IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No.: UI-2023-000890

First-tier Tribunal No: HU/01173/2022

THE IMMIGRATION ACTS

Decision & Reasons Issued:
On 15 September 2023

Before

UPPER TRIBUNAL JUDGE CLIVE LANE
DEPUTY UPPER TRIBUNAL JUDGE MONSON

Between

JCL
(ANONYMITY ORDER MADE)

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellant: Ms Emma Daykin, Counsel
For the Respondent: Mr Nicholas Wain, Senior Home Office Presenting Officer

Heard at Field House on 8 June 2023

Order Regarding Anonymity

Pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008, the appellant is granted anonymity.

No-one shall publish or reveal any information, including the name or address of the appellant, likely to lead members of the public to identify the appellant. Failure to comply with this order could amount to a contempt of court.

DECISION AND REASONS

1. The appellant, against whom a deportation order has been made, appeals from the decision of First-tier Tribunal Judge Margaret O'Keeffe promulgated on 4 February 2023 ("the Decision"). By the Decision, the Judge dismissed the appellant's appeal against the decision of the respondent dated 20 December 2021, to refuse the claim made by his representatives on 3 September 2021 that his removal from the United Kingdom pursuant to the deportation order was incompatible with the appellant's rights, and/or those of close family members, under Article 8 ECHR.

Relevant Background

2. The appellant is a national of Portugal, whose date of birth is 18 February 1995. In March 2008 he entered the UK to join his mother, when he was aged 14. He lived in the UK continuously until he was deported on 29 November 2016.

3. The appellant was convicted on 25 July 2012 for an offence of violent disorder committed in 2011 in the context of the London Riots, for which he was sentenced to 16 months' detention. An appeal against deportation was allowed in 2013 on EEA grounds. Following his appeal being allowed on 21 June 2013, the appellant was issued with a warning letter on 28 June 2013.

4. The appellant subsequently received 10 months' imprisonment for affray in 2014. On 23 February 2015, having reviewed his case in line with his fresh conviction and on the basis of intelligence provided by the Metropolitan Police Service, the then Secretary of State notified the appellant of his liability to deportation pursuant to the Immigration (EEA) Regulations 2006. On 28 July 2015 a decision to make a deportation order pursuant to these Regulations was made and certified under Regulation 24AA. A signed deportation order was made on the same day. No appeal was lodged.

5. In 2016 the appellant received fines for a number of driving offences committed on one occasion; and he was sentenced to 12 months' imprisonment for possession of an offensive weapon. On 29 November 2016 the appellant was removed to Portugal.

6. On 9 December 2016 the appellant was arrested for returning in breach of his deportation order. On 13 December 2016 he was convicted of illegal entry and sentenced to four months' imprisonment. On 7 February 2017 he was removed to Portugal. On 14 August 2018 the appellant was arrested by the police in the UK on suspicion of GBH. No further action was taken in respect of this, but a notice of decision to remove was served on him. On 15 August 2018 the appellant was detained under immigration powers, and on 5 September 2018 the appellant was removed to Portugal. On an unknown date, the appellant returned back to the UK for a third time in breach of his deportation order. On 16 July 2021 the appellant was detained under immigration powers.

7. On 3 September 2021, while he was being held in an Immigration Removal Centre, his solicitors made written representations as to why he should not be deported,

8. In a supplementary decision letter dated 20 December 2021, the respondent recognised that paragraph 298 of the Immigration Rules and section 117C (6) of the 2002 Act did not apply directly to him because he was an EEA national. However, in order to ensure consistency and fairness in the application of Article 8, consideration had been given as to whether he met the private or family life exceptions to deportation (answer 'no') and, in the alternative, whether there were very compelling circumstances such that he should not be deported. The respondent maintained that there was a significant public interest in deporting him, because he had a total of 5 convictions for 10 offences, including a first offence of violent conduct. Furthermore, he had been arrested by the police on 11 occasions for varying offences including attempted murder; burglary; violent disorder; handling dangerous goods; grievous bodily harm; attempted theft; affray and robbery. He was previously part of the criminal gang known to the police as 'The Don't Say Nothing Gang'. He associated with members of this gang. The criminal gang had been involved in violence and street robberies which involved a variety of weapons including knives and sticks. He had had a deportation order made against him and he had returned to the UK in breach of that order. He had a clear disregard for the laws of the UK, and he had continued to commit offences during his time here. He had further breached the deportation order by taking up employment.

