



**Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: HU/00598/2021**

THE IMMIGRATION ACTS

**Heard at Bradford
On the 9th March 2022**

**Decision & Reasons Promulgated
On the 31st March 2022**

Before

UPPER TRIBUNAL JUDGE HANSON

Between

CHUN LAI WONG
(Anonymity direction not made)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr Akram instructed by UK Migration Lawyers Ltd.
For the Respondent: Ms Young, a Senior Home Office Presenting Officer.

DECISION AND REASONS

- 1.** The appellant, a citizen of Hong Kong born on 15 June 1998, appeals a decision of the Secretary of State dated 5 January 2021 to refuse his human rights claim; relied upon as an exception to the order for his deportation from the United Kingdom made pursuant to section 32(5) UK Borders Act 2007.
- 2.** The appeal was originally allowed by a judge the First-tier Tribunal but that decision set aside by the Upper Tribunal following a challenge by the Secretary of State.

3. The Upper Tribunal found no reason to disturb the findings of the judge below in relation to Exception 1 and 2 which were not challenged, meaning the only issue requiring reconsideration is whether there exists any very compelling circumstances over and above those set out in Exception 1 and Exception 2 which will prevent the appellant's deportation, i.e. make it disproportionate.
4. Directions were given for the provision of any additional evidence that the parties were seeking to rely upon. Further evidence has been provided by the appellant by way of witness statements and a detailed bundle. Mr Akram indicated at the outset that he wished to call his client to expand upon the content of the statement but it was directed the statements will stand as the evidence in chief of the maker. When the nature of any further statement the appellant wanted to make was explored it appeared that there was nothing he wanted to say that had not already been said included in the statements and that the main purpose of the appellant addressing the Tribunal was to enable him to restate his regret for what had occurred and to provide reassurance it would not happen again. These are, however, matters clearly set out in the witness statements all of which have been taken into account in assessing the merits of the appeal.

The evidence

5. The appellant's immigration history shows on 27 September 2005 his father applied for an Entry Clearance Visa in response to which he was granted a Work Permit for a period of calendar five years valid until 24 March 2011, with the appellant being granted Entry Clearance in line with his father.
6. On 22 March 2011 the appellant's mother made an in-time application for Indefinite Leave to Remain (ILR) on the basis of being a work permit employee, in which the appellant was listed as being a dependent. The application was rejected on 8 April 2011.
7. On 18 April 2011 the appellant's mother made a further application for ILR naming the appellant as a dependent which was successful, resulting in a grant of ILR on 23 August 2011.
8. On 26 November 2012 the appellant's father made an application for naturalisation although the appellant's application was refused in line with his father because he failed to declare his conviction in 2008 and the ten-year ban imposed on 28 October 2012. On 4 April 2013 a reconsideration request was made in response to which the Secretary of State wrote to the appellant's father and explained that any application submitted where one had previously been refused on the grounds it was will be considered on its merits and the ten year ban no longer applies, although the decision to refuse British citizenship was maintained.
9. On 4 December 2018 the appellant submitted an application for No Time Limit leave.
10. On 3 April 2020 at Wolverhampton Crown Court the appellant was convicted on three counts, Count 1 possessing controlled drug with

intent to supply - Class A - Cocaine, Count 2; possess imitation firearm with intent to cause fear or violence and Count 3; facilitate the acquisition/acquire/process criminal property. Sentencing was postponed until 17 May 2020 when the appellant was sentenced to 3 years imprisonment.

- 11.** Notification of the intention to make a deportation from the United Kingdom was served upon him on 22 May 2020 which the appellant refused to sign and on 18 June 2020 the appellant, through his representatives, made a human rights claim. On 22 December 2020 the Deportation Order was signed and on 5 January 2021 the human rights claim refused.
- 12.** The sentencing remarks from the Wolverhampton Crown Court set out the offence committed and demonstrates that the appellant's previous good character had been taken into account. They are in the following terms:

... You are aged 21 and I deal with you as if you were somebody previous good character, despite those two cautions that are recorded against you. The offences that you stand to be dealt with for, possession of controlled drugs of class A, cocaine, with intent to supply and possession of a prohibited weapon, that is the stun gun disguised as a torch. And possession of criminal property, some £615.

All of those offences which covered on 25 November when, by chance, police officers had been directed to the city centre in Wolverhampton because there was a fight said to be going on. You were chased and detained and found, volunteered by you, the fact that you had some drugs in the bag that you were carrying and they were 13 wraps in street sized deals, total weight of 2.6g, with a value of £280 including the wrap that was to be found in your vehicle a little while later. When you are searched, you are found to have in your pocket the torch. That torch was a stun gun effectively and it was disguised. I note that in mitigation, it is said that it was not working and you gave an explanation as to how you came to be in possession of that and I will return to that in a moment.

