IN THE UPPER TRIBUNAL IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2022-006280
First-tier Tribunal No: HU/56873/2021

THE IMMIGRATION ACTS

Decision & Reasons Issued:
On the 02 May 2024

Before

UPPER TRIBUNAL JUDGE MANDALIA

Between

Secretary of State for the Home Department
(NO ANONYMITY DIRECTION MADE)

Appellant

and

Sofian Majera

Respondent

REPRESENTATION:

For the Appellant: Mr C Bates, Senior Home Office Presenting Officer
For the Respondent: Mr D Furner, Birnberg Peirce Ltd

Heard at Birmingham Civil Justice Centre on 15 January 2024

DECISION AND REASONS

INTRODUCTION

1. Although the appellant in the appeal before the Upper Tribunal is the Secretary of State for the Home Department, for ease of reference I continue to refer to the parties as they were before the First-tier Tribunal ("FtT"). Hereafter I refer to Mr Majera as the appellant and the Secretary of State as the respondent.

2. The appeal is listed for hearing before me following the decision of Upper Tribunal Judge Jackson to set aside the decision of First-tier Tribunal Judge Young-Harry dated 3 November 2022 ("the 'error of law' decision"). The FtT judge had allowed the appellant's appeal against the respondent's decision of 19 October 2021 to refuse the appellant's human rights claim

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and the decision to refuse to revoke a deportation order signed on 13 November 2012. This decision should be read alongside the 'error of law' decision. Judge Jackson said:

> "23. Overall I find that the First-tier Tribunal erred in law in failing to take into account all of the relevant circumstances to assess whether there were very compelling circumstances over and above the significant public interest in deportation in this case and failed to give adequate reasons as to why such weight was given to rehabilitation that it, together with a passage of time was sufficient to tip the balance in the Appellant's favour. It can not be seen from the decision that there has been a lawful balancing of all relevant factors, nor can the final conclusion be understood by the losing party. For these reasons it is necessary to set aside the decision of the First-tier Tribunal and for the appeal to be heard de novo."

3. Judge Jackson directed that the appeal be relisted for a hearing before the Upper Tribunal for the decision to be remade. Although not relevant to her decision, she highlighted that there was no reference at all in the decision of the FtT to the relevant provisions of the Immigration Rules which apply to an application to revoke a Deportation Order. She said those provisions go beyond those factors set out in section 117C of the Nationality, Immigration and Asylum Act 2002 ("the 2002 Act") and would need to be addressed in any further decision.

THE BACKGROUND

4. The background to the appeal is summarised in paragraphs [3] to [6] of the decision of Judge Jackson:

> "3. The Appellant claims to be a national of Rwanda (although this has at times been disputed by the Respondent, the proposed destination for return remains Rwanda) born on 10 January 1982, who first came to the United Kingdom with family members on 14 April 1997, aged 14. An application for asylum was refused on 25 April 2001, but the Appellant was granted Exceptional Leave to Remain (ELR) for a period of four years and then indefinite leave to remain in November 2005. The Appellant's criminal history began with his first conviction on 16 May 2001, following which there were a not insignificant number of further convictions, the last of which was on 12 September 2006 when he was convicted of ten counts of robbery for which he was sentenced to life imprisonment with a minimum tariff of seven years and court recommended deportation. The Appellant's sentence for those last offences was amended on appeal to an indefinite period of imprisonment for public protection with a minimum term of seven years and the court recommended deportation remained.
>
> 4. The Appellant was served with a liability to deportation notice on 22 March 2007, following which representations were made. A Deportation Order was signed on 13 October 2012 and the Respondent formally refused his human rights claim on 16 November 2012. An appeal against that refusal was initially dismissed on 3 July 2013 and again by the Upper Tribunal on 19 February 2014, following which the Appellant was appeal rights exhausted on 27 November 2014.
>
> 5. On 2 April 2015 following his release from prison (although he remained in immigration detention for a further few months), the Appellant made an application to revoke the Deportation Order. The initial decision refusing to treat this as a fresh human rights claim was withdrawn and a

new decision was made on 19 October 2021 which is the subject of this appeal.

