Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: PA/07461/2017

THE IMMIGRATION ACTS

Heard at Birmingham Justice Centre	**Decision & Reasons Promulgated**
On 18th February 2020	**On 21st April 2020**

Before

UPPER TRIBUNAL JUDGE MANDALIA

Between

SM
(Anonymity Direction Made)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellant: Ms E Rutherford, Counsel instructed by CB Solicitors
For the Respondent: Mrs H Aboni, Senior Home Office Presenting Officer

DECISION AND REASONS

1. An anonymity direction was made by the First-tier Tribunal in respect of the appellant's children. As this appeal concerns the interests of minor children, it is appropriate to make an anonymity direction. Unless and until a Tribunal or Court directs otherwise, the appellant is granted anonymity. No report of these proceedings shall directly or indirectly identify him or any other member of his family. This direction applies both to the appellant and to the respondent.

2. The appellant is a national of Zimbabwe. He arrived in the UK in September 2001 as a visitor. In March 2002 he made an application for leave to remain as a student. That application was rejected by the respondent in April 2002 and the appellant remained in the UK unlawfully. In December 2008, he claimed asylum. That claim was refused by the respondent in February 2009 and his appeal against that decision was dismissed by the First-tier Tribunal for reasons set out in a decision promulgated on 6th April 2009. The appellant remained in the UK unlawfully and entered into a relationship with his partner and they married on 19th August 2011. The appellant's partner is a Zimbabwean national resident in the UK. There are two children of the appellant's relationship with his partner. The appellant's son was born on 5th May 2011 and his daughter was born on 1st May 2013. The appellant's partner has a son from a previous relationship. The appellant's stepson, SM, was born on 18th September 2004.

3. On 13th December 2013, the appellant was convicted at Wolverhampton Crown Court of doing an act of cruelty to a young person under 16, for which he received a two-year sentence of imprisonment. The appellant was served with notice of liability to deportation, and after considering representations made by the appellant in February 2014, the respondent made a decision dated 12th July 2017 to deport the appellant and refuse his human rights claim. The appellant's appeal was allowed by FtT Judge E Smith in a decision promulgated on 30th November 2017. His decision was set aside by Upper Tribunal Judge Rintoul for reasons set out in a decision promulgated on 9th May 2019. The appeal was remitted to the FtT for rehearing. The only finding preserved was that it would be unduly harsh for the children to live in Zimbabwe with the appellant.

4. The appeal was reheard by FtT Judge Parkes on 25th June 2019 and dismissed for reasons set out in a decision promulgated on 11th July 2019. Permission to appeal was granted by Upper Tribunal Judge Grubb on 11th September 2019.

5. Before I turn to the decision of Judge Parkes, it is useful to say a little more about the appellant's conviction. In his sentencing remarks, His Honour Judge Challinor stated:

> "… I have to sentence you for the offence of cruelty to a child. The child was your stepson, who was only eight years old. He was a vulnerable child who needed care and protection and over a significant period you have been assaulting him. The medical report shows clearly

> he has many injuries over his face, body, ears, shoulder, hands, lower limbs, covered in bruises and scars. You have clearly been beating him regularly with belt, cane *(sic)*. You have been restraining him by holding him inappropriately, although I accept there is no stamping involved in this case. The evidence of the district nurse… is very telling. You were described as not shouting when she heard you but enraged. She could hear [SM] screaming. She said the sounds made her feel physically sick. Heaven only knows what was going on in that house and what has been going on in that house to that little boy at your hands. When the police attended you tried to conceal what you had done by lying to them, telling them that there was no one else in the house. That tells me a great deal about you and what you knew you were doing. You knew what you were doing was not only wrong but criminal and that is why you lied. I do not believe, and do not accept, that this was excessive chastisement. Later, when police went upstairs, they found [SM] injured and cowed in one of the bedrooms.
>
> I have to assess the seriousness of this offence. I regard your culpability as high. The reason for that is because these were sustained assaults. You used weapons: belt, cane. I do not regard this as sadistic behaviour, but it was very cruel in the sense that most people understand that word. And, finally, the attempt to conceal what you had done aggravates your position. In terms of harm, of course the injuries speak for themselves. That little boy must have felt a lot of pain as a result of what you were doing to him. But the effect upon [SM] was dramatic, traumatic. His teacher speaks of difficult behaviour at school. His teacher … speaks of how unhappy he was and how he found it difficult to relate to the children and how he was being violent…. It is difficult to know or to assess the long-term effect upon [SM] but it is very likely to be very significant. One cannot but be struck by what he said in his ABE interview after describing how you were beating him, assaulting him…. In mitigation on your behalf I accept that the injuries, the physical injuries to [SM] were no more serious than actual bodily harm. I also accept that your experience as a child has affected you, although you are old enough and you have been in this country long enough to know what you were doing was very wrong …"