Also found on you was £615 and you indicated that you had a vehicle nearby. That vehicle was also searched and found in that was a balaclava, a further gun, an imitation gun, it was a BB gun, and two cartridges and a wrap of cocaine, along with an iPhone. There was an iPhone also recovered on your person. That telephone had messages which on analysis showed drug dealing and that goes back to October. And so, the prosecution case is that you are out in the city centre selling drugs and the money that you had on you bears testimony to that.

You declined to answer the questions that were put to you in an interview and you did not indicate any pleas when you appeared in the magistrates court but you pleaded guilty here over the telephone when the matter was last listed and you have reinforced those pleas today.

Mr Isles submitted that although in the matters in the round and in particular in guidelines that apply in relation to drug offences, that

the custody threshold is not only reached but passed and so it is a sentence of imprisonment insofar as you are concerned. But he submits that the court can step back from what might otherwise be a tariff sentence and bear these matters in mind. First of all your age. Secondly that you have no previous convictions, although you have those reprimands but as I say, I put those out of my mind for the moment because it seems to me they were cautions and you must have admitted what you had done and so that goes in your favour. But you have not actually been convicted in a court of law of any other criminal offending. And the fact that you pleaded guilty when you got here and so you took advice that was offered to and so you recognise that you are in the wrong and so you effectively put your hands up when you arrived at the Crown Court.

I have also read the testimonial that has been submitted to the court by your sister and it bears reading because it sets out what she feels about you. One might say, "well, she would do so because she is closely allied to you." But, I would like to think that there is a degree of reality because part of the mitigation from Mr Isles is that this was not something that you dreamt up yourself, but being a university student you were effectively befriended by others who were more streetwise and they had effectively got you to involve yourself in what you were caught doing on 25 November, now 2018 and I also remind myself of that and you have been on bail throughout and you have not reoffended and again, that is something that goes in your favour.

As to role, Mr Bryce on behalf of the prosecution submits that your role was significant and you were out street dealing and so therefore under the guidelines for drug offences, the starting point is 4 ½ years, with a range of 3 ½, up to 7. Mr Isles submitted that your role really is lesser in the sense that if the court accepts that you have been involved by others, it was not your setup, and you are more or less acting under direction from somebody else but of course, who you work with a largish quantity of drugs in £615, which shows that you had sold drugs that particular night and were likely to have sold what remained. If it is a lesser role, then the ranges between two and four years.

I look at these matters in the round, bearing in mind your age and bearing in mind totality and the fact that it is a custodial sentence and the first custodial sentence and given the current climate as well, custodial sentences may be harder and harsher to serve than at any other time if there ever was a time in which serving a custodial sentence could be acceptable. It seems to me that looking at in the round, even individually and certainly in the round, but only custody as appropriate.

- 13.** Having given the maximum credit the sentencing judge found the appellant was entitled to; he passed a total sentence of three years imprisonment. The appellant served half the sentence and has been released on licence.
- 14.** The appellant's evidence comes from his witness statements in which he confirms his immigration history. In his recent statement he claims

he has been in the UK for seventeen years and established a life for himself in this country.

- 15.** The appellant states his family is composed of himself, his father, mother, a younger brother, a sister and now his partner Sophia. The appellant claims they have always been a tightknit family with his parents working long hours six or seven days a week in a Chinese takeaway to support them, which resulted in a close relationship between the appellant and his younger brother as he stepped in when his parents were at work.
- 16.** The appellant claims he has known Sophia for over three years, initially as friends, and that they formed a relationship in January 2019. Sophia moved into the appellant's family home. The appellant states that he and Sophia intend to buy a home together, get married, have children, and at the date of the supplementary statement, 21 January 2021, had had an offer accepted on a property deal and were proceeding to obtain the mortgage.
- 17.** The appellant claims Sophia cannot relocate to Hong Kong as she is a British citizen from birth, has never visited or lived in Hong Kong, does not know the language, and has numerous ties to the UK. The appellant claims he has not lived in Hong Kong since he left before his re-entry in 2005 and that there is nobody there and nothing for him. He claims the UK is his home and that he will not be able to survive in Hong Kong without family and his partner.
- 18.** The appellant admits he has made mistakes in the past and states he will be devastated if he is separated from his family. The appellant claims that he will not pose a risk if allowed to remain as he does not want to be a criminal, wants to be a family man, and asks for a chance to rebuild his life. He states he bitterly regrets his actions and is sorry for what has done in the past as he has let himself and his family down. The appellant expresses shame for his actions and all the consequences of the actions he has undertaken and claims that as a result of the deportation decision his life is in limbo.
- 19.** The appellant states he does not want to get into trouble again and reaffirmed his wish to concentrate on his future with Sophia and to look into completing his HGV licence process.
- 20.** The appellant claims to be socially and culturally integrated into the UK and in the final paragraphs of this supplementary statement writes:

18. I genuinely feel remorseful for the mistakes that I have made in the past and having realised my errors I genuinely ask for a chance to be able to redeem myself.