The Hearing Before, and the Decision of, the First-tier Tribunal

9. The appellant's appeal came before Judge O'Keeffe sitting in the First-tier Tribunal at Hatton Cross on 7 December 2022. Both parties were legally represented, with Ms Daykin appearing on behalf of the appellant, and Mr Williams (Home Office Presenting Officer) appearing on behalf of the respondent. The Judge received oral evidence from the appellant and from four supporting witnesses - one of whom was his mother, 'Ms T', and another of whom was his partner, 'Ms C', who is also the mother of two of his three children: 'K' (born on 11 April 2014) and 'Y' (born on 17 October 2019). The appellant's other child, 'Z' (born on 7 September 2015), has a different mother, and his mother was not called as a witness.

10. Mr Williams made it clear at the outset of the hearing that no reliance was placed by the respondent on any allegations the appellant had faced in the past that did not lead to a conviction.

11. The Judge's discussion and findings began at [22] of the Decision.

12. At [28], the Judge found that the appellant had demonstrated that he had a genuine and subsisting parental relationship with all three of his children. At [29] the Judge found that the appellant and Ms C had given consistent evidence that they continued to be in a relationship with each other, and

that they used to be living together before the appellant was detained. She was satisfied that they were in a genuine and subsisting relationship. She further held that, apart from the appellant's offending history, there was absolutely nothing in the evidence to suggest that the appellant's presence in this children's lives was anything other than positive.

13. At [30] the Judge went on to address the submission that the appellant also had a genuine and subsisting parental relationship with his younger sister, 'M', who had been born on 26 June 2009 and was now aged 13. She sadly had been the victim of serious sexual abuse at the hands of her father, who had received a sentence of 24 years imprisonment. At [33] the Judge said that, while she had no doubt that the appellant provided emotional support to his sister M and to his mother, she was not persuaded that the evidence demonstrated that he had stepped into the shoes of a father-figure.

14. At [34], the Judge held that Article 8 was clearly engaged in its family life context. The issues for determination in the appeal were therefore as identified in Ms Revill's skeleton argument as adopted by Ms Daykin: namely, whether deportation would be unduly harsh on the appellant's children or Ms C, or whether there were very compelling circumstances over and above Exceptions 1 and 2, such that deportation would be disproportionate.

15. At [35] and [36], the Judge cited paragraphs [41] and [42] of the Supreme Court decision of *HJ (Iraq) -v- SSHD* [2022] UKSC 22. At paragraph [37], the Judge directed herself that whether deportation would be unduly harsh on the children involved a consideration of their best interests, and that she therefore was going to apply the principles set out by Lord Hodge in *Zoumbas -v- SSHD* [2013] UKSC 74, which she went on to list.

16. The Judge went on to juxtapose the oral evidence bearing on the issue of the children's best interests with what she was able to glean from the documentary evidence. The Judge concluded, at [48], that deportation of the appellant would undoubtedly make life harder for Ms C and, as a result, for her two children. But, on the evidence before her, considered as a whole, she found that it had not been demonstrated that the effect of the appellant's deportation on Ms C would be unduly harsh. With regard to the impact upon the children, the Judge held at [49]:

> "I was told very little about the two younger children and have no evidence from [Z's] mother as to how the removal of the appellant would affect her on a practical level in terms of childcare. Losing the appellant as a physical presence in their lives would undoubtedly be difficult for these children. Recognising the elevated standard applicable in this case and considering the evidence before me as a whole, I find that the appellant has not demonstrated that the impact of removal on any of his three children would be unduly harsh."

