IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2023-002851

First-tier Tribunal No: : HU/01351/2022

THE IMMIGRATION ACTS

Decision & Reasons Issued:

On 30th of January 2025

Before

UPPER TRIBUNAL JUDGE KEITH

Between

KEBWE DADRIANE TOMLINSON
(NO ANONYMITY ORDER MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: The appellant represented himself
For the Respondent: Ms A Ahmed, Senior Home Office Presenting Officer

Heard at Field House on 19 December 2024

DECISION AND REASONS

Background

1. This is the remaking of the appellant's appeal against the respondent's refusal on 15th March 2022 of his human rights claim for leave to remain, in the context of a deportation decision having been made against him on 8th November 2021. The Upper Tribunal had previously found errors of law in a First-tier Tribunal decision (Judge Brannan) dismissing the appellant's appeal. The Upper Tribunal had retained remaking and preserved some of the FtT' Judge's findings. The Upper Tribunal error of law decision is annexed to these reasons and the preserved findings are referred to at §22, which I set out in further detail below.

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The hearing

2. The appellant represented himself. My previous directions dated 2nd September 2024 explain the context, which briefly are that earlier representatives had withdrawn at the last moment, he had come to an earlier hearing unprepared and that hearing had been adjourned. On behalf of the respondent, Ms Ahmed had provided significant assistance to the appellant and me in preparing an agreed core bundle and an authorities bundle, for which the appellant and I were grateful. Her co-operation has significantly assisted the appellant in having a fair hearing.

3. The following witnesses gave evidence at the hearing before me: the appellant; his current partner, Ms Tamica Mighty, his mother, Mrs Jennifer Wilson-Hudson; his step-father, Kenneth Hudson, one of his sisters, Ms Toshaine O’Connor; and another sister, Ms Touah Brown. Each adopted their witness statements and Ms Ahmed cross-examined them. Their evidence is largely uncontested, albeit with some important areas of dispute. I found them, on the whole, to be witnesses of candour who were willing to volunteers facts which did not necessarily support the appellant’s case. I set out my findings briefly and only discuss areas of contested evidence where it is necessary to explain my decision.

Findings

The relevant previous findings

4. I set out a number of findings made by Judge Brannan (hereinafter, the ‘Judge’) in his decision promulgated on 22nd May 2023 and where such findings were unaffected by the errors of law which this Tribunal had previously found. The Judge had noted that there was a dispute about the level of the involvement that the appellant had with various of his children and former partners. The Judge proceeded to set out the facts and findings, which I recite.

5. These findings were as follows:

> “9. The Appellant is a national of Jamaica born on 19 November 1984. He entered the UK on 13 April 2001 when he was 16. He was granted indefinite leave to remain on 12 June 2003 as a dependent on his stepfather.
>
> 10. On 26 January 2006 he was cautioned by the police for theft by an employee.
>
> 11. In November 2006 the Appellant had his first child (‘Child 1’) with the first of his ex-partners (‘EX 1’). Child 1 is a boy. According to the statement of the Appellant’s mother, the Appellant’s relationship with EX 1 began in 2004 and she moved into the family home during her pregnancy. She goes on to say that the relationship broke down soon after Child 1 was born.
>
> 12. On 17 April 2007 the Appellant was convicted of possessing controlled drug with intent to supply – class A – Heroin, and sentenced to 9 months of imprisonment suspended for 2 years.
>
> 13. In June 2008, the Appellant had a second child (‘Child 2’) with the second of his ex-partners (‘EX 2’).

14. On 30 June 2010 the Appellant was sentenced to 3 years and 6 months of imprisonment for possession of cocaine with intent to supply. He remained in a relationship with EX 2 during his imprisonment.

15. The Respondent pursued deportation action against the Appellant. The Appellant was successful in an appeal against the decision to deport him on 8 June 2011. The Respondent appealed against that decision with permission from Immigration Judge Easterman. Senior Immigration Judge Gleeson (as she was then) found no error of law in the first instance decision at a hearing on 25 October 2011. The minutes of that hearing records that the reason why the Appellant's appeal was allowed was that his family life, particularly his links with his children and their mothers outweigh the public interest in deportation. The Respondent gave him a warning letter on 14 December 2011 that if the Appellant came to the adverse notice of the Respondent in future she would be obliged to consider the question of whether he should be deported.

16. The Appellant said in oral evidence that his relationship with EX 2 ended in 2012 but they decided to give their relationship another try resulting in the conception of another child ('Child 4'). She is a girl born in July 2014.

17. However, the Appellant also appears to have been in a relationship with another woman ('EX 3') at this time. This is evident because during cross-examination the Appellant was asked about why he was recorded as living at an address in Wimbledon. His answer was that he lived with Ex 2 for three years there.…

18. According to the evidence of his current partner, the Appellant began a relationship with his current partner in mid-2015. She already had a child from a previous relationship ('Child 3') born in June 2009.