19. I implore the Tribunal to consider my lengthy residence in the UK, my well-established family life in the UK with my immediate family members and my partner S as well as my most compassionate and compelling circumstances and grant me the right to continue to live my life in the UK. I do have a strong regard for my family. I love my family very much with all my heart and if I were taken away from them I really don't think that I can live without being in their lives, that would just kill me.

20. I humbly request that my appeal be allowed. I do not pose a threat to society and I humbly request that I may continue to be a part of my family's lives as we have a well-established family life together.
21. There are a number of witness statements from the appellant's sister confirming her support for her brother and speaking highly on the appellant's behalf. There are also witness statements from Sophia who was born on 15 November 1999, who confirms their relationship, expresses her love for the appellant, states that she has with the appellant's support commenced a nursing degree at university, has her support network and social life in the UK, that the appellant has no home in Hong Kong or family or friends and could not re-establish a life for them in Hong Kong; which is a country she has never visited and where she does not know the language.
22. Sophia claims that as a British citizen she could not go and live in Hong Kong as she has lived in the UK since birth, that this is her only home, and that it will be a disproportionate interference with their lives and their studies, employment, family and friends, to leave the UK. Sophia states that if the appellant was deported she will be devastated as she would not know how she would cope without him. Sophia claims the appellant is not a risk to the public as he understands the severity and consequences of his actions, that he is truly remorseful, asks that they not be punished, and asks the appeal to be allowed so she and the appellant can continue their lives together in the UK.
23. All witness statements have been considered with the required degree of anxious scrutiny even though they not may not be referred to in further detail.
24. The appellant also seeks to rely upon a report from an Independent Social Worker dated 18 March 2021. The report contains a detailed assessment of the family dynamics and sets out the answers to certain questions that were posed by the appellant's solicitors. The family members who are the subject of the report are listed as follows:

Mr Chun Lai Wong (DOB: 15.06.1998) (the appellant)
Ms Sophia Caizzo (DOB: 15.11.1999) - the appellant's partner
Mr Kin Man Wong (DOB: 19.11.1969) - the appellant's father.
Mrs On Ki Chan (DOB: 16.02.1977) - the appellant's mother.
Mr Chun Yin Wong (DOB: 20.05.1995) - the appellant's brother.
Miss Sze Nga Wong (DOB: 04.06.1996) - the appellant's sister.
Master Nathan Chun Hin Wong (DOB: 27.03.2004) - the appellant's younger brother.

25. In response to the questions referred to, the specific questions asked appearing in italics below, the Independent Social Worker writes:

9. **Response to Instructions and Opinion**

We require you to prepare a social report with a view to addressing the following issues:

- a) *What ties does Mr Chun Lai Wong have in Hong Kong?*

Mr Wong stated that he has not returned to Hong Kong since he came to the UK and has little contact with anyone there. His paternal grandmother lives in small apartment, as does his paternal grandmother, other family members are also unable to accommodate him. Mr Wong is likely to struggle to adjust to life in Hong Kong. He never intended that Hong Kong was going to be a place that he would live and feels that his aspirations and goals are not aligned with life of his in Hong Kong. Riiskjaer and Nielsson (2008) conducted research into the return and reintegration of Iraqis with refugee status living in Denmark, they found that people face difficulties reintegrating when returned to their country of origin as they have become accustomed to the way of life in their host country. Refugee Action, 2010 (Cited in Carr,2014) talk about “returnees shock” detailing how life in the country of origin is not how they left it, making people vulnerable and anxious. Since Mr Wong was a child when he left Hong Kong life will certainly be different to what he left, he has no experience of working there all living there as an adult and would have no one to support him with this transition. All of his experiences, memories, childhood and education has taken place in the UK. Those who have been deported or experienced forced immigration can face hardship caused by stigma and trauma upon return to their countries of origin, they can find it difficult to maintain contact with family members; often leading to severed relationships (Dreby, 2012;Hagan, castro, & Rodrigues, 2010; Zayas & Bradlee, 2014).

b) What role does Mr Chun Lai Wong play in Nathans’s life?