17. The Judge went on to address the question of whether there were very exceptional circumstances that outweighed the public interest in the appellant's deportation. At [51], she said that although deportation would not be unduly harsh on the children, she took into account the negative impact that deportation would have on their well-being. She held that the appellant also played a supportive role for his sister. Removal of the appellant was likely to increase the burden placed on his mother caring for the family, and in particular supporting M. On balance, she considered that it was in M's best interest that the appellant remained in the UK, thus avoiding any further stress and upset either for her or her mother.

18. At [57], the Judge said:

> "The appellant has entered the UK three times in breach of his deportation order. He was sentenced in relation to the first entry. Although the appellant has not been charged for any offences arising from the second and third entries to the UK, this is conduct I consider highly relevant to the proportionality assessment. The appellant knows that he is subject to a deportation order but chooses to ignore it completely. Whilst there is evidence of his rehabilitation to a degree with the Finesse Foreva organisation, the appellant clearly does not believe that he should be subject to a deportation order. His choice to ignore completely an order lawfully made and not appealed, weighs against any finding in his case that the risk of re-offending has been reduced as a result of his rehabilitation."

19. The Judge returned to this theme at paragraphs [60] and [61]. The appellant had displayed criminal behaviour in entering the UK twice in breach of the deportation order, following his original entry in breach of the deportation order for which he had been convicted. The appellant appeared to view the deportation order as an inconvenience to be ignored as he chose. There was a significant public interest in seeing the enforcement of the deportation order which was lawfully made as a result of the appellant's offending behaviour and not challenged by him. His wilful, blatant and continued disregard for the deportation order carried very significant weight against him in the balancing exercise.

20. At [62], the Judge said that, after taking into account all the factors that weighed in the appellant's favour, the family life considerations in this case taken cumulatively were not so strong that it would be disproportionate to remove the appellant. It had not been demonstrated that there were very compelling circumstances in this case that outweighed the public interest in the deportation of this appellant.

The Grounds of Appeal

21. The grounds of appeal to the Upper Tribunal were settled by Ms Daykin. Ground 1 was that the Judge had erred in the assessment of the evidence leading to the conclusion that it was not unduly harsh for K to remain in the UK without the appellant. Ground 2 was that the Judge had failed to consider the extent of emotional harm that was likely to be experienced by K, M and Y. Ground 3 was that the Judge had erred in her assessment of

the evidence leading to the conclusion that the appellant had not stepped into a parental role in relation to his sister M. Ground 4 was that the Judge had erred when assessing very compelling circumstances by placing no weight whatsoever on the appellant's specific and positive contribution to his local community and the evidence of rehabilitation. Ground 5 was that the Judge had reached an irrational conclusion that the cumulative family life considerations were not sufficiently strong enough to make deportation disproportionate.

The Reasons for the Eventual Grant of Permission to Appeal

22. Permission to appeal was initially refused by First-tier Tribunal Judge Mills on 27 February 2023. Judge Mills found that the challenge failed to establish an arguable error of law in the Judge's decision. The Judge had given detailed consideration to the relevant evidence, and had provided adequate reasons for the conclusions that she had reached. It was open to her to dismiss the appeal for the reasons she gave.

23. On a renewed application for permission made to the Upper Tribunal, on 25 April 2023 Upper Tribunal Judge Kamara granted permission for the following reasons:

> "2. It is arguable that the Judge erred in assessing the issue of undue harshness, including a failure to consider the extent of emotional harm, applying HA (Iraq) [2020] EWCA Civ 117.
>
> Permission is not refused on any ground."

The Hearing in the Upper Tribunal

24. At the hearing before us to determine whether an error of law was made out, Ms Daykin developed the grounds of appeal. It was not necessary for there to have been specially commissioned expert evidence to show the likely impact on M and K of the appellant's deportation. As the oral evidence was internally consistent and unchallenged, the Judge ought to have found that there was likely to be significant emotional harm caused to M and K, and treated this as a weighty factor. Although she had acknowledged the negative impact on the children, she ought to have treated the prospect of emotional harm as tipping the matter over the edge. At [57] the Judge had rowed back from the concession she had made at [22].