6. The Respondent refused the application the basis that the Appellant did not meet either of the exceptions to deportation; that he had no partner or children in the United Kingdom and had not been resident lawfully in the United Kingdom for most of his life, nor was he socially and culturally integrated and nor would there be very significant obstacles to his reintegration in Rwanda. When finding that there were no very compelling circumstances over and above the exceptions to outweigh the public interest in deportation, the Respondent acknowledged the Appellant's good behaviour since release from detention, but not that this was a significant or material factor and that family relationships can continue from outside of the United Kingdom. There were separate concerns raised as to the Appellant's claimed nationality, but it was considered that the Appellant could assist in resolving this. Finally the Respondent refused to revoke the Deportation Order."

THE ISSUES IN THE APPEAL

5. In an 'Appeal Skeleton Argument' dated 10 January 2024 settled by Mr Furner on behalf of the appellant, the issue in the appeal is summarised as follows:

"29. Under the Immigration Rules, the Appellant concedes that paragraphs 399 (concerning family life) and 399A (concerning private life) do not apply in-terms, because the Appellant has received a custodial sentence of over 4 years (see rule A398). The only issue arising for determination therefore is:

i. Whether, for the purposes of rule A398, there are very compelling circumstances over and above those described in paragraphs 399 and 399A outweighing the public interest in deportation."

…

30. Outside the Immigration Rules, the Respondent concedes at [77] that the Appellant has a protected private life in the UK for the purposes of Article 8(1) ECHR; and the Appellant concedes that any interference with those rights would be prescribed by law and done in pursuit of a legitimate aim (the prevention of crime and disorder) for the purposes of Article 8(2) ECHR. The only remaining issue for the Tribunal therefore is whether his deportation would be proportionate in all the circumstances.

32. The Appellant submits that in the context of that proportionality assessment, when seeking to strike a fair balance between the Appellant's interests and those of the community, the key issues are:

i. The current risk posed by the Appellant of re-offending and/or causing serious harm.

ii. The significance of the Respondent's delay of seven years determining the application to revoke the deportation order and the associated human rights claim.

iii. The extent of any harm caused to the Appellant, and his family members, by his deportation to Rwanda; and

iv. Whether the Respondent is entitled to rely upon a public interest in deterring foreign nationals from committing crimes as a factor weighing in favour of the Appellant's deportation."

6. Before I turn to the issues, there are two relevant matters that I record. First, the sentencing remarks of His Honour Judge Pawlak and second, the previous decision of First-tier Tribunal Judge Frankish promulgated on 3 July 2013.

The Sentencing Remarks

7. The appellant was sentenced on 13 November 2006 alongside three others. I acknowledge that the sentence imposed was amended on appeal to an indefinite period of imprisonment for public protection with a minimum term of seven years. However, the sentencing remarks of His Honour Judge Pawlak provide an insight into the offences for which the appellant was convicted. Judge Pawlak said:

> "You are all over 18. You have all pleaded guilty to robbery, which is punishable by life imprisonment - a serious offence, and a specified violent offence. Therefore, each of you qualifies for a life sentence or a sentence of imprisonment for public protection provided I am of the opinion that there is a significant risk to members of the public of serious harm caused by you committing further offences in the future as specified in Schedule 15 of the Criminal Justice Act 2003.
>
> Three of you have already served custodial sentences - something which has made no difference to your lives, and certainly has not deterred you in any way from committing these serious robberies.
>
> In the case of you three, your offences are, in my opinion, sufficiently serious to justify life sentences.
>
> You have all had unhappy family lives, but there comes a time when sympathy for your background evaporates as you continue to commit offences.
>
> These robberies usually took place late at night. Invariably you hunted in a pack. The violence was gratuitous and sadistic. Some of you appear to be addicted to violence. None of you are addicted to drugs. You treated your victims as if they were targets in an arcade game - without any human feeling or compassion. Your victims were always men on their own - either in cars or returning home from an underground or railway station. Some of your victims were kept prisoner for as long as an hour and intimidated verbally and physically. The psychological consequences of the assaults on them are substantial and continuing, as evidenced by the victim impact statements. In a word, these were appalling crimes.
>
> Some of the people who took part have not been caught. They, and others who are contemplating behaving in a similar way, need to know that they face a heavy sentence, if caught.
>
> Although there is evidence of your involvement in other offences beyond those to which you have pleaded guilty - for example, being in the area of the crime, shown by way of telephone contact and your close association with each other - I am sentencing you to terms of custody on the basis of the crimes to which you have pleaded guilty. For that purpose, I put out of my mind the other evidence, although it could be, and is, relevant to assessing how great a risk you pose to the public in the future.
>
> You have all pleaded guilty to these offences where the evidence was overwhelming. Rightly, the Crown has not proceeded to a trial on the outstanding counts. Those counts are to remain on the file in the usual

