IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2022-004255

First-tier Tribunal No:
HU/52332/2021; IA/06359/2021

THE IMMIGRATION ACTS

Decision & Reasons Issued:
On 17th of November 2023

Before

UPPER TRIBUNAL JUDGE SMITH
DEPUTY UPPER TRIBUNAL JUDGE BLACK

Between

MOHAMMAD UMAR FAROOQ
(NO ANONYMITY DIRECTION MADE)

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellant: Mr S Bellara, Counsel instructed by Talal & Co Solicitors
For the Respondent: Ms S McKenzie, Senior Home Office Presenting Officer

Heard at Field House on Wednesday 8 November 2023

DECISION AND REASONS

PROCEDURAL BACKGROUND

1. By a decision promulgated on 14 September 2023, the Tribunal (UTJ Smith and DUTJ Jarvis) found there to be an error of law in the decision of First-tier Tribunal Judge Buckwell dated 14 July 2022 dismissing the Appellant's appeal against the Respondent's decision dated 26 May 2021 refusing his human rights claim (Article 8 ECHR). The human rights claim and refusal of it were made in the context of

an application for leave to remain based on the Appellant's private life and family life with his partner and children which was treated by the Respondent also as an application to revoke a deportation order made against the Appellant on 15 November 2012. The Tribunal's error of law decision is appended hereto for ease of reference.

2. As Mr Bellara pointed out at the start of the hearing before us, the facts of this case are not disputed. Nor was there any further witness evidence beyond that which was before and was given to Judge Buckwell, the recording of which was not challenged. We had before us the Appellant's and Respondent's bundles before the First-tier Tribunal (referred to as necessary below as [AB/xx] and [RB/xx]). The only further evidence submitted was an independent social worker's report of Ms Opie-Greer dated 12 October 2023 ("the Social Worker's Report") and a letter from Newham Cricket Club dated 25 October 2023.

3. It was therefore agreed between the parties that the hearing before us should proceed on submissions only. We have read all the evidence. However, we refer below only to the evidence which is material to our assessment and to the findings which were preserved in the Tribunal's error of law decision.

4. Having heard submissions from Mr Bellara and Ms McKenzie, we indicated that we would reserve our decision and provide that in writing which we now turn to do.

LEGAL FRAMEWORK

5. The legal framework which applies in this case is not in dispute. It is best considered in the context of section 117C Nationality, Immigration and Asylum Act 2002 ("Section 117C"). Section 117C reads as follows:

> **"117C Article 8: 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.
> …"

6. It is common ground that the task for the Tribunal when considering a person who falls within Section 117C (6) due to the length of sentence (as here where the sentence is four years) is to first consider whether and to what extent that individual can meet either or both exceptions. That assessment then feeds into the assessment of whether there are "very compelling circumstances, over and above" those exceptions (see in this regard [28] to [31] of the judgment in NA (Pakistan) v Secretary of State for the Home Department [2016] EWCA Civ 662).

7. As we will come to below, the Appellant accepts that he could not satisfy the first exception in relation to his private life. The focus of his case is his family life with his partner and their children.

8. In relation to the second exception, Mr Bellara made reference to the Supreme Court's judgment in HA (Iraq) and others v Secretary of State for the Home Department [2022] UKSC 22 ("HA (Iraq)").

9. At [41] to [45] of the judgment in HA (Iraq), having reviewed the previous case-law, the Supreme Court said this about the test to be applied when considering the second exception:

> "41. Having rejected the Secretary of State's case on the unduly harsh test it is necessary to consider what is the appropriate way to interpret and apply the test. I consider that the best approach is to follow the guidance which was stated to be "authoritative" in *KO (Nigeria)*, namely the *MK* self-direction:
>
> > '… '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.'
>
> 42. This direction has been cited and applied in many tribunal decisions. It recognises that the level of harshness which is 'acceptable' or 'justifiable' in the context of the public interest in the deportation of foreign criminals involves an 'elevated' threshold or standard. It further recognises that 'unduly' raises that elevated standard 'still higher' - ie it involves a highly elevated threshold or standard. As Underhill LJ observed at para 52, it is nevertheless not as

high as that set by the 'very compelling circumstances' test in section 117C(6).

