IN THE UPPER TRIBUNAL IMMIGRATION AND ASYLUM CHAMBER

Case No: HU/06132/2018

THE IMMIGRATION ACTS

Decision & Reasons Issued:
On 30th November 2023

Before

THE HON. MRS JUSTICE HILL DBE
UPPER TRIBUNAL JUDGE SMITH

Between

H A (IRAQ)
(ANONYMITY DIRECTION MADE)

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellant: Mr R De Mello, Counsel instructed by Fountain Solicitors
For the Respondent: Mr A Deakin, Counsel instructed by Government Legal Department

Heard at Field House on Tuesday 18 July 2023

Order Regarding Anonymity

Pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008, the Appellant is granted anonymity. No-one shall publish or reveal any information, including the name or address of the Appellant, likely to lead members of the public to identify the Appellant. Failure to comply with this order could amount to a contempt of court.

DECISION AND REASONS

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PROCEDURAL BACKGROUND

1. This appeal was remitted to the Tribunal by the Court of Appeal following its judgment on 4 September 2020 ([2020] EWCA Civ 1176). By that judgment, the Court of Appeal allowed HA's appeal from the decision of the Upper Tribunal (Lane J (President) and Upper Tribunal Judges Gill and Coker) ("the Tribunal") of 8 March 2019 which had dismissed his appeal against the Secretary of State's decision dated 26 February 2018 refusing his human rights claim. The dismissal of his appeal resulted from the Secretary of State's appeal against the decision of First-tier Tribunal Judge Gurung-Thapa promulgated on 1 October 2018 which had allowed HA's appeal. The human rights claim and the Secretary of State's refusal of it (which is the decision under appeal) were made in the context of a decision to deport HA to Iraq due to his criminal offending.

2. Following the allowed appeal, the Secretary of State appealed to the Supreme Court which dismissed her appeal by judgment given on 20 July 2022 ([2022] UKSC 22).

3. The parties agreed that the appeal came before us for re-making in relation to all issues previously determined by the Tribunal. The Court of Appeal did not set aside the Tribunal's decision of 15 January 2019 finding an error of law in Judge Gurung-Thapa's decision. We therefore refer to the parties as they were before the First-tier Tribunal which also avoids any confusion.

4. Prior to the hearing and with his skeleton argument dated 19 June 2023, Mr De Mello sought to amend the Appellant's grounds to raise an issue not previously argued, at least not in the current appeal, concerning the Appellant's derivative right as a "Zambrano" carer of his British citizen children. At the outset of the hearing before us, Mr De Mello abandoned the application to amend the Appellant's grounds. We therefore need say no more about this issue.

5. We had before us an agreed hearing bundle to which we refer below as [B/xx]. We also had two lever arch files containing relevant case authorities. Those related to both this case and the appeal in RA (Iraq) v Secretary of State for the Home Department. Although the appeals of RA and HA were linked for hearing in the Court of Appeal and Supreme Court, we indicated that we intended to hear both appeals separately. We were not referred in this appeal to more than a few cases with which we deal below. We received oral evidence from the Appellant and his partner. Both gave their evidence in English. Having heard their evidence and received submissions from Mr De Mello and Mr Deakin, we indicated that we intended to reserve our decision and that we would give our decision with reasons in writing which we now turn to do.

FACTUAL BACKGROUND

6. The Appellant is a national of Iraq currently aged forty-three years. He arrived in the UK illegally on 7 July 2000, then aged twenty years. He claimed asylum. His asylum claim was refused on 15 August 2003 and his appeal against that refusal was dismissed on asylum and human rights grounds on 12 January 2004. Although the Appellant has made applications since then, none have been successful. He has never had leave to remain in the UK.

7. The Appellant began a relationship with his partner, ("NT"), in 2006. They went through a religious marriage ceremony in 2009. NT has a daughter from a previous relationship who is now an adult and at university. The Appellant and NT have three daughters, who were at the date of the hearing before us aged eleven ("E"), nine ("A") and six years ("ES"). NT and the children are all British citizens.