terms. Your pleas of guilty did not come at the earliest opportunity, for the 4 to 5 week trial to be avoided. The discount will be 20 percent.

I have read the letters written by you, the references, and the pre-sentence reports.

Sofian Majera, you are to be sentenced for 10 robberies. You are now twenty-three. You came to England in 1997, aged 14. Since February 2001, when you were 18, you have regularly been committing offences - usually to do with cars and some dishonesty. In October 2000 you were involved in aggravated vehicle-taking. The courts have sentenced you to detention or imprisonment on four separate occasions. The last was in June 2005 when you were sentenced to sixteen weeks' imprisonment for yet another offence of driving whilst disqualified.

Within a few months you were involved in these very serious offences. It is not surprising that you should be involved in offences involving carjacking. It was the next stage of your criminal career. Although your previous convictions do not include any relevant or specified offences, there is a pattern of gradually escalating seriousness, and having regard to the fact of the 10 robberies in which you are involved, I have no doubt that you are a dangerous offender, and there is a significant risk of serious harm – namely, serious injury to members of the public being caused by your committing further specified offences.

I disagree with the probation officer's opinion that there is no pattern of offending, or any other indication that you pose a higher likelihood of committing further offences of a similar nature to the ones to which you have pleaded now guilty.

You have only broken contact with the others because all of your criminal activity was stopped by the police investigation, your arrest and your being in custody. As I understand the assessment of your risk to the public, it is 'high' and not 'very high' because you plan your activities rather than act spontaneously.

In my opinion you need to be sentenced under the Criminal Justice Act 2003 provisions for serious specified offences.

The sentence will be life on each of the 10 counts. The starting point for a notional determinate sentence is, in my view, 18 years. Giving 20 percent credit, that is reduced to 14 years and four months. The notional determinate sentence is to be fourteen years. The minimum specified term which you must serve is to be seven years, less 331 days already spent in custody …"

…

Each of you came to this country as a teenager, or a near teenager. All of you, with the exception of Luis Frota, have already in your short lives spent several periods of time in custody. Your contribution to this society is to increase the risk to law-abiding people of their becoming victims of senseless and brutal crime. All four of you represent a genuine, present and sufficiently serious threat to public security and to the interests of this society. In my judgement, your remaining in this country is to the detriment of this country, and against the public interest.

Therefore I make a recommendation for your deportation or expulsion, in each case upon your release from custody. Whether you are deported or expelled will be decided by the Home Office and the Immigration Tribunal which will hear more information about you.

…"

THE DECISION OF FIRST-TIER TRIBUNAL JUDGE FRANKISH AND MR B YATES (3 JULY 2013)

8. The respondent made a decision to deport the appellant on 1 November 2012 and a deportation order was signed on 13 November 2012. The appellant's appeal against that decision was dismissed by First-tier Tribunal Judge Frankish and Mr B Yates ("the panel") for reasons set out in a decision promulgated on 3 July 2013.