6. Unsurprisingly, care proceedings followed in the Family Court and the children were made the subject of a Care Order under s31 Children Act 1989. The children were placed in the care of Wolverhampton City Council. The children were later returned to the care of the appellant's partner and following his release from prison, eventually, on 28th September 2015 the appellant was permitted to return to the family home. The Care Order made by the Family Court was discharged.

The decision of FtT Judge Parkes

7. The focus at the hearing of the appeal before Judge Parkes was upon the question whether the effect of the appellant's deportation on the children would be unduly harsh. Judge Parkes summarised the background to the

appeal at paragraphs [13] and [14] of his decision. The judge heard evidence from the appellant and his wife. At paragraphs [19] to [23], the judge refers to the evidence set out in the report of the independent social worker regarding the appellant's relationship with his children and his stepson, and the steps taken by the appellant to address what had happened previously. The judge considered the evidence set out in the report regarding the research on the negative effect of reduced father-child contact, and the effect on other relationships. At paragraph [21], the judge noted:

> "At page 8 of the report the central paragraph discussed what happened when the appellant was in prison. It appears that the local authority arranged contact, the appellant's own son developed some sleeping problems and became anxious. In the subsequent paragraph the report suggested that because the appellant is so heavily involved with the children and they are so attached to him that separation would result in serious loss and disruption of their attachment and irreparable loss."

8. The judge noted the independent social worker concluded that the current circumstances are stable, and the appellant is playing an important role in the care of the children at a critical stage of their lives, when they are young and vulnerable. The judge noted the opinion of the independent social worker that the appellant should be permitted to remain in the UK as it is in the best interests of the children. At paragraphs [24] to [28], the judge considered the matters set out in the report of the independent social worker. The judge noted the possible consequences for the welfare of the children arising from separation from their father, is a feature in all deportations where there is an existing family in the UK. The judge accepted at paragraph [25], that the appellant's wife will find it difficult without the appellant's support and contribution to family life and that will have an effect on what she is able to do for the children, but that too, is a feature in a great many deportation cases. At paragraphs [27] to [30], Judge Parkes concluded:

> "27. The principal evidence as to how the family coped when the appellant was in prison is at page 8 of the ISWR in the 2nd paragraph. Whilst I accept that it was a very difficult period for the children, the report does not highlight any issues that could be said to be unexpected or out of the ordinary. The family did not involve social services as had first happened when the appellant was arrested and there is no suggestion that any issues that the children may have had were not coped with. There is no evidence from their schools to suggest any conduct or issues that could be said to be remarkable or which required extra intervention on their part.

> 28. I appreciate that when the appellant was first arrested and sent to prison in the event it turned out that the separation was not permanent. It would not have been clear at that time that that would be the case, the sentencing judge expressed a strong view that the appellant should not have been allowed back into [SM]'s life and so the family may have hoped for the outcome that prevailed, but they cannot have any basis to expect it.
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> 29. Having regard to the report of the ISW and the other evidence discussed above, bearing in mind the preference of the children that the Appellant should remain and that as is ordinarily the case it would be in their best interest that he should remain an active part of their lives I cannot find that it would be unduly harsh for the children to remain in the UK in the absence of the appellant. I accept that the family life would be difficult and very challenging, but the evidence does not show that it would be bleak or severe, let alone unduly so.
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> 30. There is nothing in the evidence to show that there are circumstances that would take the Appellant's circumstances and those of his family could be said to be very compelling and there is no justification for allowing the appeal under article 8 outside the rules."