8. On 15 March 2010, the Appellant was convicted of two counts of assisting unlawful immigration into an EU member state, possession/control of false/improperly obtained ID cards or which relates to another or apparatus etc for making ID cards and failing to surrender to custody at an appointed time. The circumstances of the offences were that the Appellant was trying to arrange the illegal entry of his mother and brother to the UK. The Appellant was sentenced to sixteen months' imprisonment.

9. The Respondent made a deportation order against the Appellant on 31 May 2017. On 1 June 2017 ([B/409-435]), she refused an application by the Appellant based on his family and private life (and also his "Zambrano" rights) made on 22 November 2016 ([B/315-373]). The Appellant appealed that decision but later withdrew his appeal and made another human rights claim on 23 January 2018 ([B/141-143]. That was refused by the decision now under appeal ([B/537-545]).

LEGAL FRAMEWORK

10. The Appellant claims that his deportation will have an unduly harsh impact on NT and their children. Further or in the alternative, he claims that his deportation will be disproportionate when the interference with his private and family life and the lives of his family is balanced against the public interest.

11. It is first appropriate to have regard to the legal framework which applies to the issues for us to decide.

12. The legislative framework is set out in the Immigration Rules but in clearer form in section 117C Nationality, Immigration and Asylum Act 2002 ("Section 117C").

13. The latest judgment relating to the framework which applies is that of the Supreme Court in this and the linked appeals: HA (Iraq), RA (Iraq), AA (Nigeria) v Secretary of State for the Home Department [2022] UKSC 22 ("HA (Iraq)"). The framework is dealt with at [46] to [52] of the judgment. We summarise the principles there set out as follows (by reference to the relevant paragraph of the judgment) so far as relevant to our consideration:

    (1) An appellant who is a medium offender (as here) can succeed in an appeal if he meets either of two exceptions which are set out in Section 117C (4) ("Exception 1") and Section 117C (5) ("Exception 2"). Exceptions 1 and 2 are considered and determined without reference to any balance between interference and public interest. "The consideration of whether those Exceptions apply is a self-contained exercise governed by their particular terms" ([47]).
    (2) If an appellant cannot meet either of the two exceptions, Section 117C (6) requires a balancing assessment weighing the interference with the Article 8 rights of the person intended to be deported and his family against the public interest in his deportation. Although that section is expressed as applying only to those offenders who are sentenced to more than four years in prison, the Court of Appeal has determined that it applies equally to an appellant sentenced to less than four years if the offender cannot meet the exceptions ([47] and NA (Pakistan) v Secretary of State for the Home Department [2016] EWCA Civ 662 as cited at [4] – "NA (Pakistan)").
    (3) The test under Section 117C (6) involves "a safety valve, with an appropriately high threshold of application, for those exceptional cases involving foreign criminals in which the private and family life considerations are so strong that it would be disproportionate and in violation of article 8 to remove them" (per Rhuppiah v Secretary of State for the Home Department [2016] 1 WLR 4203 cited at [48]). There is no exceptionality test but "it inexorably follows from the statutory scheme that the cases in which circumstances are sufficiently compelling to outweigh the high public interest in deportation will be rare" (per NA Pakistan cited at [50]).
    (4) If the intended deportee could only show a "bare case of the kind described in Exceptions 1 and 2" that could not be described as very compelling circumstances over and above those exceptions. "On the other hand if he could point to factors identified in the descriptions of Exceptions 1 and 2 of an especially compelling kind …going well beyond what would be necessary to make out a bare case of the kind described in Exceptions 1 and 2, they could in principle constitute 'very compelling circumstances, over and above those described in Exceptions 1 and 2', whether taken by themselves or in conjunction with other factors relevant to application of article 8" (per NA (Pakistan) cited at [50]).

(5) When applying Section 117C (6), all relevant circumstances are to be balanced against the "very strong public interest in deportation" ([51]).

