



**Upper Tribunal
(Immigration and Asylum Chamber)
PA/11836/2018**

Appeal Number:

THE IMMIGRATION ACTS

**Heard at Field House
On 18th October 2022**

**Decision & Reasons
Promulgated
On the 19 April 2023**

Before

UPPER TRIBUNAL JUDGE MANDALIA

Between

MR SCHNEIDER FONANGWAN

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Ms I Sriharan, counsel instructed Direct Access
For the Respondent: Mr E Tufan, Senior Home Office Presenting Officer

DECISION AND REASONS

1. Although there has been some delay in the promulgation of this decision, having heard the evidence and the parties submission at the hearing before me, I informed the parties that the appellant's appeal is allowed. I provided a very brief summary of my reasons and I informed the parties that my reasons for allowing the appeal will follow in writing. I now provide my reasons.

Background

2. The appellant is a national of Cameroon. He arrived in the UK, aged 12 with his father and siblings to join his mother who was in the UK as a work permit holder. On 15th January 2010 he was granted indefinite leave to remain. In April 2016 he was convicted of two counts of possession with intent to supply a controlled drug of class A - Heroin and one count of possession with intent to supply a controlled drug of class A - Cocaine. On 11th May 2016 he was sentenced at Southampton Crown Court by His Honour Judge Rowland to a total sentence of two years imprisonment.
3. The appellant was informed that in light of his convictions he is liable automatic deportation in accordance with s32(5) of the UK Borders Act 2007, unless one of the exceptions apply. Having considered representations made on behalf of the appellant, on 25th September 2018 the respondent issued a decision to refuse the appellant's protection and human rights claims. The appellant's appeal against that decision was allowed on Article 8 grounds by First-tier Tribunal Judge Howard for reasons set out in a decision promulgated on 27th June 2019. The respondent was granted permission to appeal to the Upper Tribunal by Upper Tribunal Judge Martin on 20th July 2020.
4. For reasons set out in my error of law decision promulgated on 14th June 2021, I set aside the decision of First-tier Tribunal Judge Howard. I directed that the decision will be remade in the Upper Tribunal and preserved the following findings:
 - a. The appellant is not at risk upon return to Cameroon and there is no merit to his claim for international protection. The finding at paragraph [37] of the decision of Judge Howard is preserved:

“I have rejected the entirety of the appellant's asylum claim. I find that he could lead a normal life as judged by Algerian (*sic*) standards. He is in good health, he has worked in the UK and could work in Cameroon. English remains official an official (*sic*) language of Cameroon and therefore based on this information the appellant

has not shown that it would be unreasonable to expect him to relocate in Cameroon.”

- b. The appellant is in a genuine and subsisting parental relationship with [T], who is under the age of 18 and is a British citizen. It would be unduly harsh for [T] to live in Cameroon.
 - c. The appellant is in a genuine and subsisting relationship with his partner, [H], who is a British citizen, and the relationship was formed at a time when the appellant was in the UK lawfully and his immigration status was not precarious. It would be unduly harsh for [H] to live in Cameroon.
5. Since the decision of the respondent and the hearing of the appeal before the First-tier Tribunal, on 17th July 2019 the appellant’s partner [H], gave birth to their daughter who I shall refer to in this decision as [A]. She is now three years old.
 6. The appeal was first listed for hearing before me on 5th April 2022. On that day I was informed by Ms Sriharan that [A], had been admitted to the Southampton Children’s Hospital on 22nd February 2022. I was provided with a letter dated 11th March 2022 from the Children’s Neurosurgery Nurse Specialist at Southampton Children’s Hospital which confirms the appellant’s daughter was reviewed on the ward, and an MRI scan was planned during the week commencing 4th April 2022. Although the precise nature of the reasons for the admission to hospital were not set out in the letter, it appeared the appellant’s daughter had undergone neurosurgery and I was satisfied that she was in hospital as an in-patient. Unsurprisingly, the focus of the appellant and his partner had been the health of their daughter. I was satisfied that in all the circumstances, it was in the interests of justice and fairness for the resumed hearing of the appeal to be adjourned so that the appellant and his partner could attend to give evidence.