The appeal before me

9. The appellant advances two grounds of appeal. First, in reaching his decision, Judge Parkes failed to consider whether the public interest in deportation is outweighed by other compelling circumstances. The appellant claims the judge failed to refer to the decision of the Upper Tribunal in RA (s.117C: "unduly harsh"; offence: seriousness) Iraq [2019] UKUT 123 and the decision of the Court of Appeal in NA (Pakistan) -v- SSHD [2016] EWCA Civ 662, and although the failure to refer to the authorities is not in itself fatal, the judge simply stated there is no justification for allowing the appeal under Article 8 outside the immigration rules, when no such jurisdiction arises. Furthermore, in considering whether there are very compelling circumstances, the judge failed to have regard to a unique feature of the appeal. That is, the sole criminal offence for which the appellant was convicted and sentenced arose from the appellant's poor parenting, and the appellant has been rehabilitated to the extent that he is now in a genuine and subsisting and caring parental relationship with the very victim of his crime. There was evidence before the Tribunal that the appellant has successfully completed an intensive parenting program demonstrating clear insight and an ability to reflect on his previous actions, and evidence that there has been a noticeable change in the family's attitude and mood since the appellant's return home. The appellant claims this was not therefore a "run-of-the-mill" deportation and the unique circumstances were worthy of proper consideration.

10. Second, although the judge noted the conclusion of the independent social worker that the appellant is playing an important role in the care of the children at the critical stage of their lives when they are young and vulnerable, the judge failed to consider the importance of differentiating between the different ages of the children and the particular needs and vulnerabilities of each of the children.

11. Ms Rutherford submits the appellant's conviction and human rights claim, and the respondent's decision to deport, arises from an unusual set of circumstances. The appellant's only conviction relates to his conduct towards his stepson, a relationship that is now described as strong and stable, and in respect of which there are no on-going concerns. Ms Rutherford submits that at paragraphs [16] to [30] of his decision, Judge Parkes does not address the ultimate question as to whether the public interest in the deportation of the appellant is outweighed by very compelling circumstances beyond whether it would be unduly harsh for the children to remain in the UK without the appellant. Here, the victim of the offending was in fact the appellant's stepson and since the offence was committed, the Care Order previously made by the Family Court has been discharged and the appellant is now living with the family. Ms Rutherford submits there has been a real change in the family dynamics, and unusually, here, the social workers accept the appellant can live with the children and he has been permitted to return to the family home. The expert evidence before the Tribunal was that the appellant should be permitted to continue to live with the family and the children. The social workers conclude it is in the best interests of the children to have the appellant back in the family home and their professional input was not challenged by the judge. Ms Rutherford submits the judge does adequately consider whether it would be unduly harsh for the children to be separated from the appellant.

12. In reply, Ms Aboni relies upon the respondent's rule 24 response dated 4th October 2019. The respondent submits that at paragraphs [16] and [30], the judge properly noted that the issue is whether it would be unduly harsh for the children to remain in the UK without the appellant, and if that test is not met, whether there are very compelling circumstances over and above those set out in paragraph 399 of the immigration rules. Mrs Aboni submits that it is clear from reading the decision as a whole, that the judge gave adequate reasons for finding that it would not be unduly harsh for the children to remain in the UK without the appellant and it was open to

the judge to conclude that there are no very compelling circumstances to outweigh the public interest in the deportation of the appellant.

Discussion

13. Section 32 of the UK Borders Act 2007 defines a foreign criminal, a person not a British citizen who is convicted in the UK of an offence and, *inter alia*, sentenced to a period of imprisonment of at least 12 months. Section 32(4) of the 2007 Act sets outs out the clear proposition that deportation of a foreign criminal is conducive to the public good. That is a statement of public policy enacted by the legislature, which the courts and tribunals are obliged to respect. Section 32(5) of the 2007 Act requires the Secretary of State to make a deportation order in respect of every foreign criminal, subject to the exceptions set out in section 33. Insofar as is relevant that is:

> "(2) Exception 1 is where removal of the foreign criminal in pursuance of the deportation order would breach–
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> (a) a person's Convention rights, or
>
> (b) the United Kingdom's obligations under the Refugee Convention.
>
> …
>
> (7) The application of an exception—
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> (a) does not prevent the making of a deportation order;
>
> (b) results in it being assumed neither that deportation of the person concerned is conducive to the public good nor that it is not conducive to the public good;
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> but section 32(4) applies despite the application of Exception 1 or 4.".

14. Part 5A of the Nationality, Immigration and Asylum Act 2002 ("the 2002 Act") informs the decision making in relation to the application of the section 33 exceptions. Section 117A in Part 5A provides that, when a court or tribunal is required to determine whether a decision made under the Immigration Acts breaches a person's right to respect for private and family life under Article 8, and, as a result, would be unlawful under section 6 of the HRA 1998, the court, in considering the public interest question, must (in particular) have regard to the considerations listed in section 117B and, additionally, in cases concerning the deportation of foreign criminals, to the considerations listed in section 117C.