Mr Wong has played the role of confident, protector, advisor. Whilst they are siblings Mr Wong has had to mature quickly and take on some of the parenting roles over the years such as homework, taking to and from school and ensuring basic needs are met such as feeding, clothing, washing.

c) Comment on the relationship between Nathan and Mr Chun Lai Wong

Nathan and Mr Wong have a strong emotional and practical bond. Mr Wong is the closest sibling to Nathan in age and as such he was able to communicate with him and understand some of the challenges he faced. Nathan felt that Mr Wong is the one who he can turn to when he experiences emotional difficulties, he does not feel able to communicate in the same way with other members of his family. Nathan places a lot of emphasis on physical proximity, he spoke about sitting together, talking through the night, going for car rides, cuddles, he does not feel able to get this level of physical closeness with anybody else. Mr Wong speaks to Nathan every day on the phone. Mr Wong feels that he is a protected to his younger brother, he is sorry that his actions have led them to be separate and is determined that he will not make the same mistakes again.

d) What would be the impact on Nathan if Chun Lai Wong was deported?

The loss of Mr Wong has already had a negative effect on Nathan. Mr Wong's arrest and eventual conviction took place in the last two years of Nathan's education, Nathan has stated that he suffered difficulties at school with bullying and not being supported by the school. Following Mr Wong's conviction Nathan did not pass his GCSEs and did not enrol in any educational training or employment. Nathan's emotional anguish and turmoil has impacted on his education. Bruce and Perry (2010) spoke about children and loss, they asserted that "The loss of a loved one is an earthquake that fractures and devastates our emotional landscape." The fracturing of Nathan's landscape has then had an impact on his education, his health and his social interactions (Bronfenbrenner, 1979). Nathan does not feel in a position to pursue further education or employment, at present his emotional turmoil is causing him to lack motivation purpose and has had a negative effect on his identity. Should Mr Wong be deported it is my assessment that Nathan will become further isolated and insular, and he would struggle to find his way back into the world of education training or employment. His transition into adult hood is likely to be hampered as he struggles socially and emotionally.

e) *Comment on the family dynamic - effect on deportation on other family members*

The family is close-knit, interconnected with each member playing their part in the successful functioning. As a family the following difficulties have been encountered; financially, Mr Wong has contributed to the family finances since he left school, his incarceration has meant that there has been less disposable income for the family. Emotionally, each family member (other than the oldest sibling) has spoken about the effect on them. The parents feel like a part of the family is missing and Mrs Wong has had trouble sleeping since. When the phone line was down after moving house they were not able to speak to him as much and this was very upsetting, they also feel as though they have failed as parents. Cecilia feels that Mr Wong is a missing piece of the jigsaw, she also speaks to her brother daily. Sophia feels that everything is hard since Mr Wong has been in custody, even though they had been together for three years it feels much longer, she stated that emotionally she has really struggled. Sophia stated that even though his release date is getting closer it feels like it's getting closer to him going away and this is causing her stress and emotional turmoil.

f) *Comment on the relationship between Mr Chun Lai Wong and Sophia.*

Sophia feels that the loss of Mr Wong has created a hole in her life, the couple had become used to spending most of their time together as they were living with Mr Wong's family. They bought a dog in shared responsibilities for him, enjoying looking after him and taking him for walks. The couple confide in each other, with Mr Wong often becoming emotional and regretful over his actions and the situation he finds himself in. The couple have started to plan for their future and are saving for a deposit for

the property. They are in a loving and committed relationship. Sophia stated that Mr Wong encourages her to do better.

g) Why Sophia cannot leave the UK

Sophia was born and raised in the UK, she is currently living to and has a close relationship with all her family members, including her parents and siblings, her wider family ties are in the UK. Sophia is in her first year at university. Is enjoying her course and progressing well. Sophia does not speak any language other than English.

h) What ties does Sophia have in Hong Kong

Sophia has no ties in Hong Kong.

i) Can Sophia live with Mr Chun Lai Wong in Hong Kong, if not why?

Please see point (g). In addition, Sophia is a British citizen and has no accommodation or means of finances in Hong Kong.

j) What difficulties are Sophia and other family members encountering with Chun Lai Wong's incarceration and potential deportation?

See point (e).

k) Any other questions or comments you wish to make in addition to this please feel free to do so that will assist Mr Wong's case further.

Mr Wong and Nathan do have a close relationship. The assessment informed me that Nathan has experienced emotional difficulties that to date have been dealt with within the family, in particularly by Mr Wong. Nathan has come to rely on his brother for this assistance and as part of his coping mechanism. If Mr Wong is permitted to stay in the UK he will closely support Nathan into independence, assisting him to access support in developing techniques to manage his emotions and motivating and supporting him to be in a safe place to continue his education. Much of their relationship was based on close contact, such as late-night calls, walks and long drives; these are interactions that will be impossible to have with Mr Wong in Hong Kong. It is my assessment that it would not be in Nathan's best interest to be further separated from Mr Wong.