7. At the outset of the hearing before me, Ms Sriharan applied for leave to rely upon further evidence filed by the appellant. She submitted the appellant has been unrepresented throughout (*she agreed the previous day to act for the appellant on a Direct Access basis, pro bono*) and the focus of the appellant and his partner has been upon the health of their daughter, [A]. Mr Tufan accepted that it is in the interests of justice for the Tribunal to reach its decision upon the basis of all the evidence available, and he did not object to the appellant relying upon the additional material. I admitted the evidence, and gave Mr Tufan an opportunity to consider that evidence before the hearing commenced.

The evidence

8. I was provided with a bundle comprising of some 36 pages. Ms Sriharan confirmed that all the evidence relied upon by the appellant is set out in the bundle. The bundle includes witness statements from the appellant and his partner, reports by an independent social worker, Jacqueline Stubbs, and some medical records relating to the appellant's partner and his daughter, [A]. It would be entirely impractical for me to burden this decision with a reference to each piece of evidence that is before me, but for the avoidance of doubt I have had regard to all the evidence before the Tribunal whether expressly referred to or not.
9. I heard oral evidence from the appellant and his partner [H]. Their evidence is set out in my record of proceedings and what follows is a general summary. I have taken other aspects of their evidence into account when reaching my decision, and I have referred to it as far as it is necessary to do so for the purposes of setting out my reasons for allowing the appeal.
10. The appellant adopted his witness statement dated 16th October 2022. The appellant claims that he has spent the last few years focusing upon being a good father to his children and a good partner to [H]. He claims the ongoing proceedings have had an impact upon the family and the

uncertainty caused has been devastating for the family. He is at present unable to work because of his immigration status and that has placed a significant burden upon [H], to support the family financially. He confirms that in 2022 the family faced additional problems after their daughter [A] contracted meningitis followed by severe complications. He states there were times when she was in hospital and he and his partner were worried whether she would survive, and if she did, whether she would be left with significant disability. He states [A] has successfully undergone neurosurgery on four occasions and continues to require specialist care with ongoing hospital appointments and monitoring. The appellant claims his presence in the UK is also required to provide the eldest child [T] with some stability. The appellant confirms his partner struggles with depression and anxiety, and earlier in the year, had suicidal thoughts.

11. In cross-examination the appellant confirmed that although he was not previously living with his partner and children, when [A] was admitted to hospital he had to remain and stay with [T], so that she could continue attending school regularly. Because of the pandemic, only one parent was allowed to remain at the hospital with [A] and his partner stayed at the hospital for the first week. When [A] was transferred to the general hospital in Southampton in February 2022, the family were provided with a room at the Ronald McDonald Centre, close to the hospital because of the seriousness of [A]'s condition. The appellant said he stayed at the hospital overnight with [A] and [H] stayed at the hospital during the day. The appellant said that after [A] was discharged from hospital, he moved in with his partner and they have lived together at the address in Cunningham Road so that they can continue caring for their daughter together. The appellant said that his partner was struggling mentally at that time, and went through a period of depression. They had almost lost their daughter and [H] went through a particularly dark period during which he had to ensure that [H] took her medication and [T] was able to attend school.

12. The appellant confirmed his partner has family in the UK. Her mother lives in Devon with her partner. Her father lives in Bournemouth with his wife. [H] does not have much contact with her father. [H] has a brother and two step-sisters. Her brother, who I refer to as [C] lives in Devon. The first of her step-sisters who I refer to as [G] is 28/29 years old and lives in Portsmouth. Her second step-sister, who I refer to as [GE], lives in Australia. The appellant said [H]'s mother works in a pharmacy and helps out whenever she has time off from work. She spends time with the children [A] and [T] during school holidays to give the appellant and [H] some respite. She can be trusted with [A]'s medication because of her work in a pharmacy and her previous experience as a childminder. The appellant confirmed [H] speaks to her mother almost daily and it is rare for them not to speak for a couple of days. The appellant confirmed that [G] works as a dentist and comes to spend time with the family whenever she can, although her own work commitments mean there is no regular pattern.

