdened by the fact that her father was in prison and found it difficult to make friends because she was trying to keep that a secret.

113. IZ had been challenged about the inadequacy of the food provided to AZ and had avoided the question on a number of occasions but, on 12 May 2017, she had told one of the staff that she felt that AZ was 'neglected', causing the school to initiate a programme of home help but IZ had not arrived for the meetings. In April 2017, one of the staff expressed his concern on CPOMS that IZ was 'not coping at all well with regards to the situation of her husband's imprisonment and the other demands on her currently.' A couple of months before that entry, in February 2017, AZ had been brought to school suffering with chicken pox. The staff asked AZ about this and she was recorded as saying 'my mum says I have chicken pox but must come into school' adding to another member of staff that 'there is no one at home'. In January 2017, AZ had told staff that her mother did not speak to her at home or on the way to school and that IZ shut herself in her room all the time. She was asked if her siblings looked after her, and she responded that they had too much schoolwork to do.

114. Letters from AZ's headteacher state that she had made 'accelerated progress' after her father's return. The period during which he was in prison was described as one of 'relative turmoil'. The Headteacher's letter of 6 March 2020 describes AZ as having been 'emotionally damaged' and showing anxiety and stress in connection with the threat of her father's deportation. A letter from the school's senior leader noted that the school had provided AZ with various types of support including neuro-linguistic programming when her distress showed from 2017 onwards. During the time she was receiving this support, AZ had presented as 'withdrawn, not engaging with friends or falling out with

them, often crying and not able to engage in learning'. Like the headteacher, the senior leader expressed the view that AZ was 'beginning to make progress emotionally and academically [once] her father returned to the family home.' Her final report for the year 2018/2019 confirms that she was by that stage operating at above expected levels in Maths and at the expected level in other subjects, notwithstanding significant levels of absence as a result of her surgery.

MHH

115. MHH has made two statements. The first was made on 16 March 2019, at which point he was only seven years old. Unsurprisingly, the handwritten statement is short. He said that he felt miserable when his father was 'away' and that he had been affected by his absence. He had not understood what was happening in the home and everything had changed. He would have 'done better' in his education if his father had been present. Everything had improved since his father's return and he had loved the past few months.

116. MHH made his second statement on 23 November 2021, aged ten. He recalls how his father had supported the family in the 'very difficult and dark situation' when he and others contracted Covic-19. He mentioned that he had started to get panic attacks at school and that he was concerned about his asthma-related health issues.

117. Dr Labinjo expressed concern about MHH relocating to Pakistan after spending his whole life in the UK. He thought that MHH, like the other children, might suffer Separation Anxiety Disorder in the event that he was separated from his father. He said nothing further about MHH in his second report. In his third, he noted that MHH's asthma had been worse since contracting Covid-19 and that he had suffered two panic attacks at school.

118. Dr Gray noted that MHH had suffered some behavioural problems at school during his father's imprisonment but that these had improved since his father's return. She diagnosed no recognised mental health problems in MHH but she opined, as we have already noted, that the appellant's deportation would have devastating consequences for the family as a whole.

119. Ms Louis recorded that MHH had told her that the family home 'felt loud' when his father was in prison and that he had felt sad, unhappy and anxious. She noted the 'pervasive' emotional impact that the appellant's deportation would have on all of the children, given the fact that the family did not cope well when he went to prison. Mr Ahmed reached similar conclusions in his report.

120. MHH's school report for the year 2018/2019 shows that he had enjoyed a good year and was a popular, sporty boy who engaged well across the curriculum. An incident report from the headteacher details an asthma attack MHH suffered in the afternoon of 27 May 2021. He began struggling to breathe in his classroom and was taken to the Head's office. Whilst there, he was not managing to regulate his breathing. His eyes rolled back and he 'was flopping forward, almost falling off the chair'. An ambulance was called. The operator advised

the school to have a defibrillator on hand. The appellant arrived and tried to support MHH with his breathing. It was only when the paramedics arrived, however, that his breathing was brought under control. He was nevertheless taken to hospital in the ambulance. We have no medical records in connection with this incident.