25. On behalf of the respondent, Mr Wain adopted the Rule 24 Response settled by a colleague. Mr Wain submitted that the Judge could not ignore the respects in which the oral evidence was not consistent with the independent documentary evidence.

26. In reply, Ms Daykin submitted that the Judge failed to have regard to the timing of the appellant's re-entries in breach of the deportation order. They were in the context of the appellant's father only just being taken out of the equation, and so his mother and M needing the appellant's support

and/or the appellant wanting to support them. At [57] the Judge had erred in placing no weight on the appellant's rehabilitation as a result of his repeated breaches of the deportation order.

Discussion and Conclusions

27. In the light of the way that the appellant's case has been presented, we consider that it is helpful to set out the guidance given by the Court of Appeal in *T (Fact-finding: second appeal)* [2023] EWCA Civ 475 as to the proper approach which we should adopt to the impugned findings of fact made by Judge O'Keeffe:

> 56. The most-frequently cited exposition of the proper approach of an appellate court to a decision of fact by a court of first instance is in the judgment of Lewison LJ in *Fage UK Ltd v Chobani UK Ltd* [2014] EWCA Civ 5:
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> "114. Appellate courts have been repeatedly warned, by recent cases at the highest level, not to interfere with findings of fact by trial judges, unless compelled to do so. This applies not only to findings of primary fact, but also to the evaluation of those facts and to inferences to be drawn from them. The best known of these cases are: *Biogen Inc v Medeva plc* [1977] RPC1; *Piglowska v Piglowski* [1999] 1 WLR 1360; *Datec Electronics Holdings Ltd v United Parcels Service Ltd* [2007] UKHL 23, [2007] 1 WLR 1325; *Re B (A Child) (Care Proceedings: Threshold Criteria)* [2013] UKSC 33 [2013] 1 WLR 1911 and most recently and comprehensively *McGraddie v McGraddie* [2013] UKSC 58 [2013] 1 WLR 2477. These are all decisions either of the House of Lords or of the Supreme Court. The reasons for this approach are many.
>
> (i) The expertise of a trial judge is in determining what facts are relevant to the legal issues to be decided, and what those facts are if they are disputed.
>
> (ii) The trial is not a dress rehearsal. It is the first and last night of the show.
>
> (iii) Duplication of the trial judge's role on appeal is a disproportionate use of the limited resources of an appellate court, and will seldom lead to a different outcome in an individual case.
>
> (iv) In making his decisions the trial judge will have regard to the whole of the sea of evidence presented to him, whereas an appellate court will only be island hopping.
>
> (v) The atmosphere of the courtroom cannot, in any event, be recreated by reference to the evidence (the transcripts of the evidence),
>
> (vi) Thus even if it were possible to duplicate the role of the trial judge, it cannot in practice be done.
>
> 115. It is also important to have in mind the role of a judgment given after trial. The primary function of a first instance judge is to find facts and identify the crucial legal points and to advance reasons for deciding them in a particular way. He should give his reasons in sufficient detail to show the parties and, if need be, the Court of Appeal the principles on which he has acted and the reasons that have led him to his decision. They need not be

> elaborate. There is no duty on a judge, in giving his reasons, to deal with every argument presented by counsel in support of his case. His function is to reach conclusions and give reasons to support his view, not to spell out every matter as if summing up to a jury. Nor need he deal at any length with matters that are not disputed. It is sufficient if what he says shows the basis on which he has acted. These are not controversial observations: see *Customs and Excise Commissioners v A* [2022] EWCA Civ 1039 [2003] Fam 55; *Bekoe v Broomes* [2005] UKPC 39; *Argos Ltd v Office of Fair Trading* [2006] EWCA Civ 1318; [2006] UKCLR 1135."