15. The core issue in the present case was whether the decision to refuse the human rights claim made by the appellant was a justified interference with the right to respect for family life, in the context of the appellant's

conviction and the fact that he is a 'foreign criminal' as defined in s117D(2) of the 2002 Act. The Immigration Rules set out the approach to be followed by the Secretary of State where a foreign criminal liable to deportation claims that the deportation would be contrary to the United Kingdom's obligations under Article 8 ECHR. Paragraph 399(a) required the judge to consider *inter alia* whether it would be unduly harsh for the children to remain in the UK without the appellant. Applying paragraph 399(a) of the immigration rules and s117C(3) of the 2002 Act, the public interest required the appellant's deportation unless Exception 2 set out in s.117C(5) applies. That is, the appellant has a genuine and subsisting parental relationship with a qualifying child and the effect of her deportation on the child would be unduly harsh. In KO (Nigeria) -v- SSHD [2018] UKSC 53, Lord Carnwath considered the meaning of the expression "unduly harsh". He observed, at paragraph 23:

> "The expression "unduly harsh" seems clearly intended to introduce a higher hurdle than that of "reasonableness" under section 117B(6), taking account of the public interest in the deportation of foreign criminals. Further the word "unduly" implies an element of comparison. It assumes that there is a "due" level of "harshness", that is a level which may be acceptable or justifiable in the relevant context. "Unduly" implies something going beyond that level. The relevant context is that set by section 117C(1), that is the public interest in the deportation of foreign criminals. One is looking for a degree of harshness going beyond what would necessarily be involved for any child faced with the deportation of a parent. What it does not require in my view (and subject to the discussion of the cases in the next section) is a balancing of relative levels of severity of the parent's offence, other than is inherent in the distinction drawn by the section itself by reference to length of sentence. Nor (contrary to the view of the Court of Appeal in IT (Jamaica) v Secretary of State for the Home Department [2017] 1 WLR 240, paras 55 and 64) can it be equated with a requirement to show "very compelling reasons". That would be in effect to replicate the additional test applied by section 117C(6) with respect to sentences of four years or more.".

16. In SSHD v PG (Jamaica), Holroyde LJ said, at paragraph 34:

> "It is therefore now clear that a tribunal or court considering section 117C(5) of the 2002 Act must focus, not on the comparative seriousness of the offence or offences committed by the foreign criminal who faces deportation, but rather, on whether the effects of his deportation on a child or partner would go beyond the degree of harshness which would necessarily be involved for any child or partner of a foreign criminal faced with deportation. Pursuant to Rule 399, the tribunal or court must consider both whether it would be unduly harsh for the child and/or partner to live in the country to which the foreign criminal is to be deported and whether it would be unduly harsh for the child and/or partner to remain in the UK without him."

17. At paragraph 38, Holroyde LJ further observed:

> "In the circumstances of this appeal, I do not think it necessary to refer to decisions predating KO (Nigeria), because it is no longer appropriate, when considering section 117C(5) of the 2002 Act, to balance the severity of the consequences for SAT and the children of PG's deportation against the seriousness of his offending. The issue is whether there was evidence on which it was properly open to Judge Griffith to find that deportation of PG would result for SAT and/or the children in a degree of harshness going beyond what would necessarily be involved for any partner or child of a foreign criminal facing deportation.".

18. Judge Parkes considered the evidence of the appellant, his wife, and the independent social worker. The judge was concerned first and foremost with the question of whether it would be unduly harsh for the appellant's children and his stepson, if the appellant is deported from the United Kingdom. For reasons set out at paragraphs [19] to [29] of his decision, Judge Parkes concluded that he was unable to find that it would be unduly harsh for the children to remain in the UK in the absence of the appellant. The judge undoubtedly applied the correct test and I am quite satisfied it was open to him to reach the conclusion that he did for the reasons given.