26. As noted, the date of report is 18 March 2021 with the appellant having been released back into the family home since and his brother attaining his adulthood on 27 March 2022.

27. There is also within the bundle of documents an OASys report dated 30 November 2020. Within that, in relation to the description of the offences as outlined in the Sentencing Remarks, the appellant informed the Probation Officer that he also "tasered" three males who he was involved in an altercation with. The stated motivation for the drug offences was due to losing employment due to a delay in the appellant's ability to obtain a biometric card which would have allowed him to to work, and that he was given the opportunity to earn

money through dealing drugs and that the Taser and BBR gun were provided by the person he worked for “in case of trouble”.

- 28.** It is noted the appellant fully admitted to the current offences. In terms of identifying issues contributing to the risk of offending or harm it is written:

2.14 Mr Wong’s index offence and previous offences evidence a capacity to cause violence, including using weapons, to cause harm. These offences appear to have been in response to conflict with unknown individuals, triggered by feelings of anger relating to how Mr Wong feels he and his family have been treated. It appears that his feelings of anger and frustration regarding their treatment has built up throughout his childhood as a result of experiencing racism and discrimination and feeling that professionals (such as the police and teachers) were dismissing his experiences and those of his family. Mr Wong can clearly and intelligently articulate these experiences and frustrations and has provided examples of positive and prosocial ways he and his family have attempted to deal with difficulties experienced. However, he reports that he feels these attempts have generally been successful and it therefore appears that Mr Wong can feel targeted and may quickly react to situations where he feels vulnerable and attacked.

Mr Wong has exhibited positive attitudes and goals for his future and there is no evidence of attitudes which support the continued use of violence. He has demonstrated the ability to reflect on his actions and has explained his desire to avoid violence. His behaviour in custody has been positive with no evidence of confrontation and he reports he is keen to avoid any trouble, progress and plan his future.

- 29.** In relation to education, training and employability issues contributing to risk of offending and harm, in section 4.10 the author writes:

Mr Wong informed me that he attended school in the UK but experienced some difficulties as a result of being bullied. He reported that he was temporarily excluded from school on his first day of secondary school, stating that another pupil had stabbed him with a pencil and he responded by using the same pencil to stab the male in his testicles. Mr Wong was later permanently suspended in year 10 after being found in possession of a pen knife.

He informed me that he then attended Warsaw College for 3 years where he completed City & Guilds in English, Maths and Mechanics (L1&2) before going to Wolverhampton College with the intention of completing his L3 in Mechanics. He explained that on arrival, he was told that his previous qualifications were not equivalent to the L1&2 required for entry to L3 and that he would therefore need to redo them. Mr Wong stated he re-did his L1 before becoming frustrated, feeling he was excluded/pushed to the side by the tutor. He also reported he had reached 18 and if he continued, he would need to pay for his own college fees.

Mr Wong stated he left college and helped out for a year in his family’s takeaway restaurant (something he had always done from childhood) before getting a part-time job in KFC for a year. After this, Mr Wong stated he found work in a wholesalers where he worked for approximately a year before he was told the law had changed and he needed a biometric ID card to be able to work. There were delayed in obtaining this (potentially due to the outstanding investigation into his offence the battery) and Mr

Wong lost his job. He reported that he had “loved” his work at the wholesalers and enjoyed the opportunity to go out on deliveries as his ambition was to get his HGV licence.

Mr Wong reported that after losing his job, he spoke to someone he knew from the local area and asked if they were aware of any work/opportunities for them to earn money and was told they could help him but it wasn’t legal. Mr Wong stated he was told it was “just driving around” and despite saying it was “not his kind of job” was told there were no other options and took the decision to become involved for a period, stating he would do it until he had saved money to obtain his HGV licence.

Following the loss of this employment, Mr Wong stated he applied for work but after disclosing he was under investigation for the index offence, he was told to return when the investigation was concluded and was therefore unable to obtain work.

It is clear that Mr Wong’s offence of drug supply was triggered by him losing his employment and by his inability to obtain any alternatives. He stated he was keen to obtain his HGV licence and appears to have justified his involvement in offending at the time as a way for him to earn money to complete this training and achieve this goal.

Mr Wong is of interest for deportation and therefore if released while still fighting his case, is unlikely to be able to work. This would therefore be a risk factor for future offending. He is keen to complete his final HGV exam whilst in custody and undertaken bricklaying course in order to enhance his opportunities on release. Mr Wong also had a wing cleaning job whilst at HMP Oakwood and is keen to engage in employment/training as soon as he is able (COVID-19 restrictions mean that activities are not currently running).