13. The appellant confirmed that his parents also assist by providing food and his mother has occasionally stayed over at their home to help with [A], particularly after periods in hospital. The appellant confirmed he has two brothers who both live in Southampton, and a sister. The appellant said his brothers help them whenever they can. As the appellant is not allowed to work and drive, his brothers help with transport to enable the appellant to report to the immigration authorities as required, and to take [A] to Southampton to visit his parents and family. When asked why the support the appellant's partner currently receives could not continue in the absence of the appellant, the appellant explained that after [A] was discharged from hospital, he saw the significant impact that their child's health had had upon his partner. She went through a very dark period during which she was unable to do much by herself. The appellant said that he had to be around at that time to make sure that everyone was okay and the children were properly looked after. He said that although help would be available, it would not be the same because the wider

family each have their own jobs and commitments. They can assist during holidays, but the assistance provided is only short-term. He explained that [H] receives weekly phone calls regarding her mental health. When asked about [A]'s health, the appellant confirmed that she is currently taking antibiotics. She is under the supervision of a doctor in Southampton who specialises in bacterial infections. The appellant confirmed that [A] underwent an MRI scan in April 2022 when she was at the Southampton Children's Hospital. He said [A] has also had blood tests but they have been unable to pinpoint why her infection had returned for a second time, and they do not know whether the infection will return again. The current advice is that [A] may need to remain on antibiotics permanently to reduce the risk of further infection. The appellant explained that he and his partner have been asked to undergo blood tests to investigate whether there is a genetic link to [A]'s ill-health.

14. The appellant's partner [H] adopted her witness statement dated 16th October 2022. In cross examination, she confirmed the appellant has been living with her and the children at their address in Cunningham Road since [A] was admitted to hospital earlier in the year. She confirmed that she has a number of siblings and that her mother, who lives in Devon, helps the family when she can. She confirmed that her stepsister [G] also visits and assists, but that is less frequent. She confirmed that the appellant's family also assist when they can. She confirmed that she struggles with her mental health and is currently receiving therapy and prescribed multiple medications. She confirmed that she is prescribed Mirtazapine (45mg), Propranolol (60mg) and Sertraline (100mg). She said that she also has a hiatus hernia and gastritis for which she is prescribed medication [H] explained that she had postnatal depression after her eldest daughter was born. She was in an abusive relationship at that time and although that relationship ended, she has experienced depression on and off for several years. She said that she has been taking mirtazapine for about six or seven years. She said that if she has a

mental health episode, there is no one other than the appellant close by to support her. Her family live some distance away. When asked when she last had a mental health episode, [H] explained that she has been in her current state since the beginning of the year. Her mental health has been severely affected by [A]'s health. She explained that seeing [A] extremely poorly and fighting for her life was very hard. She said that the absolute fear of losing her daughter and her partner, impacted upon her severely. She explained that the events since January 2022 have demonstrated to her, that she could not cope without the appellant.

Submissions

15. Mr Tufan refers to the absence of evidence to support the claims made by the appellant and his partner, but acknowledged that both have provided witness statements and gave oral evidence before me. Mr Tufan submits [A] appears to be doing well and although the evidence before the Tribunal is that she is receiving on-going treatment, there are various members of the extended family who have provided the appellant and his partner support in the past, and will support the appellant's partner in the future. The appellant and his partner have not sought the assistance of social services and the Upper Tribunal is entitled to proceed upon the basis that if support is required, social services would support the appellant's partner and perform their duties under the law.