19. On 7 April 2017 the Appellant was convicted after a guilty plea of possession of cocaine and fined.

20. In July 2018 the Appellant had another child ('Child 5') with another woman ('Ex 4'). The birth certificate shows that the birth was registered in March 2019. … The Appellant's current partner said when asked about the Appellant cheating on her that she felt 'like any human would'.

21. It is not clear when the Appellant started or resumed cohabitation with his current partner. In December 2020 she gave birth to the Appellant's fifth biological child ('Child 6'). I accept that by then they lived together.

22. On 6 January 2021 the Appellant was arrested in possession of heroin and crack cocaine. On 19 March 2021 he was convicted of being concerned in the supply of a controlled drug of-class A (heroin); possessing a controlled drug of Class A (crack cocaine) with intent to supply; possessing a controlled drug of Class A (heroin) with intent to supply; being concerned in the supply of a controlled drug of Class A (crack cocaine), and sentenced at Lewes Crown Court to 5 years and 220 days of imprisonment.

23. While in prison the Appellant has been visited by Child 1, Child 3, Child 5, Child 6, Ex 4, his current partner and a number of other relatives. Children 3, 5 and 6 have visited with their own mothers …. Child 1 has been brought by either Ex 4 or another relative."

Child 1

6. The Judge concluded at §58 that the appellant had a genuine and subsisting relationship with Child 1. He noted that there is little evidence of his current situation or his own wishes and feelings. I pause to note that that Child 1 is in fact now an adult aged 19 and I have heard no further evidence in relation to him.

Children 2 and 4

7. At §28, the Judge found there was no explanation of the appellant's role in the lives of Children 2 and 4 and that he had no meaningful role in their upbringing at that time. Their mother has since remarried. As with Child 1, I have no updated evidence, and there is no reason to make findings different from the Judge, although for the avoidance of doubt, I have considered the matter afresh. I find that the appellant does not have genuine and subsisting parental relationships with those two children.

Child 5

8. At §29 to §31, the Judge noted prison visits by Child 5 and his mother, EX 4 to the appellant, and there was a desire to maintain a father-son relationship. The Judge accepted that the appellant had a parental relationship with Child 5 by virtue of the prison visits (§55). I also have further updated evidence about Child 5 which reinforces this, namely a letter from a former teacher of Child 5 at his primary school dated 10th September 2024, which described the appellant's "unwavering commitment" to Child 5's development, coparenting with the mother, regularly attending school, parents' meetings and 'pop in' days and a strong commitment to Child 5's academic success. I find that this is continuing evidence of an ongoing relationship.

Child 3 (the appellant's step-son) and child 6

9. At §55, the Judge found that although the appellant had lived in a household with Child 3 at some time, cohabitation was broken by the Appellant's relationship with Ex 5 and there is no evidence of the Appellant taking any decisions in relation to the upbringing of Child 3 or providing financial support for him. I accept that in light of the updated evidence and changed situation, the appellant does have a parental relationship as a step-father to Child 3. He lives with him and Ms Mighty and contributes to general household expenses, even if not to Child 3 directly. Ms Mighty describes the appellant as able do the 'school runs' at around 3 to 3.30pm as he works an early shift as an agency delivery driver for Waitrose. She describes a relationship with the appellant and Children 3 and 6 as part of a blended family, and although the relationship between the appellant and Ms Mighty and in turn with child 3 has had its ups and downs, including during periods of the appellant's imprisonment, it is currently enduring.

The wider family

10. The willingness of the appellant's parents and two sisters to attend this Tribunal is testament to the closeness of the family and love for the appellant. While the appellant lives with Ms Mighty in south London, he regularly sees his mother and

stepfather who live in Wembley. There was some dispute as to whether this was on a weekly basis or less regularly, but I am satisfied that contact is frequent. However, I do pause to observe that Mr Hudson confirmed that he acts as carer for his wife, the appellant's mother, who is aged 58, but suffers from depression (as evidenced by a talking therapies treatment plan dated 27th April 2023), has spinal decompression, has had operations on her lumber spine, spondylolisthesis, end stage bilateral knee osteoarthritis and fibroids. The consequence of this is that Mr Hudson assists his wife with her daily washing, does the shopping and most of the housework. Mrs Wilson-Hudson described herself as coping with the help of her daughters whilst the appellant was in prison. Mr Hudson also has health issues, being substantially older. He has had kidney stones removed, has recently been diagnosed with prostate cancer for which he is having outpatient treatment, scheduled for January and his eyesight is failing. He has three biological children who live in London a few miles from him. They do not provide him with significant care as they have their own families. Ms O'Connor and Ms Brown, 4 years older and two years younger respectively of the appellant, describe their close relationship with him, albeit they did not know fully of the nature of his offending. They believe that the appellant visits his parents most weekends, particularly on a Sunday. I find that all of this evidence is truthful and reflects a close-knit family, spread out across London, with regular visits by the appellant to his parents, but he does not, I find, provide a significant caring role for them.