(6) Case-law of the European Court of Human Rights continues to be relevant to the factors which have to be considered ([51]). The Supreme Court referred in particular to the cases of Unuane v United Kingdom (2021) 72 EHRR 24, Boultif v Switzerland (2001) 33 EHRR 50 and Üner v The Netherlands. The relevant factors are as follows:

(a) Nature and seriousness of the offence(s) committed by the intended deportee.
(b) Length of time that the intended deportee has remained in the UK.
(c) Time elapsed since the offending and conduct in that period.
(d) Nationalities of those affected by the decision.
(e) The family circumstances of the intended deportee.
(f) Whether a spousal relationship was formed at a time when the spouse was aware of the offending.
(g) Whether there are children of the marriage and their ages.
(h) Seriousness of the difficulties faced by the intended deportee in the country to which he/she would be expelled.
(i) Best interests and well-being of the children, in particular the seriousness of the difficulties which they would face in the country to which the intended deportee would be expelled.
(j) Extent of the intended deportee's social, cultural and family ties with the host country and country of destination.

14. Although there are two exceptions set out in Section 117C, Exception 2 is the central one in this case, namely whether the Appellant's deportation would have an unduly harsh impact on the Appellant's partner and children. That requires consideration of whether it would be unduly harsh to expect them to accompany the Appellant to Iraq or to remain in the UK without him. In this case, we do not have to consider the "go" scenario as the Respondent concedes that it would be unduly harsh for NT and the children to go to Iraq with the Appellant (see [32] of the Respondent's skeleton argument).

15. When considering the meaning of unduly harsh, we are guided by what is said in MK (Sierra Leone) v Secretary of State for the Home Department [2015] INLR 563, cited with approval in HA (Iraq) (amongst other cases) that "'unduly harsh' does not equate with uncomfortable, inconvenient, undesirable or merely difficult. Rather, it poses a considerably more elevated threshold. 'Harsh' in this context, denotes something severe, or bleak. It is the antithesis of pleasant or comfortable. Furthermore, the addition of the adverb 'unduly' raises an already elevated standard still higher."

16. If the Appellant does not establish that his deportation would have an unduly harsh impact on NT and their children, we nonetheless have to go on to balance the interference with the Appellant's family and

private life and the lives of his partner and children against the public interest, following the balance sheet approach advocated in Hesham Ali v Secretary of State for the Home Department [2016] UKSC 60 ("Hesham Ali"). As noted above, in so doing, we are conducting the assessment required by Section 117C (6), in order to decide whether there are very compelling circumstances over and above the two exceptions.

17. It follows that the legislative framework as interpreted by the courts including the Supreme Court in the instant case requires us to first decide whether Exceptions 1 and 2 are met. If we find that those are not met, we have to go on to assess whether there are very compelling circumstances taken as a whole over and above those exceptions which outweigh the public interest.

18. When considering the assessment under Section 117C(6), we must have regard to the best interests of the children involved. Section 55 Borders, Citizenship and Immigration Act 2009 requires the Secretary of State to have regard in the discharge of her immigration functions to the need to safeguard and promote the welfare of children in the UK. We also have regard to the observations made in the judgment of Lady Hale in ZH (Tanzania) v Secretary of State for the Home Department [2011] UKSC 4 (at [21] to [33]) regarding the importance of British citizenship to a child. We acknowledge and recognise that the best interests of the children are a primary although not the primary or paramount consideration ([25] of the judgment in ZH (Tanzania)).

19. When balancing the interference with the family and private lives of the Appellant and his family against the public interest, the burden of establishing the interference lies with the Appellant. Once the level and degree of interference is assessed on the evidence, it then falls to the Respondent to show that such interference is necessary and proportionate.

20. We had thought that those principles would be uncontroversial particularly in light of the Court of Appeal and Supreme Court's judgments in this case. Mr De Mello however sought to persuade us that we should not reach the point of a proportionality assessment in this case as the offence was of such a low-level nature and was also historic. The Appellant is, he submits, no longer a risk. Accordingly, there is no rational connection between the legitimate aim and deportation. One does not therefore reach the proportionality assessment.

21. We intend no disrespect to Mr De Mello's submissions by not setting them out in detail. We are bound to apply the law as set out by the Supreme Court and to have regard to Section 117C by primary legislation. It also seems to us, in any event, that Mr De Mello's arguments in this regard are catered for by the primary legislation. Although Section 117C (1) provides that it is in the public interest that

foreign criminals are deported, Section 117C (2) provides that the more serious the offence, the greater the public interest in deportation. The converse caters for Mr De Mello's argument.