43. Whilst it may be said that the self-direction involves the use of synonyms rather than the statutory language, it is apparent that the statutory language has caused real difficulties for courts and tribunals, as borne out by the fact that this is the second case before this court relating to that language within four years. In these circumstances I consider that it is appropriate for the *MK* self-direction to be adopted and applied, in accordance with the approval given to it in *KO (Nigeria)* itself.

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.

45. Such an approach does not involve a lowering of the threshold approved in *KO (Nigeria)* or reinstatement of any link with the seriousness of the offending, which are the other criticisms sought to be made of the Court of Appeal's decision by the Secretary of State."

10. The Supreme Court then went on to deal with the Section 117C (6) test as follows:

"50. How Exceptions 1 and 2 relate to the very compelling circumstances test was addressed by Jackson LJ in *NA (Pakistan)*. In relation to serious offenders, he stated as follows:

'30. In the case of a serious offender who could point to circumstances in his own case which could be said to correspond to the circumstances described in Exceptions 1 and 2, but where he could only just succeed in such an argument, it would not be possible to describe his situation as involving very compelling circumstances, over and above those described in Exceptions 1 and 2. One might describe that as a bare case of the kind described in Exceptions 1 or 2. On the other hand, if he could point to factors identified in the descriptions of Exceptions 1 and 2 of an especially compelling kind in support of an article 8 claim, going well beyond what would be necessary to make out a bare case of the kind described in Exceptions 1 and 2, they could in principle constitute 'very compelling circumstances, over and above those described in Exceptions 1 and 2', whether taken by themselves or in conjunction with other factors relevant to application of article 8.'

In relation to medium offenders, he stated:

'32. Similarly, in the case of a medium offender, if all he could advance in support of his article 8 claim was a 'near miss' case in which he fell short of bringing himself within either Exception 1 or Exception 2, it would not be possible to say that he had shown that

> there were 'very compelling circumstances, over and above those described in Exceptions 1 and 2'. He would need to have a far stronger case than that by reference to the interests protected by article 8 to bring himself within that fall back protection. But again, in principle there may be cases in which such an offender can say that features of his case of a kind described in Exceptions 1 and 2 have such great force for article 8 purposes that they do constitute such very compelling circumstances, whether taken by themselves or in conjunction with other factors relevant to article 8 but not falling within the factors described in Exceptions 1 and 2. The decision-maker, be it the Secretary of State or a tribunal, must look at all the matters relied upon collectively, in order to determine whether they are sufficiently compelling to outweigh the high public interest in deportation.'

He also emphasised the high threshold which must be satisfied:

> '33. Although there is no 'exceptionality' requirement, it inexorably follows from the statutory scheme that the cases in which circumstances are sufficiently compelling to outweigh the high public interest in deportation will be rare. The commonplace incidents of family life, such as ageing parents in poor health or the natural love between parents and children, will not be sufficient.'

51. When considering whether there are very compelling circumstances over and above Exceptions 1 and 2, all the relevant circumstances of the case will be considered and weighed against the very strong public interest in deportation. As explained by Lord Reed in *Hesham Ali* at paras 24 to 35, relevant factors will include those identified by the European Court of Human Rights ("ECtHR") as being relevant to the article 8 proportionality assessment. In *Unuane v United Kingdom* (2021) 72 EHRR 24 the ECtHR, having referred to its earlier decisions in *Boultif v Switzerland* (2001) 33 EHRR 50 and *Üner v The Netherlands* (2006) 45 EHRR 14, summarised the relevant factors at paras 72-73 as comprising the following:

> '• the nature and seriousness of the offence committed by the applicant;
> • the length of the applicant's stay in the country from which he or she is to be expelled;
> • the time elapsed since the offence was committed and the applicant's conduct during that period;
> • the nationalities of the various persons concerned;
> • the applicant's family situation, such as the length of the marriage, and other factors expressing the effectiveness of a couple's family life;
> • whether the spouse knew about the offence at the time when he or she entered into a family relationship;
> • whether there are children of the marriage, and if so, their age; and

- the seriousness of the difficulties which the spouse is likely to encounter in the country to which the applicant is to be expelled …
- the best interests and well-being of the children, in particular the seriousness of the difficulties which any children of the applicant are likely to encounter in the country to which the applicant is to be expelled; and
- the solidity of social, cultural and family ties with the host country and with the country of destination.'