- 30.** The tie between the appellant seeking employment/financial opportunities and his dealing in drugs is a theme that is repeated throughout the report. There is also within the report reference to the appellant’s lifestyle on a day-to-day basis and positive ambitions for the future such as getting a property, getting married, and employment, but also negative associations and the propensity to engage in risk-taking behaviour for financial gain.
- 31.** Section R10 of the report, in which the author summarises risks identified in the previous sections, it is written:

R10.1

Who is at risk

Mr Wong is assessed to pose a risk of serious harm to the public; this is specifically adult males. These victims are likely to be unknown males that Mr Wong enters conflict/confrontation with, likely related to their perceived treatment of him and his family. I have no information relating to the individuals involved in the index offence, and Mr Wong has not been charged for violent offences against individuals he admits to tasering, but his account would suggest these were adult males. Mr Wong previous offence of battery occurred against the male who was bullying his brother - I have no information on the age of this individual but given he was bullied at school, I would assess the victim is likely to have been 18 or under. However, I do not

assess there is an ongoing risk to children; the victim was assaulted as a result of this reported interaction with Mr Wong's brother and there is no wider risk to young people.

R.10.2

What is the nature of the risk?

The nature of the risk is physical harm through the use of punches and the use of weapons, specially a taser. The CPS paperwork states that Mr Wong tasered three individuals - he admits to tasering two and punching a third during an altercation and his previous offence of battery involved punching the victim. In addition to the physical harm described above, offences of this nature are likely to have a long-term psychological and emotional impact on victims.

R10.3

When is the risk likely to be greatest?

Consider the timescale and indicate whether risk is immediate or not. Consider the risks in custody as well as on release.

Mr Wong committed the index offence in November 2018 and was then on bail for nearly 18 months prior to being sentenced. There is no evidence of further offending/violence during this time and his behaviour in custody has been compliant and not raised concern. He does have an offence of battery which was committed in 2018, which does support the assessment that Mr Wong has the capacity to cause harm and use violence. Despite this, his attitudes are prosocial, he demonstrates motivation to make change and takes full responsibility for his behaviour. The part of the index offence related to possession of a weapon, and his previous offence of battery, both linked to how Mr Wong reports he and his family have been treated, his desire to protect himself and his family and some difficulties in managing his frustrations in relation to this. There is therefore specific circumstances which should make offending more likely than I do not assess that the risk of further violence is therefore imminent.

His OGRS score is 40% over 2 years and his OVP is 27%, both placing him in the lower bracket for general, and Violet, reoffending

R10.4

What circumstances are likely to increase risk

Describe practice, actions, events which might increase the level of risk, now and in the future

Lack of engagement with probation

Interaction with negative peers

Return to previous geographical area where there are ongoing conflicts and opportunity to associate/make contact with those who may be supportive of offending and violence

Return to drug supply

Distancing himself from family and close friends

Attitudes supportive of use of violent

Justification of use of violence and weapons for "self defence"

Entering into confrontation with others

Failure to understand and to reflect on the causes for his offending

Access to weapons

Failure to address frustration and anger related to treatment of himself and family appropriately.

R10.5

What factors are likely to reduce risk

describe practice, actions, and events which may reduce or contain the level of risk. What has previously stopped him/her?

Maintaining a balance of commitment in Mr Wong's life, focusing on commitments that positively meet his needs

Willingness to engage with probation staff and other professionals to explore his goals, associations and attitude towards violence

Mr Wong maintaining a purpose and setting himself future goals

Maintaining contact with prosocial support network

Developed understanding of triggers for violence and how to manage them

Positive engagement with licence

Positive engagement with probation and supervision sessions

Prosocial employment and entitlement to work/claim benefits

Association with family and law-abiding friends.

- 32.** The appellant is found in the community to present a low risk to the public, staff, and prisoners, with a medium risk to the public, and a low risk whilst in custody to all groups. Medium risk of serious harm is applicable where there are identified indicators of risk of serious harm, the offender has the potential to cause serious harm but is unlikely to do so unless there is a change in circumstances, for example, failure to take medication, loss of accommodation, relationship breakdown, drug or alcohol misuse. On the evidence that appears an accurate assessment for the appellant where, provided he avoids situations such as those which previously triggered his violent reaction and does not get involved in drugs, his risk of causing harm will be as assessed.