19. In NA (Pakistan) -v- SSHD [2016] EWCA Civ 662, Lord Justice Jackson held that the fall back protection set out in s117C(6) also avails those who fall outside Exceptions 1 and 2 and that on a proper construction of section 117C(3), the public interest requires the person's deportation unless Exception 1 or Exception 2 applies or unless there are very compelling circumstances, over and above those described in Exceptions 1 and 2. As to the meaning of "very compelling circumstances" over and above those described in Exceptions 1 and 2, Lord Justice Jackson said:

> "28. ... The new para. 398 uses the same language as section 117C(6) . It refers to "very compelling circumstances, over and above those described in paragraphs 399 and 399A." Paragraphs 399 and 399A of the 2014 rules refer to the same subject matter as Exceptions 1 and 2 in section 117C , but they do so in greater detail.
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> 29. In our view, the reasoning of the Court of Appeal in JZ (Zambia) applies to those provisions. The phrase used in section 117C(6), in para. 398 of the 2014 rules and which we have held is to be read into section 117C(3) does not mean that a foreign criminal facing deportation is altogether disentitled from seeking to rely on matters falling within the scope of the circumstances described in Exceptions 1 and 2 when seeking to contend that "there are very compelling circumstances, over and above those described in Exceptions 1 and 2". As we have indicated above, a foreign criminal is entitled to rely upon such matters, but he would need to be able to point to features of his

> case of a kind mentioned in Exceptions 1 and 2 (and in paras. 399 or 399A of the 2014 rules), or features falling outside the circumstances described in those Exceptions and those paragraphs, which made his claim based on Article 8 especially strong.

20. In RA (s.117C: "unduly harsh"; offence: seriousness) Iraq [2019] UKUT 00123 (IAC), the Upper Tribunal considered the approach to s117C(6) of the 2002 Act. The Upper Tribunal held that the test for showing 'very compelling circumstances' over and above undue harshness was particularly high, and found at [22], was "extremely demanding". The Upper Tribunal also considered the significance to be accorded to the particular issue of rehabilitation. The Tribunal said, at [32]:

> "As a more general point, the fact that an individual has not committed further offences, since release from prison, is highly unlikely to have a material bearing, given that everyone is expected not to commit crime. Rehabilitation will therefore normally do no more than show that the individual has returned to the place where society expects him (and everyone else) to be. There is, in other words, no material weight which ordinarily falls to be given to rehabilitation in the proportionality balance (see SE (Zimbabwe) v Secretary of State for the Home Department [2014] EWCA Civ 256, paragraphs 48 to 56). Nevertheless, as so often in the field of human rights, one cannot categorically say that rehabilitation will never be capable of playing a significant role (see LG (Colombia) v Secretary of State for the Home Department [2018] EWCA Civ 1225). Any judicial departure from the norm would, however, need to be fully reasoned."

21. Here, Judge Parkes concluded at paragraph [30] that there is nothing in the evidence to establish the appellant's circumstances and those of his family are such that they can be said to be, very compelling, so as to allow the appeal on Article 8 grounds. The judge could have expressed himself better, but it is not a counsel of perfection.

22. I reject the claim that in reaching his decision the judge did not have regard to the particular circumstances of the offence for which the appellant was convicted and the fact that he is now living in the family home, with the children, and in particular his stepson. At paragraph [19], the judge clearly considered the evidence that the appellant was allowed back to the family home and the Care Order made by the Family Court had been discharged. The judge noted the evidence set out in the reports that the children wished the appellant to return, and the appellant had taken steps to address what had happened. At paragraph [28], the judge noted that notwithstanding the remarks made by the sentencing judge, the separation of the appellant from SM in particular, had not been permanent. At paragraph [29], the judge again referred to the preference

of the children that the appellant should remain and that ordinarily, it would be in their best interests that he should remain an active part of their lives.

23. I also reject the claim that the judge failed to differentiate between the different ages of the children and the particular needs and vulnerabilities of the children when considering the impact upon the children, of the appellant's deportation. The appellant's son was 8 and his daughter was 6 years old at the date of Judge Parkes' decision. The appellant's stepson was 15 years old. The evidence of the independent social worker was that the appellant is playing an important role in the care of the children at the critical stage of their lives when they are young and vulnerable. At paragraph [25], the judge noted that children can be characterised as vulnerable and at a critical stage of development at most points of growing up, and that forms the backdrop against which many deportations take place. At paragraph [27], the judge considered how the family had coped when the appellant was in prison. The judge accepted it was a very difficult period for the children, but the report of the independent social worker did not highlight any issues that could be said to be unexpected or out of the ordinary. There was no evidence that any issues that the children may have had were not coped with, and there was no evidence from their schools of issues that could be said to be remarkable or which required extra intervention on their part.