11. It is common ground that, in relation to the Appellant's children, the Tribunal must consider their best interests as a primary consideration. Although not the paramount consideration, and those "can be outweighed by the cumulative effect of other factors, no other factor can be treated as inherently more significant" (see Zoumbas v Secretary of State for the Home Department [2013] UKSC 74 at [10] – citing from ZH (Tanzania v Secretary of State for the Home Department [2011] 2 AC 166).

EVIDENCE, FINDINGS AND DISCUSSION

12. The Appellant is a national of Pakistan. He arrived in the UK in July 1996 aged fifteen years. He is now aged forty-two years. The Appellant's father was employed by the Pakistani High Commission in London. Accordingly, the family was not subject to immigration control at least initially. The Appellant's parents and siblings have subsequently become British citizens. The Appellant could not satisfy the naturalisation requirements due to his criminal offending.

13. In February 2011, the Appellant was convicted at Isleworth Crown Court in relation to the acquisition, retention or use or control of property obtained as a result of criminal acts (in other words money laundering). We do not have the full sentencing remarks from the criminal trial. An extract is however set out in the Respondent's decision under appeal as follows ([RB/136]):

> "In this case, the jury has convicted you four men of serious money laundering offences.
>
> You were recruited by Jaffery, both of you, to collect and deposit very large sums of money that the jury found was criminal property. It was hardly surprising the jury came to that conclusion in the way in which you two moved this money around the country.
>
> I have not added up the total that can be attributed to you jointly, but it too must run to millions of pounds. I have no doubt that each of you was paid in line with that activity."

14. The Appellant deals with the background to his offence in his witness statement dated 1 November 2021 ([AB/1-7]). In summary, he says that, having been overlooked for a promotion at the company he

worked for after leaving school, he left that employment and started work for a money transfer company (R2PK). He says that this was "the biggest mistake of [his] life" and that he wholly regrets his involvement. The Appellant worked for R2PK between April and September 2008 when he was arrested for the offence of which he was eventually convicted. The Appellant says that he served his sentence without incident, becoming an "enhanced prisoner due to [his] behaviour". The Appellant was released from prison in November 2012. It is not disputed that the Appellant has not offended since.

15. A deportation order was signed against the Appellant on 15 November 2012 ([RB/4]). The Appellant appealed the decision to deport him. His appeal was initially allowed by the First-tier Tribunal on 1 March 2013. However, the Respondent was given permission to appeal that decision. The Appellant's appeal having been remitted to the First-tier Tribunal was once again allowed on 25 February 2014 on human rights grounds. However, once again, the Respondent was granted permission to appeal that decision.

16. The appeal was finally determined by Upper Tribunal Judge Perkins in a decision promulgated on 21 May 2014 ([RB/5-10]). Although he finally dismissed the Appellant's appeal, that decision is relied upon by the Appellant for what it has to say at [43] of that decision as follows:

> "It follows that although the claimant has lived in the United Kingdom for some considerable time and although his relationships with his brothers and parents are more than usually important he is not in the position of a person with a life partner who cannot be expected to remove [sic] or a minor child looking to him for fatherly guidance. These often weighty matters are not present in his case."

17. As we will come to later in this decision, the Appellant's position in this regard has changed as he now has a partner and children. The Appellant's appeal in 2014 (which was only a few years after his conviction) was therefore focussed only on the Appellant's private life and his ties with his parents and siblings as well as his unfamiliarity with life in Pakistan.