11. With regard to Ms Mighty, she describes a full-time role with a London University involving clinical and technician skills and also works as a bank nurse additionally for a second income. She receives Universal Credit where if she earns a certain amount of money, then she is able to reclaim 85% of childcare, but if her income exceeds a certain level then she loses that benefit. She describes the appellant as helping with childcare, the electricity and gas and rent and whilst she pays the bills, the appellant makes contributions monthly on most occasions if she needs him to do so. She indicated that she struggled financially when he was in prison.

Friendships

12. With regard to the appellant's circumstances, the Judge had been critical of letters from various supporters and friendship groups within the UK, if they did not know of the appellant's criminal offending and how that could be reconciled with them knowing him as a "great person" and a "good man". There was no suggestion that they are pro-criminal peers and as this Tribunal had pointed out, the Judge had not explained why, notwithstanding that they are not pro-criminal peers, the appellant could not have established genuine friendships over the years with a different circle of non-criminal friends.

13. I am satisfied that in this context the appellant has a wide network of non-criminal friends, as well as, regrettably, associations with pro-criminal peers. The non-criminal friendships are evidenced in correspondence from Milton Mcdowell (page [86] of the bundle before me), Roger Prince (page [87]), Nastassja Murphy (page [89]) and Rockel Rushan Prince-Johnson (page [90]). Whilst none of these witnesses attended to give evidence before this Tribunal, they are consistent with somebody who has lived in the UK for a significant part of their life and has established friendship groups outside of the pro-criminal peers. I do not doubt their accuracy despite the lack of live witness evidence.

Work

14. In terms of the appellant's work, the Judge had set out his concerns about the paucity of evidence with regard to the appellant having worked in the past. The appellant readily accepted that he had no academic qualifications, but said he was now working six days a week as an agency delivery driver, from June 2024. He suggested that he had had an offer of employment from Waitrose but then referred to being asked to apply for a job in circumstances where agency workers who were regarded as good by Waitrose had the opportunity to apply. He had not provided any documentation confirming an offer from Waitrose and I would have expected an offer from an organisation to be documented and readily available. I do not find the appellant to be intentionally dishonest, but I find his evidence confusing on the matter and I find it more likely that he has been invited to apply for a permanent position rather than, at this stage, being offered permanent employment. It appears therefore that he is, perhaps for the first time in his life, and in the absence of any reliable evidence of earlier employment, carrying out a regular job unrelated to drugs dealing, which provides his family with financial support.

Finances

15. An important question remains of the extent to which the appellant remains in debt. An OASys Report of 14th December 2022 had described the appellant as accepting that he had £5,000 in credit card debts along with £1,900 outstanding on an overdraft and he was in the process of trying to make arrangements for those debts but was, at that stage, clearly willing to use illegal earnings as a source of income, as evidenced by the offence for which he had been committed and had been struggling financially, with poor budgeting skills.

16. The appellant said in evidence to me that he had not known that those from whom he had borrowed were drugs dealers. I accept Ms Ahmed's challenge that the appellant is not being truthful in this aspect of his evidence, bearing in mind his arrest for possession with intent to supply. While the appellant provided details of how he had paid off a mobile phone debt, I also accept Ms Ahmed's challenge that he has not provided evidence of having cleared his credit card debts and overdraft, despite my specific direction, at §4(d) of the directions dated 4th September 2024. The appellant is someone who had previously had debts, which presented a risk in terms of his return to drug dealing. The appellant was aware that this risk was something I would need to consider at this hearing, which is why I gave the directions I did. I am very conscious that the appellant is a litigant in person, but on the other hand if, as he now claims, he has reached some form of agreement with his creditors, for example by way of a personal payment plan or something of that nature, that is something that he could have provided and he has not explained why he has not. I find it more likely that with his new job, he is now, just, keeping his head above water, but the question of outstanding debts and how he is able to finance these debts is not something which is the subject of any reliable evidence. I bear in mind the OASys author's assessment in December 2022, before his release, that he was at low risk of serious reoffending, but the lack of evidence about how the appellant has resolved his debts other than his mobile phone is troubling. I find that there is no reliable evidence that the appellant does not continue to have the debts which he had when he entered prison. That must be relevant to the continuing risk of reoffending.

Integration in Jamaica

17. The Judge had found that there were no very significant obstacles to the appellant's integration into Jamaica. I have heard evidence that he has a grandmother there and various aunts and grandchildren, who are said to be living cramped accommodation, but I bear in mind that whilst the appellant has suffered from depression, for which he has taken medication, he is able to work six days a week as a delivery driver without any qualifications, (but with a driving licence). Once again, while I have considered matters afresh, I also conclude that the appellant would be able to integrate as an insider in Jamaica and there are not very significant obstacles to his integration there.