MZ

121. The youngest child of the family, MZ, is only eight years old and there is quite properly no witness statement from her. She has no particular medical conditions and the expert evidence before us serves generally to confirm the views of the authors that all of the children suffered when their father was in prison, that they have improved considerably since he was released, and that IZ would be unable to cope in the event of his deportation.

Findings

122. We have set out the evidence at length because there is very limited, if any, dispute as to the facts. We have recorded at [13]-[20] of this decision the questions asked and the submissions made by Mr Tufan. He chose not to ask any questions of the appellant's wife and his two eldest daughters, each of whom had made detailed statements over the life of the appeal. He asked the appellant a total of seven questions. It was not suggested to the appellant that anything he had said in his witness statements was untrue or inaccurate in any respect.

123. We proceed, therefore, on the basis that the evidence we have summarised above is substantially true and correct. In particular, we accept the following points.

124. We accept, firstly, that the appellant's family has experienced financial hardship after the closure of Universal Training Centre as a result of the appellant's dishonesty. That assertion was made clearly in FZ and WZ's statements and there was no challenge to it by Mr Tufan despite the profits that the appellant's legitimate and illegitimate business would have generated before his arrest. It has not been suggested to us that the appellant and his family have untapped reserves which would enable IZ, for example, to minimise any childcare difficulties which might result from the appellant's deportation by paying for a nanny or other 'wraparound' childcare.

125. We also find that despite their long residence in this country and the network of friends which the children have, the appellant and his wife have no real support in their local area. His parents live in Saudi Arabia. His brother lives in Liverpool. Her parents are deceased and there is no suggestion that she has any other family in the UK. The evidence which we have summarised above notably contains no reference to any other family members who provided assistance when the appellant was in prison and it is more likely than not that the appellant's wife was required to cope as best she could on her own. We note the appellant's evidence that his family failed even to make contact with his wife whilst he was in prison. Again, that suggestion could have been explored with the appellant, his wife and their daughters in oral evidence but was not.

126. We find that there were very real difficulties suffered by IZ when the appellant was in prison. We accept that she was wholly unable to manage the challenges brought about by a large family with children with various health conditions on her own. There was no challenge to the consistent account given by the various members of the family about those two and a half years between the appellant's imprisonment in May 2016 and his release in November 2018. The unchallenged evidence of Dr Labinjo and Dr Gray is that IZ, FZ, WZ and MDZ all developed depression and anxiety at that time. The stress suffered by IZ at that time was such, she said, that she had considered abandoning her children. Mr Tufan did not seek to suggest that this, or any other part of her evidence, was hyperbole.

127. There is consistent evidence from a variety of sources about the children's performance at school during the time of the appellant's imprisonment. The appellant and his wife expressed concern about this in their statements, as did the older four children. The deterioration in their academic progress is essentially attributable to three points. Firstly, in respect of FZ in particular, she attempted to help her mother to keep the household afloat at the cost of her own studies. Secondly, all of the children missed their father and lacked the academic support that he has been able to provide for them throughout their lives. We note in the latter respect that he is a man with four degrees across a range of disciplines and that he is likely to be able to provide the assistance claimed.

128. Thirdly, we note what is said in the evidence about the atmosphere in the family house, which deteriorated significantly in the appellant's absence. The most alarming and, in our judgment probably the most unalloyed account of those circumstances is in the contemporaneous CPOMS reports which were provided to Dr Labinjo and have been included in the consolidated bundle. AZ was very young at that time and it could not realistically have been suggested that she was somehow playacting at school in order to generate evidence which might benefit her father. There were clearly repeated instances, over the course of months, during which the school had serious concerns about her. She was frequently tearful and withdrawn; she was regularly provided with wholly inadequate meals from home; and she made reference to her mother not talking to her and shutting herself in her bedroom. She told the school that her older siblings were too busy to spend time with her. We note in particular that a member of staff recorded in April 2017 (nearly a year after the appellant was imprisoned) his concern that IZ was 'not coping at all well with regards to the situation of her husband's imprisonment and the other demands on her currently'. In another note, when IZ was asked about the various concerns which had been raised, she said that AZ was neglected at home.