22. We make one observation however about the point raised in Mr De Mello's skeleton argument that "the majority [in Hesham Ali] did not consider that the legitimate aim was prevention of crime and disorder". We have struggled in vain to find any such statement. We should also point out that Hesham Ali concerned the legal position prior to the enactment of Section 117C. We are now bound by primary legislation to have regard to that section.

23. There is one further issue which arose from the competing submissions of both advocates concerning the ambit of the public interest. We understood the Respondent to accept that the Appellant poses a very low risk of reoffending. He has not offended since his conviction some thirteen years ago. The Respondent submits that the public interest in deportation includes not only the risk that the foreign criminal will reoffend and therefore the need to protect the public, but also the "wider policy considerations of deterrence and public concern" ([141] of the judgment in HA (Iraq) v Secretary of State for the Home Department [2020] EWCA Civ 1176). Although the Respondent accepts that the analysis there set out was doubted by Lord Hamblen JSC in the Supreme Court ([59]), he declined to determine the point. We are in those circumstances bound by the Court of Appeal's judgment.

24. However, the Respondent invited us not to have regard to "expression of society's revulsion" as part of the public interest (see [70] and [168] of the Supreme Court's judgment in Hesham Ali). She submits however that this is not the same as saying that public concern does not remain part of the public interest (relying on [70] in the speech of Lord Reed in Hesham Ali – with Lord Neuberger, Lady Hale, Lord Wilson, Lord Hughes and Lord Thomas agreeing). We accept that submission.

25. With that summary of the legal position as we see it, we now turn to the evidence.

EVIDENCE AND FINDINGS OF FACT

26. We heard evidence from HA and from NT. Each has made two statements in this appeal dated 2 August 2018 ([B/144-153] and 16 June 2023 ([B/123-130]). As we have to consider the position as at date of hearing, we refer mainly to those later statements which were in fact the only ones adopted in oral evidence.

27. In general, we accept the contents of the statements and the oral evidence given by HA and NT. Both were credible witnesses. Neither sought to exaggerate HA's case. NT, in particular, was an impressive witness. We have read the statements in full but refer only to the parts

of the written and oral evidence which are relevant to the issues we have to determine.

28. HA and NT are in a genuine and subsisting relationship. They married in an Islamic ceremony. It is clear from NT's evidence that she is frustrated by the period of time that the immigration proceedings have been ongoing. As she says in her statement, if she did not love her husband, she would not have stayed with him as the proceedings have taken their toll not just on him but on the whole family. He is unable to go abroad with them as he has no status and no passport. He missed their first family holiday to Turkey for that reason.

29. NT is of Afro-Caribbean heritage. She considers that she would have no-one of her cultural background in Iraq. She says that she and HA have already "experienced issues within the Kurdish community for having a mixed-race relationship" and she considers that this would be worse if she were to return to Iraq with HA. However, there is some evidence in the bundle that the family has been accepted by the Kurdish community in the UK (see for example letter at [B/171]). NT was prepared we assume to convert to Islam in order to undergo an Islamic marriage ceremony. Whilst HA said that his family (who remain in Iraq) did not accept NT, he admitted that they had never said as much but that "it was silence more than words".

30. Whilst we did not find of assistance on this point the background evidence at [B/546-632], particularly since NT would be returning to Iraq with HA if she were to go, we do accept, as HA said that the inter-racial relationship between HA and NT is an unusual one and might not be accepted. We accept (as does the Respondent) that NT would find it difficult to live in Iraq. NT says that she "couldn't even consider living in another country with [HA]" both for her own reasons and because the children are settled in the UK. It is the Appellant's case that even visits by NT and the children would be difficult in the circumstances.

31. HA and NT have three daughters together. As we have already noted, they were at the date of hearing aged eleven years, nine years and six years (birth certificates at [B/137-139]). NT also has an elder daughter from a previous relationship who is now aged nineteen and at university. She is therefore no longer a child.

32. HA and NT had another child who was still-born in 2010. Although NT speaks in her first statement of the mental health problems which she understandably suffered at that time, we formed the view when hearing her give evidence that she is a very capable and independent woman. She works full-time as a credit controller and enjoys her job.