16. On behalf of the appellant, Ms Sriharan submits the appellant and his family have faced significant difficulties over recent months in particular. She submits there are a number of relevant factors that point to the elevated threshold being met here. She submits the appellant has already played a significant role in the life of [T], and his role in looking after and assisting with the care of the children is now more important because of the health of [A]. Ms Sriharan acknowledges that even on the evidence of the appellant and his partner, [A] is stable at present, but she submits, it appears there is every chance that [A] will have to be on antibiotics for the rest of her life and she is left with a condition that she will have to deal with. There remains a potential risk of a brain abscess because of the blood clots and the appellant is very important to the functioning of the family overall. Ms Sriharan submits that although there is little evidence before the Tribunal, the independent social worker, Jaqueline Stubbs, had the opportunity of carrying out an assessment of the appellant and his partner, and reviewed more extensive documents including some medical records. She confirms the appellant's partner disclosed she has suffered with mental health difficulties for several years and has a diagnose of Post-traumatic Stress Disorder, anxiety, and

depression which has an impact on her daily functioning and at times her capacity to care for the children. The account provided by [H] of her mental health and the support she has required is set out at paragraphs [13.2] and [13.3] of the report of Jacqueline Stubbs dated 16th August 2021. In her addendum report Jacqueline Stubbs refers to the change in circumstances since her previous report, including the birth of [A] and the urgent medical care and attention she has required.

17. Ms Sriharan submits that if any further emergency arises at home, the appellant's partner is likely to regress and the appellant's presence will be needed to maintain a stable family environment for the children. There would remain a risk that the intervention of social services may become necessary to safeguard the children with the potential for long term ramifications for the children.

DECISION

18. In reaching my decision I have had regard to all the evidence before me, whether or not it is referred to. I have had regard, in particular, to the evidence set out in the witness statements of the appellant and his partner and the opinions expressed by Ms Jacqueline Stubbs in her two reports. Although there is only a limited amount of medical evidence before me, I have had the opportunity of hearing oral evidence from the appellant and his partner.
19. Section 32 of the UK Borders Act 2007 defines a foreign criminal, as a person not a British citizen who is convicted in the UK of an offence and, *inter alia*, sentenced to a period of imprisonment of at least 12 months. Section 32(4) of the 2007 Act sets out the clear proposition that deportation of a foreign criminal is conducive to the public good. That is a statement of public policy enacted by the legislature, which the courts and tribunals are obliged to respect. Section 32(5) of the 2007 Act requires the Secretary of State to make a deportation order in respect of

every foreign criminal, subject to the exceptions set out in section 33. As far as is relevant that is:

“(2) Exception 1 is where removal of the foreign criminal in pursuance of the deportation order would breach—

- (a) a person's Convention rights, or
- (b) the United Kingdom's obligations under the Refugee Convention.

...

(7) The application of an exception—

- (a) does not prevent the making of a deportation order;
- (b) results in it being assumed neither that deportation of the person concerned is conducive to the public good nor that it is not conducive to the public good;

but section 32(4) applies despite the application of Exception 1 or 4.”.

20. The appellant arrived in the UK in July 2006, aged 12, with his father and siblings. Mr Tufan accepts the appellant has a genuine and subsisting relationship with [H], who is a ‘qualifying partner’ as defined in s117D(1) of the Nationality, Immigration and Asylum Act 2002 (“the 2002 Act”). He also accepts the appellant has a genuine and subsisting relationship with the two children, [T] and [A], both of whom are qualifying children within the definition set out in s117D(1). I find the appellant has established a family life with his partner and the two children [T] and [A]. As far as his family life with his parents and siblings is concerned, it is well-established in the authorities that there is no relevant family life for the purpose of Article 8 simply because there is a family relationship between adults (such as a parent and child). There must be something more than normal emotional ties: see *Kugathas v Secretary of State for the Home Department [2003] EWCA Civ 31*. Although the appellant previously lived with his parents, I accept that since January 2022 when [A] was admitted to hospital, the appellant has lived with his partner and the two children. I do not accept on the very limited evidence before me that the appellant has a family life with his parents and siblings for the purposes of Article 8. I therefore focus upon the appellant’s family life with his partner and the children.