18. In the Tribunal's error of law decision, Judge Buckwell's findings in relation to the Appellant's private life were preserved as those were not challenged. Mr Bellara confirmed that he did not seek to go behind the Tribunal's decision in that regard. It is therefore appropriate to set out those findings at [97] of Judge Buckwell's decision as follows:

> "On the facts, with respect to Exception 1, the Appellant has been resident for most of his life in this country but his residence has not

> been lawful. By reference to his immigration history, detailed above, the Appellant came to this country in 1996 and had immigration leave only until 2000. He therefore has not been lawfully resident in this country for most of his life. His criminal history would bring into doubt whether he was socially and culturally integrated in the United Kingdom. The circumstances which the Appellant faces, in terms of having to return to Pakistan and the difficult decision of his wife and two children, do not in themselves amount to very significant obstacles as to the integration of the Appellant himself on return to Pakistan, which is what the specific statutory provision relates to. Whilst I take into account the Court of Appeal's judgment in Kamara [2016] EWCA Civ 813 I do not find that the Appellant would face very significant obstacles as to integration. He left the country as a teenager and but [sic] retained links with his family in this country and ties of language remain. Overall, I therefore do not find that the Appellant would meet the provisions of Exception 1…."

19. We turn then to the second exception. The Appellant is in a relationship with Hasina Bibi. They entered into an Islamic marriage in September 2017. They have two children. [M] was born in 2019 and is now aged four years. [A] was born in 2021. She is aged nearly two years. Ms Bibi and both children are British and are therefore qualifying partner and children for the purposes of Section 117C (5).

20. Before we turn to consider the position of the Appellant's partner and children, it is necessary for us to say something about the Social Worker's Report. Mr Bellara submitted that we should place weight on this document. Ms McKenzie said we should give it little weight as the report did not disclose its methodology. We also raised with Mr Bellara our concern that some of the comments made in the report are overstated. For example, Ms Opie-Greer talks about [M] being "a 'physical, sporty child' who enjoys attending cricket practice". She says that it is important that the Appellant be there to support [M]'s "extracurricular activities" and she then refers to research about the importance of "academic and extra-curricular success". We do not profess any expertise in childhood development. However, [M] is aged only four years and we consider Ms Opie-Greer's comments about impact in this regard to be overstated.

21. Mr Bellara accepted that the Social Worker's Report was written following a remote meeting between Ms Opie-Greer and the Appellant and his family. The report does not record the length of the interview. Many of Ms Opie-Greer's comments are based on research or generalised assertions. We are able to give the Social Worker's Report some weight in relation to certain aspects as discussed below but in other areas to which we refer below, we are unable to give it any or any significant weight.

22. Ms Bibi has provided a witness statement dated 1 November 2021 ([AB/8-10]). Her passport at [AB/11] shows that she was born in Sylhet and is therefore of Bangladeshi origin. In evidence to Judge Buckwell, Ms Bibi said that she has never been to Pakistan and did not have any friends or family there ([65]). When asked whether she had been in contact with the Appellant's extended family members in Pakistan, she said that she had not because they speak Urdu ([68]). When asked whether she might return to Pakistan with the Appellant, she said that she is settled in the UK and that "[a]ll her connections are here, including her past education and her employment".

23. However, although Mr Bellara mentioned the potential problems for Ms Bibi to go with the Appellant to Pakistan as she is not a Pakistani national and has never visited that country, he accepted that there was no evidence before us to suggest that she would not be permitted to enter as the Appellant's wife. Ms Bibi's concerns about going to Pakistan are therefore based on never having been to or lived there and that she has connections to the UK.

24. Ms Bibi is employed as a civil servant. We were told that she works for the Independent Police Commission. She works full-time so that the Appellant is the children's primary carer. She said that, if the Appellant were to return to Pakistan and she and the children remained in the UK, she would not be able to work because she would not have anyone to help with the children.

25. As Ms McKenzie pointed out, however, the Appellant has his family in the UK including his parents and siblings and their families. Their statements (at [AB/22-53]) suggest that at the date of those statements the Appellant and Ms Bibi lived at the same address as the Appellant's parents and his brother and sister-in-law and their child. However, the Social Worker's Report refers to the Appellant taking his children to his mother's house when Ms Bibi is working from home (which it appears from the report may be a regular pattern). This suggests that the Appellant, Ms Bibi and the children live separately but clearly live near to his parents and sibling.

26. The statements of the Appellant's parents and sibling paint a picture of a close, loving family unit. We accept therefore Ms McKenzie's submission that if Ms Bibi were to remain in the UK with the children and the Appellant were deported, she would be able to count on their support to assist with the children, thereby enabling her to continue to work. As we have already noted, it appears from the Social Worker's Report that Ms Bibi works regularly from home and, of course, as the children grow older, they will be able to attend school. Indeed, we were told that [M] already attends school.