Analysis based on my findings

18. As the Judge did, I set out the analysis starting with Exceptions 1 and 2 of Section 117C of the Nationality, Immigration and Asylum Act 2002 but noting that by virtue of the length of the appellant's prison sentence he must satisfy me that there are very compelling circumstances over and above those two exceptions. I do not recite Section 117C of the 2002 Act or the well-known authority of HA (Iraq) v SSHD [2022] UKSC 22 in relation to whether the effect of deportation would be unduly harsh on Ms Mighty or Children 1, 3, 5 or 6.The Judge had considered and I reminded myself of the relevant factors set out in Unuane v UK [2021] 72 EHRR 24 at §72 to §73. I turn to an assessment of the appellant's circumstances as to whether this framework renders refusal of the appellant's human rights claim disproportionate.

Exception 1

19. In respect of Exception 1, and the appellant's right to right to respect for his private life, the appellant has lived for more than half of his life lawfully in the UK. Contrary to the decision of the Judge on social and cultural integration, and having also reminded myself of the relevant principles in CI (Nigeria) v SSHD [2019] EWCA Civ 2027, and the extent to which the appellant's previous and recent periods of imprisonment have disrupted his social and cultural ties in the UK, he has maintained relationships with members of his family, has other social relationships outside pro-criminal peers, lives in accommodation, is currently working and has done so since June 2024. I do not regard the fact of the appellant having fathered five children by four different mothers as indicative of a lack of social and cultural integration. Rather it is a facet of different kinds of families and parental relationships, as part of, rather than separate from, wider UK society.

20. However, I have found that the there are not very significant obstacles to the appellant's integration in Jamaica, despite his depression. He lived there until he was 16, has extended family there and despite having no qualifications, has recent work experience which he could utilise, as a driver.

21. The appellant therefore does not satisfy Exception 1.

Exception 2

22. The appellant has a current relationship with Ms Mighty and qualifying children, two of who he resides with (Children 3 and 6) and one with whom he has regular and important involvement (Child 5).

23. Child 1 is now an adult, so is not a qualifying child. Even if he were a child, given the paucity of the evidence about Child's circumstances and wishes, there is no evidence that the effect on him either or the so-called 'go' or stay' scenarios

would be unduly harsh (‘go’ where he returns to Jamaica with his father, ‘stay’ where the son remains in the UK).

24. In respect Child 5, I bear in mind the correspondence from the primary school already referred to. Child 5 is now six. His mother, EX 4 is from Jamaica. He is said to have asthma. Beyond the school letter’s reference to the importance of the appellant’s role in his son’s life as part of a nurturing home environment, there is no evidence of how the effect of deportation in in the ‘go’ scenario would be unduly harsh. I have no updated evidence about EX 4 or her ability to return to Jamaica, beyond her having another child. Once again, even considering the school letter, it is not sufficient to explain why the effect of the ‘stay’ scenario, whereby Child 5 is separated from seeing his father but maintains contact with him from Jamaica, would be unusually harsh. I accept the author’s powerfully held views on the appellant’s role in nurturing his son’s emotional growth and confidence and support for his academic endeavours, but that does not begin to meet the threshold of undue harshness.

25. I do, however, accept that the effect on Child 6 of the ‘go’ scenario would be unduly harsh. He is in a relationship with Ms Mighty, who is integrated in the UK, lives near her mother and works two jobs to support her two children and it would be unreasonable to expect Child 6 and Child 3 to leave the UK as part of a family unit with the appellant. I also accept the effect of deportation in the ‘stay’ scenario would be unduly harsh, given how Ms Mighty, despite her best endeavours, struggled to cope while the appellant was in prison. Child 6 would need to go into expensive after-school care, not all of the costs of which Ms Mighty could reclaim back in benefits, and to expect remittances from the appellant while he is re-establishing himself in Jamaica is unrealistic. Just as she had barely coped before, I find that the same would be true in the event of the appellant’s deportation. Exception 2 is therefore met in respect of Children 3 and 6.

Very compelling circumstances

26. I have considered the effect of deportation on the appellant’s qualifying partner and children, and the wider family (parents and siblings), both separately and when combined with other aspects of the impact on the appellant’s private life, and whether they amount to very compelling circumstances, so as to outweigh the public interest in deportation.

27. The starting point is the public interest in the appellant’s deportation as a foreign criminal.

28. In the appellant’s favour, he has lived in the UK for more than half his life and that is a significant period, namely since 2006, entering as a minor. He remains integrated in the UK, has family who clearly love him and friends who think highly of him, as well as professionals (his probation officer writes highly of him). He now has a legitimate job (perhaps the first n years) and the possibility of a permanent job. I attach significant weight to his private life, even if he does not meet the requirement of Exception 1.

29. The effect of the appellant’s deportation on Ms Mighty and Children 3 and 6 as British citizens would be unduly harsh. He is contributing to the family finances, as well as playing an important role in Child 5’s life. He clearly meets Exception 2, and that too has significant weight. His wider family will, I have no doubt miss

him very much, even if it is his step-father who cares for his mother, and his step-father is in poor health.

30. Against the appellant, I bear in mind the three aspects of the public interest in deportation, as set out in Zulfiqar v SSHD [2022] EWCA Civ 492: (i) the risk of re-offending; (ii) the need to deter foreign nationals from committing serious crimes and (iii) maintaining public confidence in the system.