21. It is uncontroversial that the decision to refuse the appellant's human rights claim has consequences of such gravity as to engage the operation of Article 8. I accept that the interference is in accordance with the law, and that the interference is necessary to protect the legitimate aim of immigration control and the economic well-being of the country. The central issue in this appeal is whether the decision to refuse leave to remain is proportionate to the legitimate aim.

22. Part 5A of the Nationality, Immigration and Asylum Act 2002 NIAA 2002 informs the decision making in relation to the application of the exceptions referred to in section 33 of the UK Borders Act 2007. Section 117A in Part 5A provides that, when a court or tribunal is required to determine whether a decision made under the Immigration Acts breaches a person's right to respect for private and family life under Article 8, and, as a result, would be unlawful under section 6 of the HRA 1998, the court, in considering the public interest question, must (in particular) have regard to the considerations listed in section 117B and, additionally, in cases concerning the deportation of foreign criminals, to the considerations listed in section 117C. Section 117C specifically deals with the weight to be attached to the public interest in deporting foreign criminals and provides a structure for conducting the necessary balancing exercise, dependent in part, on the length of sentence imposed.

23. The first question that arises is whether the appellant is a foreign criminal, as defined in s117D(2) of the 2002 Act. I was provided with a PNC report setting out the appellant's offending history which confirms that on 11th May 2016, the appellant was sentenced at Southampton Crown Court by His Honour Judge Rowland to a total sentence of two years imprisonment. As far as the offences are concerned, in his sentencing remarks His Honour Judge Rowland said:

"[The appellant] aged 22, effectively of good character so far as this case is concerned but pleaded guilty now to 3 separate offences of

possession of Class A drugs with intent to supply: two lots of heroin; one lot of cocaine. The first offence committed on 6th March of last year; basis of plea which I accept and I sentence you on 12 wraps of heroin effectively acting as some sort of custodian, but then on 5th June whilst on police bail they were, moving up the scale, a different league altogether because you had three wraps of cocaine and two wraps of heroin, out and about street dealing with £1000 in cash....”

24. His Honour Judge Rowland noted that a seriously aggravating feature is that the second two offences were committed whilst the appellant was on bail. He gave the appellant full credit for his guilty plea, and took into account the appellant’s otherwise good character. The appellant was sentenced to a term of six months imprisonment for the first count, and to 18 months imprisonment concurrent for each of the second and third counts, but consecutive to the sentence for the first count. That was therefore a total of two years imprisonment. Mr Tufan accepts there is no evidence of any further offending since the index convictions.
25. The appellant is not a British citizen, and he has been convicted of an offence and sentenced to a period of imprisonment of at least 12 months. The appellant is a ‘foreign criminal’ as defined in s117D. Applying s117C(3) of the 2002 Act, the public interest requires the appellant’s deportation unless Exceptions 1 or 2 set out in s.117C(4) and (5) apply. I therefore first proceed to consider whether he is exempt from deportation as a result of the private or family life exceptions set out at s117C(4) and (5) of the 2002 Act. The focus of the evidence and submissions before me was upon Exception 2 set out in s117C(5) of the 2002 Act:

“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.”
26. The appellant has a genuine and subsisting relationship with [H] and a genuine and subsisting parental relationship with [T] and [A]. The issue before me is whether the effect of the appellant’s deportation on the appellant’s partner and the children, would be unduly harsh.

27. In his submissions before me Mr Tufan referred to the decision of the Supreme Court in HA (Iraq) & Others v SSHD [2022] UKSC 22. The Supreme Court confirmed, at [41], that the reference in KO (Nigeria) v SSHD [2018] UKSC 53 to the harshness involved for "*any child*" faced with the deportation of a parent was an illustrative consideration rather than a definition or test. The Supreme Court cited, with approval, the test set out in MK (Section 55: Tribunal Options: Sierra Leone) [2015] UKUT 223 (IAC):

"... '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."