24. Looking at the evidence before the First-tier Tribunal, it is difficult to identify anything which distinguishes this case from other cases where a parent who is subject to deportation as a foreign criminal, is separated from a child. All children deprived of a parent's company during their formative years will be at risk of suffering harm. It is necessary to look for consequences characterised by a degree of harshness over and beyond what every child would experience in such circumstances. It is important to bear in mind the observations of Hickinbottom LJ in PG (Jamaica) at paragraph 46:

> "When a parent is deported, one can only have great sympathy for the entirely innocent children involved. Even in circumstances in which they can remain in the United Kingdom with the other parent, they will inevitably be distressed. However, in section 117C(5) of the 2002 Act, Parliament has made clear its will that, for foreign offenders who are sentenced to one to four years, only where the consequences for the children are 'unduly harsh' will deportation be constrained. That is entirely consistent with Article 8 of ECHR . It is important that decision-

> makers and, when the decisions are challenged, tribunals and courts honour that expression of Parliamentary will."

25. Great weight should generally be given to the public interest in the deportation of such offenders, but it can be outweighed, applying a proportionality test, by very compelling circumstances. In my judgement on the evidence before Judge Parkes and in light of the facts found by him, it was in the end open to the judge to conclude that there are no features in this case that come close to reaching the very high threshold of "very compelling circumstances", and it was open to the Tribunal to conclude there is no justification for allowing the appeal on Article 8 grounds. In my judgement and on any rational view of the circumstances in this case, it was open to Judge Parkes to conclude that the removal of the appellant could not be said to be disproportionate when weighed against the strong public interest in deporting foreign national criminals.

26. The judge undoubtedly considered all matters in the round. The public interest in the deportation of a foreign criminal is not set in stone and must be approached flexibly. In my judgement, the judge had proper regard *inter alia* to the conviction that the led to a sentence of imprisonment, the ties that the appellant retains with his family and in particular his children, and the family circumstances described in the evidence and the matters set out in the experts reports. Children living with a foreign criminal will very often have a good and strong relationship with a parent facing deportation. The fact that the victim of the crime for which the appellant was convicted and sentenced was the stepson of the appellant and that the family have now been reunited and are living together does not detract from the strong public interest in the deportation of the appellant as a foreign criminal, absent something compelling which makes the appellant's claim based on Article 8, especially strong. It follows that in my judgement, it was open to the judge to conclude the deportation of the appellant is in the public interest and not disproportionate to the legitimate aim for the reasons given by him.

27. As the Court of Appeal said at [18] of Herrera v SSHD [2018] EWCA Civ 412, it is necessary to guard against the temptation to characterise as errors of law what are in truth no more than disagreements about the weight to be given to different factors, particularly if the judge who decided the appeal had the advantage of hearing oral evidence. The assessment of such a claim is always a highly fact sensitive task. The FtT judge was required to consider the evidence as a whole and in my

judgment he plainly did so, giving adequate reasons for his decision. The findings and conclusions reached by the judge are neither irrational nor unreasonable. The decision was one that was open to the judge on the evidence before him and the findings made.

28. It follows that I dismiss the appeal

Decision:

29. The appeal is dismissed and the decision of First-tier Tribunal Judge Parkes, stands.

Signed Date 13th April 2020

Upper Tribunal Judge Mandalia

NOTIFICATION OF APPEAL RIGHTS

1. A person seeking permission to appeal against this decision must make a written application to the Upper Tribunal. Any such application must be received by the Upper Tribunal within the appropriate period after this decision was sent to the person making the application. The appropriate period varies, as follows, according to the location of the individual and the way in which the Upper Tribunal's decision was sent:

2. Where the person who appealed to the First-tier Tribunal is in the United Kingdom at the time that the application for permission to appeal is made, and is not in detention under the Immigration Acts, the appropriate period is 12 working days (10 working days, if the notice of decision is sent electronically).

3. Where the person making the application is in detention under the Immigration Acts, the appropriate period is 7 working days (5 working days, if the notice of decision is sent electronically).

4. Where the person who appealed to the First-tier Tribunal is outside the United Kingdom at the time that the application for permission to appeal is made, the appropriate period is 38 days (10 working days, if the notice of decision is sent electronically).

5. A "working day" means any day except a Saturday or a Sunday, Christmas Day, Good Friday or a bank holiday.

6. The date when the decision is "sent' is that appearing on the covering letter or covering email