31. There remains a pattern of increasingly serious offending which the fact of the appellant's fatherhood and loving family relationships have done nothing to deter the appellant. Having successfully resisted deportation in 2011, the respondent had warned him of the risk of deportation if he offended again in the future. He did so anyway and received an even lengthier sentence. As I explored with the appellant in his witness evidence, he had no doubt provided assurance as to his changed ways when he succeeded in his previous appeal in 2011, and I asked him what had changed since then in light of his subsequent offending. His suggestion to me was that he had since matured and reflected on his offending. While that may be true, he was in his late thirties when he committed his last, most serious offence and this was connected to his financial difficulties. I have born in mind the OASys assessment of a low risk of a reoffending, but I also attach significant weight to absence of evidence about financial stability, or the lack of contact with pro-criminal peer connections. The fact that the appellant claims untruthfully not to have been aware of the criminality of those he borrowed from only reinforces that risk.

32. I have considered the nature of that offending (drug-dealing), while conscious of the risk of not 'double-counting' (see: Gadinala v SSHD [2024] EWCA Civ 1410, especially para [44]). I have borne in mind the sentencing remarks for the index offence of His Honour Judge Huseyin (starting at page [156]), which recognised the financial pressure the appellant was under, his guilty plea and a sentence at the lower end in the range of the sentence, but which was nevertheless for 5 years and 220 days. I also note the UK press reports of the appellant's conviction, which reported his possession of 93 wraps of crack, said to be worth £1,860, which the appellant had attempted to swallow when arrested (page [160]), in a targeted arrest as the car he was in was suspected being used to deal drugs.

33. The nature of the offenses, and the public interest in deterrence and confidence, means that the public interest in deportation is very weighty. Notwithstanding all of the factors in the appellant's favour, I conclude that the public interest ultimately outweighs those factors. The effect is unduly harsh on his family, but there is nothing in the quality of that which takes it beyond harsh, to become very compelling, either of itself or in conjunction with the appellant's private life, which I have also considered separately. The proportionate response lies in the appellant's deportation, which does not breach his human rights.

34. Accordingly, the appeal is dismissed.

Notice of Decision

The appellant's appeal is dismissed on human rights grounds.

J Keith

Judge of the Upper Tribunal

Immigration and Asylum Chamber

27th January 2025

ANNEX – ERROR OF LAW DECISION

IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2023-002851

First-tier Tribunal No: HU/01351/2022

THE IMMIGRATION ACTS

Decision & Reasons Issued:

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Before

UPPER TRIBUNAL JUDGE KEITH
DEPUTY UPPER TRIBUNAL JUDGE CHANA

Between

KEBWE DADRIANE TOMLINSON
(NO ANONYMITY ORDER MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellant: Mr A Patyna, Counsel instructed by Duncan Lewis & Co Solicitors
For the Respondent: Mr S Walker, Senior Home Office Presenting Officer

Heard at Field House on 17th May 2024

DECISION AND REASONS

1. These are the written reasons which reflect the full oral judgment which we gave to the parties at the end of the hearing.

2. The appellant appeals against a decision of Judge Brannan of the First-tier Tribunal, promulgated on 22nd May 2023, who had considered the appellant's appeal on human rights grounds in the context of a deportation order having been made against him. He is what is statutorily defined as a 'foreign criminal.'

The Judge's reasons

3. The factual scenario is complex, but the summary of the relevant points is that the appellant is a Jamaican national, born in 1984. He entered the UK as a minor, aged 16. He was granted indefinite leave to remain on 12th June 2003, as a dependant of his stepfather. The Judge subsequently recorded a history of offending, escalating in seriousness, coupled at the same time with the appellant becoming the father of various children by various mothers. Once again it is unnecessary for us to recite that history in detail. The relevant index offences are recorded at §22 of the judgment, where the Judge stated that on 6th January 2021, the appellant was arrested for possession of heroin and crack cocaine. He was convicted on 19th March 2021 for being concerned in the supply of heroin; possessing crack cocaine with intent to supply; possessing heroin with intent to supply, and being concerned in the supply of crack cocaine, for which he received a sentence of five years and 220 days. We pause to note that during the time he was in prison, he was visited by various of his children and the Judge considered their circumstances in a clearly structured and detailed way. Having considered the children's circumstances, the Judge briefly analysed the appellant's health and prospects of reoffending on release, which was assessed to be low. The Judge also considered the circumstances of the appellant's family in Jamaica.