28. The Supreme Court went on to say:

"44. Having given that self-direction, and recognised that it involves an appropriately elevated standard, it is for the tribunal to make an informed assessment of the effect of deportation on the qualifying child or partner and to make an evaluative judgment as to whether that elevated standard has been met on the facts and circumstances of the case before it.

29. The documentary evidence before me is limited, but I have had the opportunity of hearing the oral evidence of the appellant and his partner. I found them to be honest and credible witnesses, who were doing their best to assist the Tribunal. I accept their explanation that although they appreciate the importance of this appeal, their focus during the months leading up to the hearing of the appeal has been upon the health and well-being of their daughter [A]. The evidence of the appellant and his partner was entirely consistent in all material respects and I accept their evidence that the appellant and his partner have lived together as a family unit since [A] was admitted to hospital in January 2022. Neither the appellant nor [H] downplayed the support that they have had available to them from the wider family when they gave evidence before me. They were both entirely candid and consistent in their evidence that

[H]'s mother and step-sister [G] have been available when they can to assist with the care of [T] and [A] and to provide some respite to the appellant and his partner. They were equally candid and consistent about the support that is provided by the appellant's parents and brothers in particular. I was particularly impressed by the evidence of [H] who appeared to me to be entirely honest and credible in her evidence regarding her own health and the difficulties that have been faced by [A].

30. There is evidence before me, and I accept, that [A] was admitted to the Southampton Children's Ward on 31st January 2022 after her mother had increased concerns about her presentation and she became significantly unwell. She was placed on antibiotics and fed through tubes due to high levels of infection revealed by blood tests. A scan of her brain revealed [A] had contracted meningitis where there were a number of clusters to the left-hand side of her brain and a blood clot. [A] was transferred to the Neurological ward at Southampton General Hospital on 12th February 2022 where she was diagnosed with Meningitis bacteria and underwent emergency surgery the next day. [A] subsequently had operations where she underwent surgery to the back of her head, behind her ears and two to the left-hand side. Although there was some improvement the appellant and his partner were prepared for the worst as they had been advised of the long-term prognosis. Although [A] is reported to be in a stable condition following the operations to her brain, she remains under the care of medical professionals. In her oral evidence, which I accept, [H] confirmed that generally, [A] is well, but she has some permanent hearing loss in her left ear. She also has a clot in one of her veins in her brain. In their evidence, which I accept, both the appellant and [H] explained that [A] is now taking antibiotics again and blood tests in July 2022 revealed that she is susceptible to new pneumococcus bacteria leaving her prone to infection. She is also susceptible to brain abscesses and the treating clinicians hope that with antibiotics, she will avoid another serious infection. [H] confirmed that [A] is walking, talking, and generally doing well, but there is a serious worry about what might

happen to her in the future. I accept the evidence of [H] that [A] is thought to have lost hearing in her left ear and that her ability to communicate is limited. They are matters that remain under investigation.

31. I accept that [A]'s illness and the treatment she has had to endure has had a significant impact on [H]'s mental health. I accept her evidence, which is supported by the evidence of the appellant that the period since [A]'s admission to hospital has been particularly difficult for [H] and has left her in a depressive state. In her oral evidence [H] confirmed that she works as a tax adviser for HMRC, but has been on sick leave since 31st January 2022 when [A] fell ill. She said that she feels unable to return to working and she has recently handed in her notice. I accept her evidence that her previous employment was stressful and with everything else that was going on at home with the health of their daughter [A], she does not feel strong enough to return to her previous employment. She has however found herself a small cleaning job that she can do for about two hours each day, but that is likely to have an impact upon the income she receives. I accept her evidence that she continues to be prescribed Mirtazapine, Propranolol and Sertraline. In her evidence before me, which I accept, [H] confirmed that although she does not receive any help from social services, she is supported by a mental health crisis team. Initially, after [A] was discharged from hospital in April 2022, the mental health crisis team checked on her every other day. She is now under the care of her GP and receives therapy, although the crisis team are available to her if she ever needs them.
32. In reaching my decision, I have had regard to the best interests of [T] and [A]. The leading authority on section 55 remains ZH (Tanzania) v Secretary of State for the Home Department [2011] UKSC 4. In her judgment, Lady Hale confirmed that the best interests of a child are "a primary consideration", which, she emphasised, was not the same as