33. Due to NT's work, HA looks after the children for most of the time. Although the children are all now in education, NT normally goes to work before the children go to school. HA helps also by picking up the children from school and after-school clubs although the evidence

indicates that both parents share that responsibility. HA takes them swimming every Monday.

34. NT confirmed that the children attend after-school clubs for which she pays £11 per day per child. Although she accepted that they could continue to attend those clubs if necessary five days per week if HA were deported, she said that she would still have to leave work early to pick them up. She did not envisage that this situation could continue indefinitely. She also pointed out that the children were involved in extra-curricular activities which they really enjoyed, and which would involve picking them up even earlier. She did however accept that the eldest child could now walk home on his own from school. We accept that the two younger children could not do so.

35. NT has other family members in the UK. Her mother lives here as do her two brothers. NT accepted that she has strong bonds particularly with her mother and one of her brothers. Notwithstanding NT's evidence that her mother is now elderly, and her brother has his own family, we find that they would provide some support to NT if HA were not there to assist. NT accepted that her elder daughter lived with NT's mother until she went to university in September 2022. She also accepted that she had not asked her mother recently whether her mother would help with picking up the children were that necessary.

36. We also accept the evidence that, at weekends, the family is involved in activities together. NT said that they visit her mother every Saturday. On Sundays, they have a family day involving picnics or days out to different places.

37. The Appellant has not produced any corroborative evidence about the impact of his deportation on the children. We are unable to gain any insight based on the position when HA was in prison. He was convicted in March 2010. The couple's first child was not born until October 2011.

38. Whilst we might have found it helpful to have evidence from an independent social worker regarding the strength of the family ties, we have regard to and accept what is said by NT about the relationship between HA and the children. She describes HA as having "a very strong presence in all our lives". We do not accept however that she and the children would not cope if HA were not there. As we have said, NT struck us as a very independent and capable woman who would be able to look after herself and the children alone with such support as her family might be able to offer if that were necessary.

39. However, we have no doubt that the children would find it difficult. At their ages, they would clearly notice and understand the separation. NT says that they would be devastated. She says that it would affect them emotionally and she fears physically.

40. We accept as NT said that remote communication would be no substitute for physical contact. We also accept as she said that visits are likely to be difficult. The children could not be expected to travel to Iraq alone. NT and the children are likely to find visits to Iraq something of a cultural shock. Such visits are in any event likely to be expensive for a single mother with three children.

41. However, aside the witness evidence from HA and NT, there is very limited evidence about the children. There is no evidence that any of them suffer from any physical or mental health problems. We have no information about their education save that one child is at secondary school and the other two are at primary school and that all appear to be doing well and are well settled in the UK education system.

42. It appears that the two elder children at least are aware of the ongoing immigration proceedings and the potential deportation of their father. The Appellant's solicitor has taken instructions from the two elder children. His statement appears with their evidence at [B/131-134]. Both children say that they could not adapt to life in Iraq. Understandably, both say that they would miss their father if he were not there. E says that she would "feel very scared" if her father were not in the UK to talk to. A says that she missed him when he was unable to go on holiday with them. However, as we have noted, despite their awareness of the situation, there is no evidence to show that either child has been impacted physically or mentally. Both are said to be doing well at school and participating in extra-curricular activities.

43. Although HA's case is based on his family life with NT and their children, we also need to make findings in relation to his private life as those may potentially impact an overall assessment under Section 117C (6). We accept that the Appellant arrived in the UK in 2000. He is now aged 43 years. However, having claimed asylum and had his claim refused and his appeal dismissed, HA has never had lawful status in the UK. That is relevant to the weight which we can give to his private life. There is in any event limited evidence about that private life.

44. HA has a Masters degree in construction project management which he obtained in the UK. He has in the past worked as a construction manager. It appears that he may have been permitted to work for the first few years that he was in the UK which may be so as he was an asylum seeker from 2000 to 2004 (see letter at [B/288]).