4. The Judge then directed himself on the law at §43 onwards, and in particular, noting Exceptions 1 and Exception 2 of Section 117C of the Nationality, Immigration and Asylum Act 2002, that as per Section 117C(6), the starting point was that the public interest required deportation unless there were very compelling circumstances over those described in Exceptions 1 and 2. The Judge reminded himself of the law in HA (Iraq) v SSHD [2022] UKSC 22 and the very strong public interest in deportation, which he cited at §46. The Judge first considered Exception 1. At §49, the Judge noted that the appellant had lived for more than half his life lawfully in the UK. At §50, the Judge reminded himself of the authority of CI (Nigeria) v SSHD [2019] EWCA Civ 2027 when considering social and cultural integration in the UK, including the maintenance of relationships with members of his family. The judge's findings which are the focus of Ms Patyna's challenge on behalf of the appellant at §51, are as follows:

> "There is little evidence of the social and cultural integration in that although the Appellant clearly as family in the UK his criminality shows a serious rejection of societal values. He has a number of character references from people, but as Mr Marcantonio- Goodall submitted, none refer to his criminality and its effect upon their view. The tenor of all of the evidence is simply that the Appellant is a nice guy and, where it is referred to, his criminality does not reflect his personality. I also cannot ignore the Appellant's personal conduct. Mr Alam submitted that I am not here to make moral judgment. However the Appellant's decision to have five [sic] children by four different women does not show genuine concern over the effect he has on others. The reality is that he has never been around in the household of any of the children he has fathered. He separated from Ex1 shortly after the birth of Child 1. He was imprisoned within two years of the birth of Child 2. He had already begun another relationship before the birth of Child 4. Child 5 was born to Ex4 whilst he was in a relationship with his current partner. The Appellant was finally imprisoned only weeks after the birth of Child 6. There are of course many different complex families in the UK. However, the pattern of the Appellant's behaviour illustrates his disregard of the consequences of his action in favour of his own desires. Overall I find that the Appellant has not socially and culturally integrated in the UK".

5. The Judge then continued at §52 by concluding, in terms of obstacles to integration in Jamaica, that the appellant lived in that country until he was 16, still had extended family there and the only real obstacle was economic, but there was no evidence about that situation and the burden was on the appellant to explain it. In the circumstances, the appellant did not satisfy Exception 1. We pause to observe that there is no appeal or challenge to the finding at §52 that there would not be very significant obstacles to the appellant's integration in Jamaica and therefore Ms Patyna accepts that Exception 1 would not be met. Instead, the challenge is to analysis of the social and cultural integration in the UK, which remains relevant to very compelling circumstances.

6. The Judge made detailed findings in relation to Exception 2 at §54 onwards and in particular whether the effect of deportation on the children and the appellant's current partner would be unduly harsh. The Judge concluded that for Child 6 to relocate to Jamaica he would need to do so without his mother which would be severe and therefore unduly harsh; and the effect on the appellant's current partner would also be unduly harsh. The Judge recognised that this was not enough for the appellant's appeal to succeed and at §67 he needed to consider the overall balance within the ambit of very compelling circumstances. The Judge rightly referred himself to the seriousness of the index offence at §68; the length of the appellant's stay in the UK and in particular that he had entered the UK aged 16 at §69; and the appellant's conduct since his arrival in the UK and the repeated offending (§70). The Judge went on to consider the appellant's children's nationalities; his current partner; and once again, the effect of deportation on her and their children. The Judge reiterated at §77 that the appellant was not socially and culturally integrated in the UK, and he therefore gave little weight to that factor.

7. By way of conclusion on the proportionality of deportation, the Judge went on to consider that he applied a heavy weight to length of the prison sentence for the index offence. Against this, in the appellant's favour, were the 22 years he had lived in the UK; the undue harshness on his current partner and Child 6; and the interference of his relationship with the Children 1 and 5. It appears that no weight was given in relation to private life in respect of social and cultural integration, although the Judge had noted the period in which the appellant had lived in the UK. At §80, the Judge ended with the following:

> "I am conscious when looking at the overall balance and the benchmark that Parliament has set, that Exception 1 is not satisfied but Exception 2 is. However this is not a sufficiently strong case within the ambit of Exception 2, combined with the length of residence under Exception 1, to outweigh the public interest in deportation. My broad evaluative assessment when looking at the balance is that very compelling circumstances have not been shown in this case and the deportation of the Appellant is proportionate."

The Judge therefore dismissed the appellant's appeal.

The Appellant's application for permission and the grant of appeal

8. The appellant's application for permission to appeal was initially refused, but on renewal, permission was given. The renewed grounds, which we do no more than summarise, point to and focus on what the appellant says is the Judge's flawed approach to the assessment of the appellant's social and cultural integration in the UK. In very broad summary, that analysis was one of the building blocks of the analysis of very compelling circumstances and even

though, as Ms Patyna accepts, Exception 1 cannot be met, nevertheless if the fact that the appellant was socially and culturally integrated into the UK had been appropriately analysed that in turn would have had an effect on the proportionality assessment (see CI (Nigeria) v SSHD [2019] EWCA Civ 2027). The appellant argues that it is not inevitable that if the Judge had concluded the appellant had been socially and culturally integrated, he would still have concluded that the appellant's deportation was proportionate.