57. More recently, Lewison LJ summarised the principles again in *Volpi and another v Volpi* [2022] EWCA Civ 464 at paragraph 2:

> i) An appeal court should not interfere with the trial judge's conclusions on primary facts unless it is satisfied that he was plainly wrong.
>
> ii) The adverb "plainly" does not refer to the degree of confidence felt by the appeal court that it would not have reached the same conclusion as the trial judge. It does not matter, with whatever degree of certainty, that the appeal court considers that it would have reached a different conclusion. What matters is whether the decision under appeal is one that no reasonable judge could have reached.
>
> iii) An appeal court is bound, unless there is compelling reason to the contrary, to assume that the trial judge has taken the whole of the evidence into his consideration. The mere fact that a judge does not mention a specific piece of evidence does not mean that he overlooked it.
>
> iv) The validity of the findings of fact made by a trial judge is not aptly tested by considering whether the judgment presents a balanced account of the evidence. The trial judge must of course consider all the material evidence (although it need not all be discussed in his judgment). The weight which he gives to it is however pre-eminently a matter for him.
>
> v) An appeal court can therefore set aside a judgment on the basis that the judge failed to give the evidence a balanced consideration only if the judge's conclusion was rationally insupportable.
>
> vi) Reasons for judgment will always be capable of having been better expressed. An appeal court should not subject a judgment to narrow textual analysis. Nor should it be picked over or construed as though it was a piece of legislation or a contract."

Ground 1

28. In the light of the guidance which we have set out above, Ground 1 has an unpromising start. Ms Daykin submits that the Judge placed undue weight on the absence of specific reference to the appellant in documents and letters from the school relating to K. But as is emphasised by the Court of Appeal, the question of how much weight should be attributed to a particular piece of evidence is exclusively the province of the Trial Judge, and we can only intervene if the Trial Judge was clearly wrong.

29. We consider that it was entirely open to the Judge in her function as the Trial Judge to attach weight to the fact that Ms C's evidence regarding the improvement in K's behaviour being due to the input of the appellant was not supported by documents and letters from K's school.

30. There is no merit in the submission that the Judge failed to give reasons for not attaching any weight to Ms C's evidence regarding the improvement in K's behaviour being due to the input of the appellant. On the contrary, the Judge expressly weighed up that evidence against the documentary evidence emanating from an independent source. The Judge inferred from this evidence that it was in the professionals in K's life that had led to an improvement in K's behaviour, whereas there was no indication that the appellant had played a role in his improvement so far as the school was concerned.

31. It is a mischaracterisation to say that the Judge effectively set aside Ms C's evidence due to the absence of any explicit corroboration from the school. The Judge weighed up all the relevant evidence pertaining to the issue, which she reasonably treated as being to some extent conflicting, and gave adequate reasons for concluding that the appellant's role as a father in K's life was not as pivotal as the oral evidence (albeit internally consistent) suggested, albeit that the Judge accepted that it was in K's best interest that the level of direct contact which he currently enjoyed with his father should continue. The Judge was not clearly wrong to reach this conclusion, and no error of law is made out.

Ground 2

32. Although Ground 2 has been treated as a reasons challenge, in reality it is a sophisticated attempt to re-argue the case that was put before the First-tier Tribunal.

33. Ms Daykin submits that the Judge failed to give appropriate weight to the emotional impact upon the children individually, flowing from the physical loss of their father. In submitting that the Judge failed to give appropriate weight to the emotional impact upon the children, Ms Daykin is saying no more than that the Judge ought to have found that the impact upon the children would be unduly harsh.

34. The Judge acknowledged that there was no substitute for physical contact and the presence of the appellant in the children's lives, and held that the physical loss of their father would undoubtedly have a negative impact upon the children. The Judge gave reasons for finding that the negative impact upon the children would not amount to an impact that was unduly harsh. Ms Daykin does not submit in terms that this reasoning was inadequate, but supplies reasons as to why the Judge should have reached a different conclusion.

35. It is apparent from comparing Ms Revill's skeleton argument which Ms Daykin adopted before the First-tier Tribunal with Ms Daykin's formulation

of Ground 2 that the error of law challenge involves taking a point that was not taken in the First-tier Tribunal.