27. Ms Bibi did say in her evidence to Judge Buckwell that the births of her children had been difficult, and she was undergoing physiotherapy. Reference to those difficulties is also referred to in the Social Worker's Report, but we have no medical evidence in this regard. Similarly, although the Social Worker's Report records Ms Bibi's concern that her husband's deportation would impact on her emotional and mental health, we have no medical evidence to support those concerns. We are unable to give weight to the views of the social worker in this regard. There is no indication that she has any relevant qualifications to judge the likelihood of mental health problems.

28. We accept that Ms Bibi would not wish to go to Pakistan with her husband were he to be deported. We accept that she has grown up in the UK and works here (although there is limited evidence about her own circumstances or her family in the UK). She might well find it difficult to adapt to Pakistan as she has not lived there and apparently does not speak the language which is spoken by the Appellant's relatives. Nonetheless, she will have some familiarity with Pakistani culture having lived at one time with her Appellant's family in the UK. She is said to continue to have a close relationship with his family. The Appellant is recorded as having told Ms Opie-Greer that Ms Bibi acts as his mother's carer.

29. On the evidence we have, taken at its highest, it may be harsh for Ms Bibi to return to Pakistan with the Appellant, but we are unable to conclude that it would be unduly harsh. Similarly, we are unable to conclude that it would be unduly harsh for her to remain in the UK without him. She would have the support of his family to assist with childcare. She would no doubt experience some emotional distress due to separation but on the evidence which we have, we are unable to conclude that this would amount to an unduly harsh consequence.

30. We turn then to the position of the children. Both are, we accept, very young. They are likely to be able to adapt to another country. They will have some familiarity with the culture of Pakistan having been brought up alongside the Appellant's family members. Although we were told that [M] is now in education we have no evidence about that. It may well be that [M] enjoys going to cricket practice with his father but he would be able to do that also in Pakistan.

31. There is reference in the Social Worker's Report to [M] having "speech and language delay" and that he requires "one to one parental support daily" which is provided, it is said, by a combination of the Appellant and Ms Bibi.

32. Mr Bellara confirmed that there is no further evidence about [M]'s problems. We were told that the family is awaiting referral to a therapist. We also note that [M] is now in education and will no doubt be supported at school if he needs additional assistance in this regard.

33. We have no reason to doubt the views of the social worker about the closeness of the relationship between the Appellant and his two children. [M] is said to have spoken to the social worker about the Appellant taking him to and collecting him from school. Ms Opie-Greer says that "it was clear that this is important to him". She also observed [A] sitting on her father's need. Ms Opie-Greer "observed a positive and heart-warming relationship between father and daughter".

34. Ms Opie-Greer assesses that the Appellant "takes an active role in his children's lives and plays a role in providing them with the consistency, routine and stability that they need to thrive".

35. Of course, if the family were to go with the Appellant to Pakistan that role would not be lost. Ms Opie-Greer does not assess the position in that regard. She has proceeded on the basis that Ms Bibi and the children would remain in the UK without the Appellant.

36. The greatest impact on the two children if they were to go to Pakistan with their parents would be the loss of their benefits as British citizens including to the education to which they are entitled. We accept that those benefits are important and that it would be harsh for them to lose those benefits. However, on the evidence we have, and particularly given their young age, we cannot conclude that it would be unduly harsh for them to go with the Appellant to Pakistan. Ms Bibi and the children might not wish to take that step. However, given the closeness of their relationship with the Appellant we cannot discount the possibility that they may decide to do so.

37. Turning then to the alternative "stay" scenario, we accept, for the reasons given by Ms Opie-Greer, that there would be a negative impact on the children of separation from the Appellant. We accept that remote communication is no substitute for their father being with them in person. Ms Bibi and the children would be able to visit the Appellant. We do not have evidence about Ms Bibi's earnings, but she is in regular employment and has the support of the Appellant's family in the UK.