129. We have noted for ourselves that the CPOMS reports contain two references to IZ asking the school for letters about how she was struggling without her husband. It might conceivably have been suggested, in reliance on those requests, that AZ's treatment and her mother's admission of neglect was merely designed to improve the appellant's chances of success in this appeal. Wisely, however, Mr

Tufan opted not to take any such point and in our judgment the CPOMS reports shine a very clear light on the circumstances which confronted the family during the time that the appellant was in prison. AZ's circumstances at that time were miserable. The reports show that she was often sent to school with a cold chicken nugget wrapped in a piece of bread (in place of a sandwich); sobbed through her lunch; and that she told the staff who tried to support her that IZ had refused to read a note expressing concern about her treatment 'as she knew what it would say'. There is every indication in the reports that IZ was aware that she was failing AZ but that she was unable – owing to her own situation at the time – to take any remedial action.

130. We therefore accept that the children's academic progress and their mental wellbeing deteriorated significantly during the time that the appellant was in prison. We accept that AZ felt this particularly acutely and it was for that reason that she attended counselling which was organised by the school. We also find that MDZ's behaviour at school became considerably worse when his father was in prison. The contrast between the earliest report from his school and those which were produced when his father was in prison could not be more stark. The early references to a pleasant and quiet boy were replaced in the later reports with references to a boy who exhibited insolence and did not know when to stay quiet.

131. Many children, boys in particular, exhibit such changes as they progress through adolescence. What is clear from the papers in respect of MDZ, however, is that his behaviour improved markedly upon his father's return to the family home. That is apparent from the communications from the headteacher and his chemistry teacher. We therefore accept that there was a direct relationship between the appellant's absence and the serious decline in MDZ's behaviour at school.

132. We have focused on AZ and MDZ because the evidence about their circumstances at school is particularly clear. It is nevertheless important to note that FZ, WZ and MHH also state in their unchallenged evidence that their performance at school suffered when their father was in prison and that it improved markedly upon his return. Again, we accept that unchallenged evidence.

133. We have touched on the psychiatric consequences of the appellant's imprisonment for the members of the family. Importantly, Mr Jafferji also submitted that there had been other consequences, or potential consequences, for the children's health. MDZ and AZ were again uppermost in this respect. It was said that AZ had missed appointments in connection with her left ear and that MDZ had missed appointments with the dermatologist when the appellant was in prison.

134. This important evidence – given by IZ and by her children in their statements – was not challenged by Mr Tufan. We are bound to observe that there is little evidence in support of what is said. It might have been open to the Secretary of State to submit, in light of the limited evidence of missed appointments, that actually IZ had appreciated the need to prioritise these commitments over all others. But no questions were asked of IZ about this and it is not for us to

question such important assertions when they go unchallenged in this way. It has been confirmed on more than one occasion that proceedings before the IAC are adversarial and that it is not generally for the Tribunal to adopt an inquisitorial role, even where the best interests of a child are at stake: JK (DRC) v SSHD [2007] EWCA Civ 831 and SSHD v Suckoo [2016] EWCA Civ 39 respectively refer.