Discussion

- 33.** The appellant was convicted and sentenced to a period of 3 years imprisonment meaning he falls within the medium category of those subject to a deportation order. It is not disputed that the appellant satisfies the definition of 'foreign criminal' found in s117D of the Nationality, Immigration Asylum Act 2002.
- 34.** Section 117 A-C of the 2002 Act, in full, reads:

117A Application of this Part

- (1) This Part applies where a court or tribunal is required to determine whether a decision made under the Immigration Acts—
- (a) breaches a person's right to respect for private and family life under Article 8, and
- (b) as a result would be unlawful under section 6 of the Human Rights Act 1998.
- (2) In considering the public interest question, the court or tribunal must (in particular) have regard—

- (a) in all cases, to the considerations listed in section 117B, and
 - (b) in cases concerning the deportation of foreign criminals, to the considerations listed in section 117C.
- (3) In subsection (2), “the public interest question” means the question of whether an interference with a person's right to respect for private and family life is justified under Article 8(2).

117B Article 8: public interest considerations applicable in all cases

- (1) The maintenance of effective immigration controls is in the public interest.
- (2) It is in the public interest, and in particular in the interests of the economic well-being of the United Kingdom, that persons who seek to enter or remain in the United Kingdom are able to speak English, because persons who can speak English—
- (a) are less of a burden on taxpayers, and
 - (b) are better able to integrate into society.
- (3) It is in the public interest, and in particular in the interests of the economic well-being of the United Kingdom, that persons who seek to enter or remain in the United Kingdom are financially independent, because such persons—
- (a) are not a burden on taxpayers, and
 - (b) are better able to integrate into society.
- (4) Little weight should be given to—
- (a) a private life, or
 - (b) a relationship formed with a qualifying partner,
- that is established by a person at a time when the person is in the United Kingdom unlawfully.
- (5) Little weight should be given to a private life established by a person at a time when the person's immigration status is precarious.
- (6) In the case of a person who is not liable to deportation, the public interest does not require the person's removal where—
- (a) the person has a genuine and subsisting parental relationship with a qualifying child, and
 - (b) it would not be reasonable to expect the child to leave the United Kingdom.

117C Article 8: additional considerations in cases involving foreign criminals

- (1) The deportation of foreign criminals is in the public interest.
- (2) The more serious the offence committed by a foreign criminal, the greater is the public interest in deportation of the criminal.
- (3) In the case of a foreign criminal (“C”) who has not been sentenced to a period of imprisonment of four years or more, the public interest requires C's deportation unless Exception 1 or Exception 2 applies.
- (4) Exception 1 applies where—

- (a) C has been lawfully resident in the United Kingdom for most of C's life,
 - (b) C is socially and culturally integrated in the United Kingdom, and
 - (c) there would be very significant obstacles to C's integration into the country to which C is proposed to be deported.
- (5) Exception 2 applies where C has a genuine and subsisting relationship with a qualifying partner, or a genuine and subsisting parental relationship with a qualifying child, and the effect of C's deportation on the partner or child would be unduly harsh.
 - (6) In the case of a foreign criminal who has been sentenced to a period of imprisonment of at least four years, the public interest requires deportation unless there are very compelling circumstances, over and above those described in Exceptions 1 and 2.
 - (7) The considerations in subsections (1) to (6) are to be taken into account where a court or tribunal is considering a decision to deport a foreign criminal only to the extent that the reason for the decision was the offence or offences for which the criminal has been convicted.
- 35.** As noted above, it is a preserved finding that the appellant cannot satisfy either Exception 1 or 2 of section 117C . That is an important issue as those sections set out the Secretary of State's view of what a medium offending individual is required to prove, on the facts of their case, to establish that the strong public interest in their deportation is outweighed.
- 36.** It is also important to note that the reason Exception 1 could not be satisfied is that it was not made out, despite the appellant's protestations and claimed lack of ability to re-establish himself in Hong Kong as there will be very significant obstacles to his integration into Hong Kong, the First-tier Tribunal Judge whilst accepting it will cause hardship found the appellant has family in Hong Kong who could provide him with a support network. He also speaks the language and he is a capable adult who completed education before entering custody and who has taken every opportunity given to him to complete further courses.
- 37.** In relation to Exception 2, the First-tier Tribunal Judge found that whilst Sophia would not find easy relocating to Hong Kong, and difficult to remain in the UK without the appellant, there were no features that "brought the case close to approaching the 'undue harsh' territory". It was not found there were very significant obstacles to the appellant integrating into Hong Kong. As such their private lives can continue abroad.
- 38.** The requirement is for the appellant to show that there are compelling circumstances at this stage of the assessment which means he needs to show circumstances that are more compelling than those he relied upon when attempting to show he can satisfy Exceptions 1 and 2, - see *Akinyemi v The Secretary of State for the Home Department* [2017] EWCA Civ 236.
- 39.** Although those points relied upon in support of the Exceptions did not enable the appellant to succeed at that point, those matters have

been taken into consideration as part of the overall holistic balancing exercise, i.e. in undertaking the holistic evaluation of all relevant factors including those which might have already been assessed in the context of the 'exceptions' - see *NA (Pakistan) v SSHD & Ors* [2016] EWCA Civ 662; *SSHD v PF (Nigeria)* [2019] EWCA Civ 1139, *HA (Iraq) v Secretary of State for the Home Department (Rev 1)* [2020] EWCA Civ 1176.