38. However, the Social Worker's Report does not provide evidence that the impacts would be unduly harsh. Ms Opie-Greer refers to various research papers about the consequence of children being separated from a parent but those are generalised assertions and are

speculative as to actual impact. We therefore conclude that the impact of the Appellant's deportation were Ms Bibi and the children to remain in the UK would be harsh but not that it would be unduly harsh.

39. We turn therefore to consider whether there are very compelling circumstances over and above the two exceptions.

40. Although we have concluded that the Appellant is unable to meet the first exception, we take into account when assessing his private life that he has a close relationship with his family members in the UK. His parents and siblings and their families are all in the UK. We have already referred to the picture painted by their statements of a very close family unit.

41. We also accept that the Appellant has been in the UK now for over twenty-five years. He has never lived or worked in Pakistan as an adult. He will be familiar with the culture there having grown up within a close Pakistani family. He speaks the language. He cannot be said to be an outsider. He would probably find employment (he has worked in hotels in the past). Nevertheless, whilst the Appellant's background shows that he is resourceful and resilient, having found employment in the UK at a young age (prior to the employment which led to his criminal offence), we accept that he may find it difficult to adapt to live in Pakistan.

42. Although we have adopted Judge Buckwell's finding that the Appellant is not socially and culturally integrated in the UK, because of his criminal offending, we accept that he has spent a large part of his life in the UK, albeit not lawfully. He has built a family here.

43. The Appellant is also involved in community work in the UK. We need to refer here to the letter from Newham Cricket Club dated 25 October 2023 which reads as follows:

> "I am writing on behalf of Newham Cricket Club to vouch for the invaluable contributions of Mr Mohammad Farooq. As a dedicated volunteer, he has been instrumental in organizing cricket activities and managing catering arrangements on a weekly basis.
>
> It's important to highlight that Mr Farooq is not just any volunteer; he is a vital member of our club. His relentless efforts and unwavering commitment play a pivotal role in bringing the members of Newham Cricket Club together, fostering camaraderie and enhancing our club's spirit.
>
> His dedication, combined with his passion for cricket and excellent organizational skills have made him an indispensable part of our community. We hold Mr Farooq in the highest regard and firmly believe that his involvement elevates the standard and reputation of our club.

> We wholeheartedly recommend Mr Farooq for any future endeavours he may pursue and are confident that he will bring the same level of dedication and spirit that he has demonstrated with us."

44. We make the preliminary observation that this letter is addressed "[t]o whom it may concern". It has the air of an employment reference, and we are far from clear whether the writer understood the purpose of it or indeed why it might be required. The letter does not indicate that the writer is aware of the Appellant's past offending. Nonetheless, we consider that we can place weight on this letter at face value in relation to the contribution which the Appellant is making to the community. Although we have preserved the finding that the Appellant is not socially and culturally integrated, therefore, we do place weight on this letter as showing that the Appellant is integrated to some degree.

45. Turning then to the consideration of the Appellant's family life, we start with the children's best interests. We have no doubt that the best interests of the children are to remain in the UK with both parents. Whilst we have found that it would be harsh but not unduly harsh for them either to leave the UK with their parents or remain here with their mother, their interests as British citizens are to remain in the UK and their interests are best served by having both parents physically in their lives.

46. We do not repeat our conclusions regarding the second exception as above. We give weight to the Appellant's family life and that of Ms Bibi and the children when carrying out our assessment under Section 117C (6).

47. As Mr Bellara accepted, although the decision of the Tribunal in the previous appeal was nearly ten years ago, that is the starting point for our assessment. As he also pointed out, though, Upper Tribunal Judge Perkins dismissed the appeal specifically noting that the Appellant did not at that stage have a partner or children. That position has changed.

48. In relation to the public interest, Judge Perkins said this:

> "44. Although I accept that the claimant has not been convicted of the 'sex, drugs, violence' kind of offence which carries particular public disapproval he was a significant (I accept not the major) participant in wholesale money laundering. This was a very serious crime and does attract a particularly high degree of public repugnance that ought to be reflected in the balancing exercise."

49. We gratefully adopt that assessment of the public interest in relation to the Appellant's offending. We accept that there is a strong public interest in the deportation of foreign criminals as is the Appellant.