135. We accept, therefore, that AZ and MDZ both missed healthcare appointments when the appellant was in prison. There is no evidence before us that their conditions worsened as a direct result of those missed appointments but that is not really the point. It is clear from the medical evidence before us that Stevens-Johnson syndrome (from which MDZ suffered in 2017) is a very serious condition which can be life-threatening. Whilst he has latterly been treated for serious, lichenified eczema, we accept that he must be monitored for long-term complications arising from the Stevens-Johnson syndrome and that a failure to attend these routine appointments might have the most serious of consequences. Equally, there is clear evidence before us about how serious a condition AZ's cholesteatoma was. Without proper treatment, we accept that this could have deprived AZ of the hearing in one ear. There is also evidence, which we accept, that a cholesteatoma can cause meningitis or even death. Thankfully, the consultant who performed the surgery is content that she should make a full recovery but, like her brother, it is imperative that she should have regular follow-up treatment to check that there has been no recurrence. The reality is that MDZ and AZ missing appointments could have had very serious consequences for them. We are confident that the importance of those appointments would have been known to IZ. Her failure to ensure that they attended such appointments is further evidence of her inability to cope with the demands of the family during the appellant's incarceration.

136. When the appellant was sent to prison, therefore, we accept that IZ was unable to manage all of the challenges presented by a large family with their various difficulties. We are entitled to draw inferences from what happened during those two and a half years about the likely effect of the appellant's deportation on the family members: MI (Pakistan) v SSHD refers, at [56], per Simler LJ.

137. As matters stand, however, it would not be appropriate to conclude that IZ's ability to manage the household on her own would be as it was when the appellant was in prison. Whilst it might properly be assumed that some things are as they were at that stage, we accept that she has contracted Covid-19 twice and that she now suffers from symptoms of the phenomenon known as long-covid. Mr Tufan asked no questions of IZ about this, or any other aspect of her evidence, and we accept that she has now suffered for some time from fatigue, breathlessness and joint pain. Dr Labinjo suggested in his report that these symptoms might well last for years to come and would present further difficulties for IZ in the event of the appellant's deportation.

138. It might have been suggested by the respondent that matters have changed for the better since the appellant was in prison, and that the children are now more able to provide care for each other than had

previously been the case. The appellant was released from prison more than three years ago. FZ is now a university student who is living at home. WZ is still at school but is evidently an intelligent young woman who might be thought capable of assisting her mother in the event of her father's absence. WDZ is now 16 and AZ is 12. Given the ages of the older children, the respondent might well have suggested to the witnesses that there was sufficient support within the family home to prevent matters deteriorating to the extent that they did in 2017 and 2018. No such suggestion was put, and no such submission was made.

139. Having considered the past, we turn to consider the likely consequences of the appellant's deportation on his wife and children. Mr Tufan submitted that the experts' conclusions in this regard were 'speculative'. If, by that, he meant that the opinions of the experts were unduly speculative, in that they had no foundation in established facts, we disagree. What befell the appellant's wife and children during the time that he was in prison provides a proper foundation for the opinion, expressed by each of the experts in this appeal, that the appellant's wife would be unable to cope without him and that the wellbeing of the children would be compromised in a multi-faceted way. Looking to the future, we consider it more likely than not that IZ would be less able to care for the children as a result of her long covid symptoms. It is likely, in our judgment, that there would be a significant downturn in each child's academic performance. MDZ would likely exhibit behavioural problems at school once again. The health of MDZ and AZ would be placed in jeopardy as it was in 2017/2018, as a result of IZ's inability to cope with all of the demands on her time. We also think it likely that the younger two children – who are less able to fend for themselves in any meaningful way – would suffer from emotional neglect and a poor diet, in the same way as AZ did when the appellant was in prison.

140. Given IZ's long-covid symptoms, lack of financial or other support and the extent of the responsibilities which she would have to shoulder in the event of the appellant's deportation, we consider that she would have no choice but to give up her work for the NHS. That would add significantly to the hardship faced by the family by adding more serious financial constraints on their ability to function but we do not consider that IZ would be able to cope, whether or not she was in work.