45. Although HA claimed asylum on arrival, he no longer relies on this claim. He has a mother, seven brothers and two sisters living in Sulaymaniyah. Although in his first witness statement, HA said that he was no longer in contact with his family, he now accepts that he has re-established contact via social media. We accept as HA said that, having been in the UK for over twenty years and being now aged 43 years, he would not wish to return to Iraq. However, that is a matter of

choice and not inability to relocate. HA accepted that he speaks the language, and that he would understand the culture, having grown up in Iraq.

46. In terms of HA's offending, the sentencing remarks at [B/271] indicate that on 15 March 2010, HA was sentenced to a term of twelve months for false document offences involving the obtaining of documents apparently for his mother and brother. HA was also convicted of possession of a false identity document for the purpose of trying to get married. For that offence, he was sentenced to a consecutive period of three months.

47. Although HA says in his statement that he has not committed offences before or since the index offence, the deportation decision at [B/307] refers also to other driving offences committed in 2006. We did not understand the Appellant to dispute those offences. He simply says that he could not remember whether he was arrested once or twice. He said that he got arrested on "the same day or next day" and that he could not recall being arrested twice. The record in the decision letter indicates that there were two convictions in January 2006 and July 2006. Both were for offences connected with driving (whilst uninsured and without a licence and using a mobile whilst driving) and for resisting or obstructing a police constable and failing to surrender to custody. We assume from the fact of the two convictions that these offences occurred on two separate occasions. None resulted in a period of imprisonment. Those offences occurred about seventeen years ago.

48. There is no evidence that the Appellant has committed any further offences after those for which he was sentenced in 2010.

ASSESSMENT AND CONCLUSIONS

Exception 1: Private life

49. We need spend little time on this exception since it is not the focus of the Appellant's case. Although the Appellant says that he has lived in the UK for 23 years and this may be so as he arrived in 2000 and there is no evidence that he has returned to Iraq since, he has never had lawful residence in the UK. He has not lived in the UK lawfully for most of his life and cannot therefore meet the first part of the exception.

50. We are prepared to accept that the Appellant is socially and culturally integrated. He speaks English. He is married to a British citizen and has British children. He has studied for a Masters degree whilst in the UK. He has worked in the UK although is currently not entitled to do so. Whilst there is limited information about the detail of his private life, we accept that there is sufficient evidence to conclude that he is socially and culturally integrated in the UK.

51. We do not accept that there would be very significant obstacles to the Appellant's integration in Iraq. He has been away from that country for a significant period. However, he grew up there. HA himself accepted that he speaks the language and understand the culture. All his family still live in Iraq. The Appellant may prefer to remain in the UK but there is no obstacle preventing him from returning to Iraq other than the interference with his family life to which we now turn.

Exception 2: Family life

52. This is the main issue in these proceedings. We remind ourselves when assessing the case within the exception of the high threshold which applies to the issue whether it would be unduly harsh for NT and the children to either go to Iraq with the Appellant or remain in the UK without him.

53. Mr Deakin confirmed that the Respondent concedes that NT and the children could not go to Iraq with the Appellant. It would be unduly harsh for them to do so. Not least because of the mixed-race element of the relationship between NT and the Appellant and the children's mixed-race heritage, we consider that the Respondent was right to make this concession. We would ourselves have found that it would be unduly harsh for NT and the children to go to Iraq with the Appellant.

54. Having carefully considered the evidence, we do not accept that it would be unduly harsh for them to remain in the UK without him.

55. As we have pointed out, we have very limited evidence about the potential impact of the Appellant's deportation on the children. The two elder children are apparently aware of that prospect and have expressed their concerns about it. However, despite that knowledge, there is no evidence that they have been physically or mentally impacted by it. On the evidence we have, they are well adjusted children doing well at school and outside it. We accept of course that awareness of a prospect of something is not the same as the actuality, particularly for a child. Nonetheless, the absence of evidence that they are so acutely worried about the prospect of their father's deportation as to be mentally impacted by it is something we have to take into account.

56. We accept that the children have a strong bond with their father and that they would find it difficult to remain in the UK without him. We accept that the relationship would have to continue at least in the short term via remote means. We accept that remote communication is no substitute for physical contact and that visits to Iraq are likely to be difficult to arrange. However, we simply do not have the evidence to support a finding that it would be unduly harsh for them to continue their relationship in that way.