9. First, the grounds cite §51 of the Judge's reasons, which they criticise for dismissing the evidence of the appellant's character witnesses on the basis that those witnesses had not referred to his criminal behaviour or its effect on their view of him. The grounds argue that there is no authority for the proposition that evidence of private life should be ignored because those with whom an appellant has social ties have not considered the effect of the appellant's criminality on their view of him or that his criminality does not reflect his personality. It may have been open to the Judge to conclude that a lack of references to criminality meant that he statements of friendships were not credible; or that their relationships had broken down; but those were not findings made by the Judge.

10. Second, whilst the Judge referred to the length of the appellant's residence, when considering that he had lived more than half his life in the UK, the Judge had failed to consider that his presence had begun when he was a minor (see CI (Nigeria) and Maslov v Austria [2009] INLR 47).

11. Third, the Judge had impermissibly placed weight on his disapproval of the appellant having fathered multiple children, through multiple partners, without providing support for them, in support of the contention that the appellant was not socially and culturally integrated. Whilst CI (Nigeria) was authority for the proposition the reliance upon associations with criminals or pro-criminal groups would not amount to integration, it was not open to the Judge to disregard social or familial ties simply because they did not accord with the Judge's 'moral compass.'

The hearing before us

12. On behalf of the appellant, in oral submissions, Ms Patyna referred to the case of Yalcin v SSHD [2024] EWCA Civ 74. Exceptions 1 and 2 have a role to play in the assessment of "very compelling circumstances," in three potential ways - see §§54 to 57:

    (a) first, where the circumstances of either exception are present to a degree which is "well beyond" what would be sufficient to establish a "bare case;"

    (b) second, where circumstances of "bare case" are complemented by other relevant circumstances; or

    (c) third, because of a combination of both.

13. An example of the second scenario was where the effect of the appellant's deportation would be unduly harsh, complemented by other factors such as long residence in the UK. Ms Patyna argued that the appellant's case fell within either the second or third scenarios, and the Judge's errors in relation to long residence which began as a child, and his social and cultural integration, were material.

14. On behalf of the respondent, Mr Walker responded that he had little to add to the Judge's decision, which was open to him, other than to accept that the Judge had erred in one respect, but the error was not material. The error was a factual one, where the Judge had stated at §51 that of the character references relied on, none referred to the appellant's criminality. Ms Patyna had offered to take us through the First-tier Tribunal bundle with the various references by friends and supporters of their awareness of the appellant's criminality, but we indicated that was not necessary if Mr Walker in turn accepted that there had been such references. He did so. We are also conscious that the Judge did appear to qualify this by saying later in the paragraph that the tenor of all of the evidence was that the appellant is a "nice guy, and where it is referred to, his criminality does not reflect his personality." Mr Walker argued that the factual error was not material as the Judge was entitled to reach the conclusion he did on the lack of social and cultural integration.

15. Mr Walker also initially argued that the reference to the appellant fathering multiple children by different mothers was merely a statement of fact, although he accepted that the Judge's reference to the "pattern of behaviour" "illustrates his discard of the consequences of his actions in favour of his own desires" tended to support Mr Patyna's submission that the Judge had effectively counted against the appellant's social integration a factor, based on the Judge's personal disapproval of such behaviour, which went beyond a mere expression of facts.

16. Importantly, Mr Walker accepted that if the Judge's analysis of social and cultural integration was flawed overall then this would be a material error of law in the sense that it was one important foundation in the Judge's overall conclusions on very compelling circumstances.

Discussion and conclusions

17. We have focused our attention on the Judge's analysis at §51 of social and cultural integration. Whilst doing so, we do not ignore the other grounds of appeal and in particular the challenge that the Judge had failed to consider the fact that the appellant's private life in the UK had begun when he was a minor, although we do not accept that the Judge erred in that aspect of his analysis as he was plainly conscious of that and factored that into the analysis on proportionality at §69.

18. We return to the analysis at §51. We remind ourselves that it is not the function of this Tribunal to substitute our view of what the Judge should have decided. If we find that there is an error of law, it may well be that any eventual outcome, having considered all of the evidence holistically, is nevertheless the same. However, at the stage of an error of law hearing, the question was whether the error was material. Both parties accept that if the Judge did err, then the error affected the overall assessment of very compelling circumstances, so that it was material.

19. We accept Ms Patyna's submission that the Judge erred first in concluding that there was little evidence of integration, in part, because the character references from people with whom had social ties did not refer to the appellant's criminality. As the grounds point out, either they could be disregarded as not credible, in the sense that the authors had little or no knowledge of the appellant; or because the friendships had broken down. The Judge did not suggest either. Rather, he regarded their testimony as amounting to little evidence, because they did not regard his criminality as reflecting the person they knew. While a Judge may

discount connections with pro-criminal peers, the Judge did not explain why one cannot have deep and long-lasting friendships with those who are law abiding, and why that would not count as evidence of integration, or be of little weight, merely because those friends are not aware of a person's criminality, or if they were and without condoning his criminality, maintained the friendship. We do not go so far as to say that the reasoning was perverse, but it was not adequately explained on the facts of this case.