141. We note Mr Tufan's submission that Ms Gray's report is from 2019 and that it has not been updated. We attach little significance to that point, however. Our concerns about the ability of the family to manage in the event of the appellant's deportation stem principally from the situation which developed whilst he was in prison. As we have documented at length, the family deteriorated in a variety of ways, and we accept that the mental health of the family as a whole suffered. It is reasonable to assume that their mental health has now improved to a point, as the appellant has been in the family home for over two years since his release from prison. Whilst his deportation has remained in contemplation, the other stressors which were brought about by his absence have been removed. In considering what would happen in the event of his deportation, therefore, we are particularly assisted by

evidence of the family circumstances at the time that he was in prison or shortly thereafter.

142. Nor we do attach any weight to the point made by Mr Tufan about the availability of assistance from social services. It was seemingly suggested that the presence of social services and their ability to intervene in the event of IZ neglecting her children in the future was the panacea to any contention that undue harshness would arise on the appellant's deportation. That submission was based on something said by Arden LJ (as she then was) in SSHD v BL (Jamaica), in the context of an appeal against the Upper Tribunal's decision to allow a foreign criminal's appeal against a deportation order made in 2013. The Secretary of State's appeal was allowed because the UT had erred in law by focusing on what was in the best interests of the respondent's children and failing to balance their interests with the public interest in deportation. In reaching that conclusion, Arden LJ (with whom McFarlane and Macur LJJ agreed), noted that the Upper Tribunal was 'entitled to work on the basis that the social services would perform their duties under the law' and that it was 'not bound to regard the role of the social services as irrelevant'. Whilst we accept that some support from social services would probably be available, we consider it unlikely that IZ would seek such support until the family's situation became very problematic indeed. The CPOMS report to which we have referred above instead shows quite clearly that IZ is likely in times of difficulty to bury her head in the sand, to ignore offers of help, and to permit the wellbeing of her children to suffer. We need not evaluate whether this propensity stemmed from the mental health problems IZ began to suffer from when the appellant was in prison or for some other reason; we accept that she has such a propensity and that the family as a whole is likely to experience serious difficulty before social services become involved.

143. As we have recorded above, Mr Tufan accepted that the appellant's deportation would have 'harsh' consequences for the appellant's wife and children. Given the unchallenged evidence, that was an unsurprising concession. He nevertheless submitted that the consequences would not be unduly harsh and certainly not 'extra unduly harsh'.

144. As to the first of those thresholds, we bear firmly in mind the endorsement in KO (Nigeria) v SSHD of what was said by the Upper Tribunal in MK (Sierra Leone):

> "… 'unduly harsh' does not equate with uncomfortable, inconvenient, undesirable or merely difficult. Rather, it poses a considerably more elevated threshold. 'Harsh' in this context, denotes something severe, or bleak. It is the antithesis of pleasant or comfortable. Furthermore, the addition of the adverb 'unduly' raises an already elevated standard still higher."

145. Some degree of 'harshness' is acceptable because of the strong public interest in the deportation of foreign criminals. The question – as Simler LJ put it at [23] of MI (Pakistan) v SSHD is "whether the harshness which deportation will cause for the children is of a

sufficiently enhanced degree to outweigh that public interest". In considering that question, we have focused on the reality of the situation of the children in this family, taking into account the suggested list of factors set out by Underhill LJ at [56] of HA (Iraq) v SSHD. Having done so, we come to the clear conclusion that the appellant's deportation would bring about unduly harsh consequences for IZ and for MDZ, AZ, MHH and MZ. (FZ and WZ, being adults, are no longer relevant to this aspect of our enquiry). That elevated threshold is amply met, we find, by the combination of factors we have described above. We find that the appellant's deportation would have unduly harsh consequences for his wife and his children, all of whom would suffer greatly from the sudden and serious deterioration of many aspects of their lives as a result of his absence.