- 40.** The appellant dealt in drugs for his own personal financial gain. Drugs, especially those of Class A, are substances that cause huge damage to society both to those who become addicted to them, but also victims of robberies, burglaries, or thefts, undertaken to enable addicts to raise funds to buy the drugs they need, as well as the substantial cost to the NHS and the Police in dealing with consequences of those who break the law by involving themselves in drugs or the damage to health caused by those who use them, combined with the fact that it is illegal to do as the appellant did. The combination of related issues surrounding drugs, and the damage they do to society in the UK, means great weight must be given to the public interest in a case such as this.
- 41.** The appellant therefore needs something over and above the exceptions to show that he can satisfy the extremely demanding test so as to ensure that Part 5A produces a result compatible with Article 8 ECHR.
- 42.** The appellant relies on his relationship with his brother who, as noted, was nearly an adult and who clearly will have the benefit of remaining in the family unit with very supportive family members. I accept the assessment that this is a very close loving family unit who had to pull together whilst the appellant was in prison, and I am sure they will continue to do so in the future if he is deported. It was not made out, as recognised before the First-tier Tribunal, that there will be any undue harsh consequences to anybody involved within the family if the appellant is deported, even Sophia.
- 43.** It is a preserved finding the appellant has family support in Hong Kong which is a sustainable finding. Insufficient evidence has been provided to show this is not the case. It is accepted the situation will be difficult for the appellant in re-establishing himself but it is not one in which he or Sophia will face insurmountable obstacles. I accept the reality is the Sophia may wish to stay in the United Kingdom where her family are, that does not make the decision disproportionate. Such an arrangement has not been shown to be unduly harsh for Sophia.
- 44.** The Secretary State has a strong argument that there are insufficient exceptional circumstances when all the factors are put together and weighed in the balance to outweigh strong public interest in this matter.

- 45.** The appellant in the submissions made on his behalf recognised that there was a formidable hurdle that he was required to cross to succeed with his claim but submitted that the evidence that enabled him to achieve this is that set out in the witness statements and pleadings. It was argued that the fact the appellant is integrated, has siblings in the UK, family support, his resumed relationship with Sophia whose pregnancy was confirmed on the day of the resumed hearing by a photograph of a positive pregnancy testing kit but nothing else, the desire of the family to stay together, evidence of the quality of the relationships, claim that Sophia cannot go to Hong Kong with the appellant meaning the relationship could not continue abroad, and the impact deportation, when combined, tip the balance in the appellant's favour.
- 46.** With regard to the pregnancy, there is no evidence from a GP, as the positive test was said to have been taken on the morning of this hearing, and there is no confirmed birth of a child in the UK. Accordingly family life recognised by article 8(1) does not exist, although I accept the pregnancy can form part of Sophia's private life. It was not made out that family life cannot continue elsewhere or that it will be unduly harsh if the appellant was deported. The pregnancy does not alter these findings on the facts.
- 47.** The appellant also comments about his intentions in the future, but I note that there is insufficient evidence that he has undertaken work to enable him to deal with the triggers for his violence or if his financial situation deteriorated, to show he would not resort to whatever means he felt necessary in the future to support his family or punish those he believed has wronged him or his family. The existence of the close family is a positive factor but neither that close family nor the appellant's concerns about the shame it may bring upon the family if he was convicted appeared to be a sufficient deterrent for him in the past.
- 48.** The assertion the appellant received a sentence of four years reduced to 3 on appeal is therefore at the lower end of the scale is not relevant. The appellant was convicted and it is that conviction that places him within the medium range of offenders and the subject of the deportation order.
- 49.** Having looked at all the evidence with the required degree of anxious scrutiny and having taken time to think carefully about where the balance in this case lies, I find the Secretary of State has discharged the burden upon her to the required standard to show that the determinative factor in this appeal, especially considering it is an offence involving the supply of Class A drugs, falls in her favour and that any interference with a protected right is proportionate. Accordingly I must dismiss the appeal.

Decision

50. I dismiss the appeal.

Anonymity.

51. The First-tier Tribunal made an order pursuant to rule 45(4)(i) of the Asylum and Immigration Tribunal (Procedure) Rules 2005.

I make such order pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008.

Signed.....
Upper Tribunal Judge Hanson

Dated 22 March 2022