“the primary consideration”, still less “the paramount consideration”. The children involved are, and have always been, wholly blameless for the criminal behaviour of the appellant and its consequences for them. I accept that it is generally in the best interests of children to have a good relationship with each of their parents, but that can be outweighed by other factors relevant to the public interest in the deportation of foreign criminals.

33. Having considered all the evidence before me I find that in the particular circumstances that the appellant, [H], and the children find themselves in, the particular family dynamics are such that the effect of the appellant’s deportation on his partner and the children would be unduly harsh. I reach that decision having noted that 'unduly harsh' does not equate with uncomfortable, inconvenient, undesirable or merely difficult. 'Harsh' in this context, denotes something severe, or bleak. Furthermore, the addition of the adverb 'unduly' raises an already elevated standard still higher.
34. I reach that decision based upon the findings that are preserved and the findings that I have set out above. As Jacqueline Stubbs states in her report, it is unclear whether [A]’s illness has had an impact on her social, emotional and cognitive development. I accept that both the appellant and [H] have been specially trained to manage the risks of infection in the family home as it is vital that [A] does not contract illness as this may be life threatening. I accept that although [A] is generally well at present, she requires a high level of supervision and proactive parenting to ensure that any cross-infection is eliminated as far as it can be. It is the uncertainty that lies ahead for [A] and the particular care that is required by [A], combined with the mental health of [H] that leaves me in no doubt that the effect of the appellant’s deportation on his partner and the children would be unduly harsh. I am satisfied from the evidence that I heard that [H] places significant reliance herself upon the support

that she receives from the appellant to maintain her overall well-being and to bring some stability to the children's lives.

35. True it is that the appellant and [H] both have supportive families who I have no doubt do their best to provide as much support as they can. However, they are only able to dip in and out, and provide assistance when they can to give [H] in particular, some respite. However, I am satisfied that here, it is not only periodic support that is required, but the presence of the appellant in what is now the family home to achieve stability for the children and to ensure that the health and wellbeing of the children is properly managed. Thus far I have referred largely to the health of [A], but I have throughout also been mindful of the well-being of [T]. I accept the appellant plays a significant role in the family dynamics so that stability is provided for [T] too, particularly during period of crisis and when [A] requires further investigations or treatment. The availability of social services support would in my judgement be entirely insufficient here because this is not a family that might require financial support or some limited respite, but a family who depend heavily upon each other for physical and emotional support.
36. I acknowledge the deportation of foreign criminals is in the public interest. However, taking all the evidence before me together, I am satisfied that the elevated standard has been met on the facts and circumstances before me, and that Exception 2 set out in s117C(5) of the 2002 Act applies.
37. In reaching my decision I have also had regard to the fact that the appellant expresses considerable remorse and there is no evidence before me of any further offending. In my final analysis, I find the appellant's protected rights, considered collectively with rights of [H], [A] and [T] in particular, are such as to outweigh the public interest in the appellant's removal having regard to the policy of the respondent as expressed in the Immigration Rules and the 2002 Act. I am satisfied that on the facts here, the decision to refuse leave to remain is

disproportionate to the legitimate aim and I allow the appeal on Article 8 grounds.

Notice of Decision

38. The appeal is allowed on Article 8 grounds.

Signed **V. Mandalia**

Date

16th March 2023

Upper Tribunal Judge Mandalia