146. But the appellant is not a medium offender. He cannot succeed merely by showing that his wife and his children would experience undue harshness in the event of his deportation. As Mr Tufan quite properly reminded us, this is instead a case in which the appellant must establish there are very compelling circumstances, over and above those described in Exceptions 1 and 2 which suffice to outweigh the public interest in deportation. Borrowing from what was said by Underhill LJ (with whom King and Moylan LJJ agreed) in SSHD v JG (Jamaica) [2019] EWCA Civ 982, Mr Tufan submitted that this was not a case in which the appellant could establish that the consequences of his deportation would be 'extra unduly harsh'. We note Underhill LJ prefaced this description of the test by referring to what had previously been said about it by Jackson LJ in NA (Pakistan) v SSHD, where he referred to a case which was 'especially compelling' or 'especially strong'.

147. In order to consider whether the appellant is able to meet s117C(6), we must undertake an Article 8 ECHR balancing exercise, taking into account all of the considerations weighing in favour of the appellant and weighing those against the public interest in his deportation.

148. The necessary starting point in considering the factors weighing in favour of the appellant is the best interests of his children, to which we are bound to have regard by s55 of the Borders, Citizenship and Immigration Act 2009. We remind ourselves that their interests are a primary consideration, not a paramount consideration. Their interests can be outweighed by the cumulative effect of other considerations and, in order to assess whether that is so, it is necessary to have a clear idea of the child's circumstances: Zoumbas v SSHD [2013] UKSC 74; [2014] Imm AR 479, at [10].

149. We have set out at some length above the circumstances of each of the children as we have found them to be in the past and the present. We have explained what we consider to be the likely impact on the children of the appellant's deportation. It will be apparent from the findings we have already reached that the best interests of the appellant's children militate very clearly in favour of his remaining in the UK, and that there would be very serious, multi-faceted difficulties experienced by each of the children in the event of his deportation.

150. We also take into account the consequences of the appellant's deportation on IZ. We have already found that the situation which would develop upon the appellant's deportation would be unduly harsh for her. She would find it impossible to maintain the household and the children, her mental health would deteriorate and she would not have (or would not call upon) any external assistance. Her difficulties in childcare and managing the household would be compounded by financial stress caused by giving up her job and by the effect of the long covid symptoms she described to Dr Labinjo.

151. At this stage of our enquiry, we may also take into account the effect of the appellant's deportation on his adult children. They continue to live at home and continue, on any sensible view, to have a family life with the appellant, their mother and their siblings. We think it unnecessary to rehearse the authorities which pre and post-date Kugathas v SSHD [2003] EWCA Civ 31; [2003] INLR 170in that connection. It suffices to recall the common sense observation made by McCombe LJ at [45] of AP (India) v SSHD [2015] EWCA Civ 89, that young students who gravitate towards home during the holidays continue to form an important part of the family until they have started to make their own way in the world. Those observations apply a fortiori to FZ and WZ, who continue to live at home whilst they continue their education.

152. WZ has not made a recent statement in connection with the appeal. FZ has made a statement. She was not challenged on the contents of that statement, which includes an assertion that she would find it difficult to attend university without her father's assistance. She explains in her statement that he is able to drive her to university in an hour, whereas it would take a total of four hours per day in the event that she was required to take public transport. We accept that this would be one small facet of the difficulty which would be faced by FZ and WZ in the event of the appellant's deportation. The more serious difficulty would come from IZ's inability to manage the household and the impact that this would once again have on their studies and their mental health. The impact it had on them in the past is documented in the material we have cited above and was not challenged by Mr Tufan. As before, we think it more likely than not that FZ and WZ would suffer from recognised mental health conditions (severe anxiety and depression) in the event of their father's deportation.

153. We also take account of the appellant's circumstances. We accept that he his mental health has suffered as a result of his imprisonment, the stress it placed on his family and the ongoing threat of deportation. As we have found above, however, we do not consider that he would encounter very significant obstacles to reintegration to Pakistan. Despite what is said in the expert evidence, and notwithstanding his mental health problems, we find that he is a very well-qualified and enterprising man who would be likely to find his feet reasonably quickly on return to Pakistan.