50. We have to bear in mind though that much time has passed since Judge Perkins' comments. The Appellant has never offended again since his release from prison about ten years ago. His offences were committed in 2008, some fifteen years ago. The deportation order has been in place for ten years. Of course, that and the Appellant's ongoing challenges to it may provide reason not to reoffend. However, the Appellant has explained the situation which led to his offending, and his family circumstances have changed dramatically since that time. The Appellant has expressed his remorse for the offence. We are satisfied on the evidence that the Appellant poses no or a minimal risk of reoffending.

51. Of course, the fact of offending and risk of reoffending is but one facet of the public interest. Deterrence is another. However, as the Supreme Court accepted in HA (Iraq), rehabilitation is a relevant factor. The circumstances which led to the Appellant's offending are no longer present and he has factors which would deter him from reoffending not least the presence of a partner and children. We therefore reject Ms McKenzie's submission that the Appellant's rehabilitation is not shown to be complete.

52. Here, the Appellant has not only not reoffended but has contributed to the community as a volunteer. He has built a family life in the UK with his partner and two children. He has other family members in the UK with whom he has a very close relationship. He has not lived in Pakistan for twenty-five years and has never lived or worked there as an adult.

53. We take all those factors together. We bear in mind in particular the passage of time since the Appellant's offence and his clean record since then. We also take into account as a primary consideration the best interests of the children which strongly support the Appellant remaining in the UK with those children. When all factors are taken together, we conclude that there are very compelling circumstances over and above the two exceptions. Notwithstanding our conclusion that the two exceptions are not met, we therefore allow the appeal under Section 117C (6).

CONCLUSION

54. The appeal is allowed on human rights grounds (Article 8 ECHR) on the basis that there are very compelling circumstances over and above the two exceptions in Section 117C such that Section 117C (6) applies.

NOTICE OF DECISION

The Appellant's appeal is allowed on human rights grounds (Article 8 ECHR)

L K Smith

Upper Tribunal Judge Smith
Judge of the Upper Tribunal
Immigration and Asylum Chamber

11 November 2023

APPENDIX: ERROR OF LAW DECISION

IN THE UPPER TRIBUNAL
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Before

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(NO ANONYMITY DIRECTION MADE)

Appellant

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SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellant: Mr S Bellara, Counsel instructed by Talal & Co Solicitors
For the Respondent: Ms A Nolan, Senior Home Office Presenting Officer

Heard at Field House on Wednesday 9 August 2023

DECISION AND REASONS

BACKGROUND

1. The Appellant appeals against the decision of First-tier Tribunal Judge Buckwell dated 14 July 2022 ("the Decision") dismissing the Appellant's appeal against the Respondent's decision dated 26 May

2021 refusing his human rights claim (Article 8 ECHR). The human rights claim and refusal of it were made in the context of an application for leave to remain based on the Appellant's private life and family life with his partner and children which was treated by the Respondent also as an application to revoke a deportation order made against the Appellant on 15 November 2012.

2. The Judge found that the Appellant could not meet either of the exceptions under section 117C Nationality, Immigration and Asylum Act 2002 ("Section 117C") and that deportation of the Appellant would not be a disproportionate interference with his private and family life. He therefore dismissed the appeal.

3. The grounds of appeal take issue with the Judge's assessment of exception 2 (Section 117C(5)) and that the Judge did not consider the best interests of the children. The Appellant also takes issue with the weight given to the public interest in the context of the length of time since the offence, the remorse shown by the Appellant, his rehabilitation and the contribution he makes to the local community. In overall summary, it is said that the Judge failed to refer to established case law and that the proportionality assessment was "flawed".

4. Permission to appeal was initially refused by First-tier Tribunal Judge Grimes on 31 August 2022. However, following renewal of the application for permission to appeal, permission was granted by Upper Tribunal Judge Blundell on 24 October 2022 in the following terms:

> "It is arguable that Judge Buckwell's consideration of the best interests of the appellant's children was perfunctory and that in attaching the weight that he did to the choices made by their parents, he contravened the fifth and seventh principles at [10] of Zoumbas v SSHD [2013] UKSC 74; [2013] 1 WLR 3690. All grounds may be argued."