36. The skeleton argument by Ms Revill, which Ms Daykin adopted, did not cite the judgment of Peter Jackson LJ in *HJ (Iraq) -v- SSHD* [2020] EWCA Civ 117, where he said at [159] that the issue of emotional harm should not be minimised, and where he pointed out at [157] that deportation of a close care-giver - where face-to-face contact could not continue - might be akin to a bereavement. Indeed, Ms Revill did not mention prospective emotional harm at all. Ms Revill only singled out K for special mention. She submitted that, in the absence of the appellant, K's behaviour and academic achievements were likely to deteriorate. This is not the same as postulating that K would suffer significant emotional harm.

37. We do not consider that the Judge minimised the adverse impact on the children consequential upon their father's removal to Portugal. She did not address the question in the context of postulated emotional harm, as this was not the way the case was put. The way the case was put was that the appellant's removal would have an unduly harsh impact upon the children, and the Judge gave adequate reasons for finding that this case was not made out, and the findings which she made were reasonably open to her on the evidence.

Ground 3

38. In Ground 3 Ms Daykin submits that the Judge placed undue weight on the absence of specific reference to the appellant in documents/reports and letters from the school relating to M. She submits that the Child Assessment Reports produced in 2017, in the immediate aftermath of the revelation of the serious sexual abuse of M by her father, were unlikely to ascribe to the appellant a parental role at that time, because it was only after the abusive father was arrested, convicted and sent to prison that the appellant stepped into that role. In respect of the evidence of Ms T, Ms Daykin submits that there were no credibility issues regarding the appellant's mother's evidence, particularly the role she described the appellant playing in their lives, and particularly in caring for his younger siblings. For example, Ms T explained in her evidence that the appellant did not remain at the hospital with her and M whilst awaiting the Mental Health Team in response to the recent incident of self-harm, because he had to go home to look after the other children. Ms Daykin submits that no reasons were given to reject her and the appellant's evidence on this issue. She submits that the Judge also did not show any balancing exercise that was performed between the evidence of the live witnesses and the documentary evidence which appears to have been preferred.

39. As is illuminated by the Court of Appeal's guidance set out above, there was no requirement for the Judge to perform an overt balancing exercise between the evidence of the live witnesses and the documentary

evidence. She was obliged of course to consider all the material evidence, but the weight which she gave to the evidence of the live witnesses and the weight which she gave to the documentary evidence was pre-eminently a matter for her. The Judge was not bound to accept the appellant's self-characterisation as having stepped into the role of a parent to M, even if this self-characterisation was supported by his mother, who was not an independent witness. The Judge could only deal with the evidence that was in front of her. There was no independent social worker's report or anything of that nature which supported the claim that the appellant had become a father to M. There might be good reasons why the documentary evidence that was available did not support the parental relationship claim. Nonetheless, the upshot was that there was no independent evidence to support it. The Judge's conclusion is thus not shown to be rationally insupportable.

Ground 4

40. On the one hand, Ms Daykin submits that the Judge placed no weight whatsoever on the appellant's specific and positive contribution to the local community, and to the evidence of rehabilitation and/or that the Judge totally excluded such evidence from the balancing exercise. However, on other hand, Ms Daykin acknowledges that the Judge accepted that the appellant had approached Finess Foreva himself to offer his help with tackling problems faced by young people in his area; that the Judge accepted that the appellant had assisted with mentoring young people who might be at risk of recruitment by local gangs in Croydon and regularly attended a community forum, including the police, local authorities and other community groups and regularly spoke at meetings for young people and assisted with anti-knife crime strategies; that the Judge accepted that the work by the organisation was inspiring, and the Judge accepted that the appellant was proud and genuinely enjoyed his role; and that she found that this work was evidence of rehabilitation *"to a degree"*.

41. Accordingly, the premise underlying Ground 4 is shown by Ms Daykin to be fallacious. As she has herself highlighted, the Judge has clearly given weight to the appellant's rehabilitative work and his concomitant positive contribution to the community in Croydon.