9. The panel referred to the sentencing remarks of His Honour judge Pawlak, and at paragraph [6] referred to the 'pre-sentence report'. They said:

> "6. The presentence report dated 7 November 2006 records as follows. The 10 offences of robbery to which the appellant has pleaded guilty occurred on 24th, 27th and 31st October and 1st (three counts), 3rd, 9th, 10th and 15th November 2005. They involved various weapons ranging from a baseball bat to a firearm and a high degree of violence including kidnapping by a group of offenders. The appellant minimised his involvement, placed most of the blame on his co-defendants and said his role was limited to that of driver and look out except 3 November when he got out of the car to use the bank card of the victim. That made him "terrified" of what would happen to him. Until the end of November he was not aware of what was happening. He started by trying to impress the others but then went to become more involved because he was threatened by his co-defendants and was scared. However in mid November he began socialising with the others and realised that he was "going to get into trouble" whereupon he told them he was leaving and "did not want to be part of it". In interview he denied use of violence or threatening behaviour. However he accepted playing an integral part in the offences and knew what was happening without making any attempts to stop their or his involvement. "He therefore had a role in and was part of the psychological and physical harm caused to the victims". Little remorse was indicated. "It is difficult to make a full analysis given the level of denial and minimisation on the part of Mr Majera and the subtle contradictions in his statement. Nine convictions from 20 separate offences commencing in 2001 have resulted in mostly custodial sentences and a twenty four month community rehabilitation order in 2002. At the time of arrest the appellant was in receipt of £90 per fortnight JSA and lived with his mother and siblings in his aunt's house, although the mother has since been rehoused in a three-bedroom house. He played, unpaid, for Leyton Football Club reserves. No health issues were reported. He was assessed as low risk in all categories (children, adults, staff, self) save for to the public once released where the assessment was high. The injuries to the victims ranged from bruises to burns and broken limbs as well as the psychological impact. "It is of concern that Mr Majera neither accepts responsibility for his actions nor understands the seriousness of his behaviour. This needs to be addressed to assist in the lowering of harm. It should be noted that Mr Majera did express a limited level of remorse and some awareness of victim issues however this needs to be further developed". Having broken his ties with his co-defendants, the appellant is assessed as medium risk of committing further offences of this nature but with a high likelihood of further driving offences, the appellant still not having a driving licence. "Addressing Mr Majera's attitude and victim empathy would assist in reducing these levels". The appellant had

> expressed concern at the length of his forthcoming sentence for which he was taking antidepressants."

10. The panel also considered reports from the Parole Panel dated 16 April 2010 and 12 June 2013 and a psychological report prepared by Joanne Lackenby, a Chartered Phycologist and Senior Lecturer at Coventry University dated 1 June 2013. The panel heard evidence from Joanne Lackenby.

11. The panel's findings and conclusions are set out at paragraphs [25] to [46] of their decision. The panel rejected the appellant's claim that the appellant was drawn into offending because of peer influence and debt, and that he had played a minor role in robberies. At paragraph [37] of their decision the panel said:

> "Lastly, we have the appellant's assertion that he is a reformed man. To his credit he has completed some relevant courses satisfactorily. As he says, he is the only one he knows to complete seven years in prison with no adjudications. That is not to say that his imprisonment has been devoid of incident. There was an unresolved prospective adjudication when he left Wellingborough and thirty-two negative VDTs in two years. He has been found to be an unsatisfactory prison employee more than once. Finally, we have the fact that the appellant has an established pattern of imprisonment none of which has had the effect of reforming him. That does not bode well for his present sentence doing so. Indeed, it can be said that the only sanction which genuinely acts as a Sword of Damocles is the current deportation process."

12. The panel rejected the claim that the appellant is low risk in respect of committing further crime or serious harm to the public noting that the nature of his crimes had become steadily more serious, with physical harm and considerable destructive psychological impact on the victims. The panel also rejected the appellant's evidence that he has close ties to his family and described those family ties as being "very slight". At paragraphs [45] and [46] of their decision, the panel said:

> "45. ...The appellant has remained gravitated to those of a similar background to himself. He admits to understanding French up to a point, fluent Kirwandan and English. The local authority reports, with the substantial personnel involved in the Child Protection Panel, make repeated reference to the family also being fluent in Swahili. Mr Bates' country report referred to Rwanda's adoption of English as its official language and the push to become an IT centre, this being the appellant's subject of interest....
>
> 46. The appellant contended that he has noone *(sic)* left in Rwanda, came as a refugee and has psychological problems in the form of depression and PTSD. So far as the refugee position is concerned, the fact is that the only link is that of the mother whose claim was rejected.... We are left with the length of the appellant's time in the UK and his mental condition. So far as depression is concerned, Ms Lackenby did not consider that this currently requires treatment. Lack of certainty over the appellant's status can also be considered to have contributed. The PTSD is thought to have been long standing and has done nothing to impair the appellant in the choices he has made in the UK. He receives no treatment here which makes the absence of facilities in Rwanda irrelevant even though that country is not without facilities albeit not at the same level as the UK. The threshold of N (2005) UKHL 31 is far from satisfied here. Neither is a breach of article 8 applicable