20. Second, we accept the appellant's challenge to the Judge's reference to fathering different children by different mothers and not showing a genuine concern over the effect he has on others and that he disregards the consequences of his actions "in favour of his own desires". We are conscious that this is not a perversity challenge, but in our view the reference went beyond a mere statement of facts and concluded that the circumstances amounted to "personal conduct" which was antithetical to social and cultural integration. We took a step back and asked ourselves whether the Judge explained adequately why those circumstances or "conduct" lessened the evidence of social and cultural integration. Mr Walker did not suggest that this had any equivalence with associations with pro-criminal peers. We conclude that the Judge's analysis was flawed, on the basis of inadequately explained reasons.

21. We are satisfied that the Judge's analysis of social and cultural integration for the purposes of Exception 1 did contain errors of law, although to emphasise again, that still means that the appellant could not meet Exception 1, but the errors remain material, as Mr Walker accepted.

22. We therefore conclude that the Judge's decision is not safe and cannot stand. However, in doing so, it is also important to recognise that his decision was in all other respects detailed, reasoned and well structured. He made certain findings that we preserve and in respect of which there has been no substantive challenge. In particular, the Judge's analysis of Exception 2 being met is undisturbed by our decision. Similarly, there is no challenge to the finding, which we preserve, that there are not very significant obstacles to the appellant's integration in his country of origin, Jamaica. The Judge also found (and it is not disputed) that he has lived for more than half of his life in the UK, beginning as a minor. The question ultimately then on re-making is whether those preserved findings, together with a remade analysis of social and cultural integration in the UK, when considered altogether, is sufficient to amount to very compelling circumstances.

23. Notwithstanding our preserved findings, it remains open to the appellant to adduce new evidence on a human rights appeal (but not to raise a new matter, without consent) as Ms Patyna has indicated that the appellant has since been released from prison, so there may be updated evidence on his circumstances.

24. We canvassed with the representatives whether we should retain re-making or remit to the First-tier Tribunal, given the preserved findings. We considered §7.2 of the Senior President's Practice Statement and the well-known authority of AEB v SSHD [2022] EWCA Civ 1512. The effect of the errors was not to deprive the parties of a fair hearing. The nature or extent of any judicial fact finding which is necessary in order for the decision in the appeal to be re-made is not such that, having regard to the overriding objective in rule 2, it is appropriate to remit the case to the First-tier Tribunal. Ms Patyna and Mr Walker were content that we retain re-making in the Upper Tribunal, given the narrowness of the issues and the consequential fact finding evidence necessary to resolve this appeal. Any

new further updating evidence should be included in a single composite bundle, which should not merely be the FtT bundle with documents added, but a composite new bundle with any evidence relevant to the central issue on which we focused, namely social and cultural integration in the UK. We canvassed with the parties the location and duration of the hearing and it was agreed one day unless the parties indicate that a lesser time period is necessary. No interpreter is needed and the remaking hearing will be in person at Field House.

Notice of Decision

(1) The decision of the First-tier Tribunal contains material errors of law and we set it aside, subject to the preserved findings set out above in §22.

(2) We retain remaking in the Upper Tribunal.

Directions on remaking

1. The following directions shall apply to the future conduct of this appeal:

1.1. The Resumed Hearing will be relisted at Field House on the first available date, time estimate of one day, to enable the Upper Tribunal to substitute a decision to either allow or dismiss the appeal.

1.2. The appellant shall no later than 4 pm, 14 days before the Resumed Hearing, file with the Upper Tribunal and serve upon the respondent's representative a consolidated, indexed, and paginated bundle containing all the documentary evidence upon which he intends to rely. Witness statements in the bundle must be signed, dated, and contain a declaration of truth and shall stand as the evidence in chief of the maker who shall be made available for the purposes of cross-examination and re-examination only.

1.3. The respondent shall have leave, if so advised, to file any further documentation on which he intends to rely upon and in response to the appellant's evidence; provided the same is filed no later than 4 pm, 7 days before the Resumed Hearing.

1.4 The parties are reminded that they must comply with the Practice Direction for the Immigration and Asylum Chamber of the Upper Tribunal: Electronic filing of documents online – CE-File – Courts and Tribunals Judiciary. They must lodge any application or documents by the CE file E-filing service. Documents uploaded to CE file must have a file name which reflects their contents and any application (whether for urgent consideration, relief from sanctions or otherwise) must be clearly identified as such. The bundle must comply with the President's Guidance on the Format of Electronic Bundles in the Upper Tribunal (IAC), including: being limited in file size, with proper pagination, indexing, hyperlinking, bookmarking and in a format which is text searchable. Failure to comply with these directions may result in the Upper Tribunal making an order for costs pursuant to its power under rule 10(3), or by imposing any other appropriate sanction. It may also result in the matter being listed before a Duty Judge, where the defaulting party will be required to attend and provide an explanation.

J Keith

Judge of the Upper Tribunal
Immigration and Asylum Chamber

29th May 2024