5. No Rule 24 Reply was filed by the Respondent.

6. The appeal comes before us to determine whether the Decision contains errors of law. If we conclude that it does, we then have to decide whether to set aside the Decision in consequence of those errors. If we set aside the Decision, we then have to go on to either re-make the decision or remit the appeal to the First-tier Tribunal.

7. We had before us the core documents relevant to the challenge to the Decision as well as the Appellant's and Respondent's bundles before the First-tier Tribunal and the Appellant's skeleton argument before that Tribunal. For reasons which will become evident below, we do not need to refer to any of the documents.

8. At the outset of the hearing, we heard from Ms Nolan who very helpfully conceded that there was an error of law in the Decision on a basis which we had ourselves identified but is not expressly pleaded in the Appellant's grounds. Since those grounds take issue however with the Judge's assessment of the exception under Section 117C(5) which is wide enough to incorporate that error, we did not need to ask Mr Bellara to amend the Appellant's grounds. We accepted the concession made and indicated that we would provide reasons briefly in writing following the hearing, which we do below. We also set out below, following further discussions with both parties, what was agreed in relation to next steps and directions.

DISCUSSION

9. At [98] of the Decision, the Judge made the following findings:

> "With respect to Exception 2, I acknowledge that the Appellant's wife is within the meaning of sub-section 117D(1) of the 2002 Act, a qualifying partner as she is a British citizen. The Appellant does not need to establish that the element of Exception 2 which relates to a child is applicable as it is an an alternative or additional provision. The Appellant's children are both young and neither is a qualifying child within the terms of sub-section 117D(1) of the 2002 Act."
> [our emphasis]

10. As the Judge had noted at [14] of the Decision, the eldest child born in March 2019 is British based on the citizenship of the Appellant's partner. The second child, born December 2021 must also therefore be British. As such, both children are "qualifying" children within the meaning in Section 117D.

11. Ms Nolan also accepted that this very clear error might affect the outcome. The Judge had not considered whether the impact of the Appellant's deportation would have an unduly harsh impact on the children, applying Section 117C(5). Although the Judge might have to go on to consider whether deportation would be disproportionate under Section 117C(6), balancing the interference against the public interest, that assessment would need to take into account a legally correct assessment under Section 117C(5).

12. For those reasons, we accepted Ms Nolan's concession. We would ourselves have reached the same conclusions for the same reasons.

13. We discussed with the parties whether any of the findings made by Judge Buckwell could be preserved. We concluded that it would be appropriate to preserve the finding at [97] of the Decision that the Appellant cannot meet the exception under Section 117C(4) concerning the Appellant's private life. There was no challenge to

that finding. The facts on which that finding is based are unlikely to have changed.

14. We agreed with the parties however that it was not appropriate to preserve any of the findings in relation to the second exception under Section 117C(5). Although there is no direct challenge to the finding that deportation of the Appellant would not have an unduly harsh impact on his partner, that needs to be considered alongside the situation in relation to the children.

15. Mr Bellara accepted that this was an appeal which could be retained in this Tribunal. We agreed however that it would be appropriate to allow the Appellant a short period to adduce any further evidence on which he wished to rely. The main issue remaining is the impact of the Appellant's deportation on his partner and children. Particularly in relation to the children who are now aged four years and one year, during the passage of time since the Decision (of over one year) their situation may have changed. We gave directions for the filing of further evidence as confirmed below.

NOTICE OF DECISION

The Decision of First-tier Tribunal Judge Buckwell dated 14 July 2022 involves the making of errors of law. Those errors may impact on the outcome and are therefore material. We set aside the Decision. We preserve the finding at [97] of the Decision. We make the following directions for the rehearing of this appeal:

DIRECTIONS

1. **By no later than 4pm on Wednesday 6 September 2023, the Appellant shall file with the Tribunal and serve on the Respondent any further evidence on which he wishes to rely at the resumed hearing.**

2. **The re-hearing of this appeal is to be listed before UTJ Smith for a face-to-face hearing on the first available date after Monday 11 September 2023 (avoiding 13 and 14 October which are not convenient to Mr Bellara), time estimate ½ day. An Urdu interpreter is required for that hearing.**

L K Smith

Upper Tribunal Judge Smith
Judge of the Upper Tribunal
Immigration and Asylum Chamber

9 August 2023