> by reason of the appellant's mental state. He is left, therefore, with the simple fact of returning to his home country where he had his formative years. There he has the benefits of an education to build upon. Economic progress is being made in that country, notably in the field in which he is interested and in the languages in which he has particular fluency. Against this, we have the serious damage he has caused to British citizens and we conclude he could cause again. In those circumstances we conclude that no breach of article 8 arises through the operation of deportation under Sections 32 and 33 of the UK Borders Act 2007….”

13. The appellant was granted permission to appeal the decision of the panel to the Upper Tribunal on 4 September 2013. A panel of Upper Tribunal Judges (Judge Kebede and Judge Kopieczek) concluded that the decision of the panel of the FtT was not vitiated by errors of law for reasons set out in their decision promulgated on 19 February 2014.

THE LEGAL FRAMEWORK

14. The appellant has appealed the respondent’s decision to refuse his application to revoke the deportation order under s.82 of the Nationality, Immigration and Asylum Act 2002 on the ground that the decision is unlawful under s.6 of the Human Rights Act 1998. The appellant must satisfy me on the balance of probabilities that Article 8 ECHR is engaged. If it is, the burden shifts to the respondent to establish that the decision is proportionate.

15. Section 32 of the UK Borders Act 2007 defines a foreign criminal as 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) require that the Secretary of State must make a deportation order in respect of a foreign criminal (subject to section 33). Section 32(6) provides that the Secretary of State may not revoke a deportation order made in accordance with subsection (5) unless–

> (a) he thinks that an exception under section 33 applies,
>
> (b) the application for revocation is made while the foreign criminal is outside the United Kingdom, or
>
> (c) section 34(4) applies.

16. As far as relevant to this appeal, section 33 of the 2007 Act sets out the exceptions to deportation as follows:

> “33 Exceptions
>
> (1) Sections 32(4) and (5)-
>
> (a) do not apply where an exception in this section applies (subject to subsection (7) below), and

(b) are subject to sections 7 and 8 of the Immigration Act 1971 (Commonwealth citizens, Irish citizens, crew and other exemptions).

(2) Exception 1 is where removal of the foreign criminal in pursuance of the deportation order would breach–

(a) a person's Convention rights, or

(b) the United Kingdom's obligations under the Refugee Convention.

…

(7) The application of an exception–

(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;

But section 32(4) applies despite the application of Exception 1 or 4."

17. Part 13 of the Immigration Rules now makes provision for revocation of a deportation order as follows:

"Section 4: Revocation of a deportation order

13.4.1 Revocation of a deportation order does not entitle the foreign national to re-enter the United Kingdom; it means they may apply for and may be granted entry clearance or permission to enter or stay in the UK.

13.4.2. A deportation order remains in force until either:

(a) it is revoked; or

(b) it has been quashed by a court or tribunal.

13.4.3. A foreign national who is subject to a deportation order can apply to the Home Office for revocation of the order and should normally apply from outside the UK after they have been deported.

13.4.4. Where an application for revocation is made, a deportation order will be revoked where:

(a) in the case of a foreign national who has been convicted of an offence and sentenced to a period of imprisonment of less than 4 years, the Article 8 private or family life exception set out in paragraph 13.2.3 or 13.2.4, or both, is met or where there are very compelling circumstances which would make a decision not to revoke the deportation order a breach of Article 8 of the Human Rights Convention; or

(b) in the case of a foreign national who has been convicted of an offence and sentenced to a period of imprisonment of 4 years or more, there are very compelling circumstances which would make a decision not to revoke the deportation order a breach of Article 8 of the Human Rights Convention; or

(c) a decision not to revoke the deportation order would be contrary to the Human Rights Convention or the Refugee Convention.