42. Ms Daykin's real complaint is that the Judge did not give this evidence decisive weight in the proportionality assessment, but instead attached significant weight to the appellant re-entering in breach of the deportation order as being an indicator that the appellant was not rehabilitated. Ms Daykin submits that one does not bluntly cancel out the other, and that a more nuanced assessment is required in light of the authorities and the factual circumstances of the case. But the Judge did not treat the negative as crudely cancelling out the positive. Her reasoning in [57] is nuanced. This is exemplified in her concluding that the positive work which the appellant had undertaken showed that he was rehabilitated *"to a degree".* There is no inconsistency in her going on to find that he was not in fact

rehabilitated - such that the risk of re-offending was reduced - because of his further offending after 2016 and his ongoing attitude with regard to compliance with the deportation order.

43. In oral argument, Ms Daykin submitted that the Judge's focus on re-entry in breach of the deportation order was inconsistent with a concession made by Mr Williams at the outset of the hearing, which the Judge said she was going to adhere to. We consider that this submission does not stand up to scrutiny. It is clear that the concession made by Mr Williams related to allegations of criminality that were on file which had not been pursued or prosecuted leading to a conviction; and in respect of which (in the absence of an admission by the appellant) the burden was on the respondent to prove the relevant criminal offending on the balance of probabilities. In the skeleton argument adopted by Ms Daykin, Ms Revill invited the Tribunal to disregard the unsubstantiated claims of criminality made in the respondent's decision, including the claim that he was involved in gangs, on the basis that no evidence had been adduced to support these allegations. We infer that it was in this context that Mr Williams made the concession that he did. But this concession did not apply to the second and third re-entries to the UK in breach of the deportation order, about which there was no dispute.

44. Although the appellant had not been prosecuted for the criminal offending involved in these two further breaches of the deportation order, it was open to the Judge to find that the appellant had thereby committed further criminal offences on the balance of probabilities.

45. Ms Daykin submits that the Judge did not take adequate account of the fact that the reason for the appellant repeatedly re-entering in breach of the deportation order was to rejoin his family, with his mother and M being under stress at the time due to the appellant's father having only just been taken out of the equation. We do not know whether family life considerations were relied on by way of mitigation after the appellant was convicted for the first re-entry. But the appellant having been convicted and sentenced to four months' imprisonment for the first re-entry, it was open to the Judge not to treat the appellant's family ties in the UK as constituting a mitigating factor in the appellant's decision to ignore the deportation order on two further occasions.

Ground 5

46. Ground 5 is that the Judge reached an irrational conclusion at [62] that deportation in all the circumstances was not disproportionate. Ms Daykin submits that the cumulative effect of the impact of the appellant's deportation on four children, in respect of all of whom the Judge found it was in their best interest that the appellant should remain, and where two of them had specific issues that the appellant played a positive key role in managing, together with his lack of offending since 2016 and positive rehabilitative work, should have caused the Judge to conclude that there were very compelling circumstances in his case.

47. The clear flaw in this line of argument is that the Judge made a sustainable finding that the appellant had offended again after 2016 through his second and third re-entries in breach of the deportation order; and that, as a result of this, and also as a result of his attitude to the deportation order, the risk of re-offending was not reduced.

48. Irrationality is a very high hurdle to surmount, and we consider that the appellant falls well short of establishing that the Judge's conclusion on proportionality was irrational. On the contrary, as with the remainder of the decision, we consider that the Judge's conclusion was well-reasoned and that she directed herself appropriately.

Notice of Decision

The decision of the First-tier Tribunal did not contain an error of law, and accordingly the decision stands. This appeal to the Upper Tribunal is dismissed.

Anonymity

The First-tier Tribunal made an anonymity order in favour of the appellant in the light of the sensitive nature of some of the evidence. For the same reason, we consider that it is appropriate that the appellant continues to be protected by anonymity for the purposes of these proceedings in the Upper Tribunal.

Andrew Monson
Deputy Judge of the Upper Tribunal
Immigration and Asylum Chamber
16 June 2023