154. Nor, despite Mr Jafferji's best endeavours and the clear evidence of rehabilitation in the papers before us, do we consider that the appellant's low likelihood of committing any further offences is a

matter which weighs in his favour in anything other than the most minimal manner. There are unchallenged expressions of remorse in his statement and it is clear that he has impressed those in the community and the Probation Service with the progress he has made since he was imprisoned but we do not consider it of great weight in the assessment of proportionality, for the reasons given by Underhill LJ at [132]-[143] of HA (Iraq) v SSHD.

155. We do attach some weight to the appellant's private life in the United Kingdom. That comprises his length of residence in this country, his connections to the community (including his charitable work) and to those who have written references in his favour. We must be clear that the amount of weight which this factor attracts is minimal, however. As compared to the consequences for the appellant's family (on the one hand) and the public interest in deportation (on the other), it is a factor of vanishingly small significance. It must nevertheless be included in the balance sheet because of the holistic nature of the exercise demanded by Article 8 ECHR: NA (Pakistan) at [29] and [38]; HA (Iraq) at [28] and Unuane v The United Kingdom [2021] Imm AR 534 at [72]-[75] and [81]-[83].

156. Against these factors which weigh, to a greater or lesser extent, in the appellant's favour, we must balance the public interest in deportation. We remind ourselves that there is a clear and pressing public interest in the deportation of a foreign criminal and that, by s117C(2), the more serious the offence committed by a foreign criminal, the greater is the public interest in deportation of the criminal. For these purposes, the seriousness of the offence is best gauged by the length of the sentence: SM (Zimbabwe) v SSHD [2021] EWCA Civ 1566, at [39], per Underhill LJ (with whom Elisabeth Laing and Baker LJJ agreed).

157. As an offence which attracted a sentence of 5 years, we treat the appellant's offence as a very serious one, the sentence for which appreciably exceeds the 'serious offender' threshold. The scales are heavily weighted in favour of deportation in a case such as the present and circumstances will have to be very compelling in order to be sufficiently compelling to outweigh that strong public interest: HA (Iraq) v SSHD, at [38].

158. We consider that the public interest in the appellant's deportation is buoyed further by s117B(1) of the 2002 Act. We reach that conclusion because the crime of which he was convicted was one which directly undermined the maintenance of an effective immigration control.

159. These are provisions of primary legislation and we make it clear, in light of what was said by Lord Reed at [50] of Hesham Ali that we give appropriate (and considerable) weight to Parliament's and the Secretary of State's assessment of the strength of the general public interest in the deportation of foreign offenders. There are therefore public interest considerations of very considerable weight ranged against the appellant as a result of his offending.

160. Balancing the competing considerations against each other, however, we conclude that there are very compelling circumstances, over and

above those in the statutory exceptions to deportation, which outweigh the powerful public interest in the appellant's deportation. Based on the inferences we have drawn above from the appellant's time in prison, and taking full account of the largely unchallenged evidence before us, we find it established that the appellant's deportation would bring about the 'disastrous consequences' of which Dr Gray spoke in her report. The family experienced recognised mental health problems, behavioural problems and neglect when the appellant was in prison. The circumstances in which they find themselves now are appreciably more difficult as a result of IZ's long covid symptoms. In the event that MDZ and AZ fail to attend their ongoing medical appointments, there is an appreciable risk that their physical health could be placed in greater jeopardy. In all the circumstances, therefore, we consider the severity of the consequences for this large family to be such that the considerable public interest in the appellant's deportation is outweighed by circumstances over and above those in the statutory exceptions.

Notice of Decision

The decision of the FtT has been set aside. We remake the decision by allowing it on human rights grounds.

No anonymity direction is made.

M.J.Blundell

Judge of the Upper Tribunal
Immigration and Asylum Chamber

25 January 2022