57. There is no evidence that their mother would not be able to cope. We reiterate that NT came across as a strong, capable and independent woman. She would no doubt find it difficult to juggle her work and family commitments. However, she has some family to support her, and we find would manage if she had to do so.

Section 117C(6)

58. We begin with the best interests of the children. This is a primary consideration. We have no doubt that it is in the best interests of the children for them to remain living in the UK with both parents. We have accepted that they have a strong bond with their father. The family unit is a strong and committed one. The Respondent has conceded that it would be unduly harsh for the children to go to Iraq with their father.

59. We then draw together the threads of our findings under the two exceptions.

60. We accept that the Appellant has probably lived in the UK for over twenty years. However, he has done so unlawfully, and we have little information about the detail of his private life formed in that period. He has obtained a qualification and some work experience whilst in the UK but those would stand him in good stead on return to Iraq. There is no reason why he could not relocate to Iraq where his mother and siblings live save for the disruption of his family life. We can give little weight to his private life. We do however take into account the length of time for which the Appellant has remained in the UK and his integration in general terms.

61. We give significantly more weight to the family life of the Appellant and in particular the impact of his deportation on his family. We have found that the impact of the Appellant's deportation is likely to be that he would be separated from NT and their children for the foreseeable future. He would be able to continue that relationship only via remote means which are no substitute for physical contact.

62. Although we have not accepted that the impact of this separation on NT or the children would be unduly harsh as we do not have the evidence to show that this would be the position, we find that the family would suffer as a result. The children are likely to be very upset. Whilst we do not have evidence about the precise impact, given their ages and understanding, we accept that it is likely to impact on them emotionally. We have no evidence that it would do so physically nor evidence that their education would suffer significantly. Nonetheless, we find that the impact would be quite substantial.

63. Similarly, although we have accepted that NT would cope without the Appellant and would manage to juggle her work and family commitments with the support of her family as necessary, separation

from the Appellant would also be very upsetting for her. She is also likely to be affected by the impact on the children.

64. Against that interference, we have to weigh the public interest. We have regard to Section 117C(1). Deportation of foreign criminals is in the public interest. That public interest involves the prevention of crime and disorder not simply due to the risk posed by the offender but also based on deterrence of others.

65. However, we also have regard to Section 117C (2). The more serious the offence the greater the public interest. It follows that the less serious the offence the lesser is the public interest. Whilst the index offence is one involving false documents for the purposes of circumventing immigration control (which also therefore involves the public interest of the maintenance of effective immigration control), the sentence reflects, as Mr Deakin accepted, the lower end of the medium level of offending.

66. Furthermore, the offence was committed some considerable time ago. Although the Appellant had offended previously, there is nothing to suggest that he has done so since. The level of risk which he poses is very low indeed. We accept that deterrence is also part of the public interest. However, the Appellant has served his sentence of imprisonment and has had his family life disrupted for many years since by these ongoing proceedings.

67. We have regard to Strasbourg case-law in relation to Article 8 ECHR.

68. We place particular emphasis on the Appellant's family circumstances, the best interests of the children and the likely impact of the Appellant's deportation on NT and those children. Whilst that impact does not reach the threshold of undue harshness (on the evidence before us), we nonetheless accept that a physical separation of the Appellant from NT and the children for the foreseeable future would have a significant impact on all involved.

69. We also place some importance on the level of the Appellant's offending, the nature of that offending and the fact that it occurred over a decade ago. Whilst we accept that the public interest in the deportation of offenders is not confined to the risk of reoffending which they pose, in our view the public interest in deportation in this case is not as strong as in some others based on the foregoing factors. Section 117C(2) allows us to take into account as a relevant consideration the nature and extent of the offending.

70. Having balanced the interference against the public interest and mindful of our conclusions that neither of the statutory exceptions are met, the combination of the factors which we set out above nevertheless lead us to the conclusion that the deportation of the

Appellant would be a disproportionate interference with the family life of the Appellant, NT and the children.

71. For those reasons, we allow the Appellant's appeal.

L K Smith

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

16 October 2023