…"

18. Finally, Part 5A of the Nationality, Immigration and Asylum Act 2002 informs the decision making in relation to the application of the exceptions referred to in section 33 of the UK Borders Act 2007. 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. Section 117C specifically deals with the weight to be attached to the public interest in deporting foreign criminals and provides a structure for conducting the necessary balancing exercise, dependent in part, on the length of sentence imposed.

19. It is uncontroversial that the appellant is a foreign criminal, as defined in s117D(2) of the 2002 Act. The appellant has been sentenced to a period of imprisonment of at least four years and is therefore a 'foreign criminal' as defined in s117D. Applying s117C(6) of the 2002 Act, the public interest requires deportation unless there are very compelling circumstances, over and above those described in Exceptions 1 and 2.

20. In *HA (Iraq) v Secretary of State for the Home Department* [2022] UKSC 22, Lord Hamblen referred to the 'very compelling circumstances' test. He cited the judgement of Sales LJ in *Rhuppiah v Secretary of State for the Home Department* [2016] 1 W.L.R 4203, at [50], that the 'very compelling circumstances' test "provides 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". Lord Hamblen said:

> "51. When considering whether there are very compelling circumstances over and above Exceptions 1 and 2, all the relevant circumstances of the case will be considered and weighed against the very strong public interest in deportation. As explained by Lord Reed in *Hesham Ali* at paras 24 to 35, relevant factors will include those identified by the European Court of Human Rights ("ECtHR") as being relevant to the article 8 proportionality assessment. In *Unuane v United Kingdom (2021) 72 EHRR 24* the ECtHR, having referred to its earlier decisions in *Boultif v Switzerland (2001) 33 EHRR 50* and *Üner v The Netherlands (2006) 45 EHRR 14* , summarised the relevant factors at paras 72-73 as comprising the following:
>
> "• the nature and seriousness of the offence committed by the applicant;
>
> • the length of the applicant's stay in the country from which he or she is to be expelled;
>
> • the time elapsed since the offence was committed and the applicant's conduct during that period;
>
> • the nationalities of the various persons concerned;
>
> • the applicant's family situation, such as the length of the marriage, and other factors expressing the effectiveness of a couple's family life;
>
> • whether the spouse knew about the offence at the time when he or she entered into a family relationship;

> • whether there are children of the marriage, and if so, their age; and
>
> • the seriousness of the difficulties which the spouse is likely to encounter in the country to which the applicant is to be expelled …
>
> • the best interests and well-being of the children, in particular the seriousness of the difficulties which any children of the applicant are likely to encounter in the country to which the applicant is to be expelled; and
>
> • the solidity of social, cultural and family ties with the host country and with the country of destination."

52. The weight to be given to the relevant factors falls within the margin of appreciation of the national authorities. As Lord Reed explained in *Hesham Ali* at para 35:

> "35. While the European court has provided guidance as to factors which should be taken into account, it has acknowledged that the weight to be attached to the competing considerations, in striking a fair balance, falls within the margin of appreciation of the national authorities, subject to supervision at the European level. The Convention on Human Rights can thus accommodate, within limits, the judgments made by national legislatures and governments in this area."

Rehabilitation

53. Whilst it was common ground that rehabilitation is a relevant factor in the proportionality assessment there was some disagreement between the parties as to the reason for that and the weight that it is capable of bearing in the context of the very compelling circumstances test.

54. That it is a relevant factor is borne out by the Strasbourg jurisprudence. The time elapsed since the offence was committed and the applicant's conduct during that period is one of the factors listed in *Unuane* , drawing on the ECtHR's earlier decision in *Boultif* . This is also supported by domestic authority - see, for example, *Hesham Ali* (per Lord Reed at para 38); *NA (Pakistan)* at para 112 and, more generally, *Danso v Secretary of State for the Home Department [2015] EWCA Civ 596* .

55. In *RA* the Upper Tribunal stated as follows in relation to the significance of rehabilitation:

> "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 … 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 … Any judicial departure from the norm would, however, need to be fully reasoned." (para 33)

56. In *Binbuga v Secretary of State for the Home Department [2019] EWCA Civ 551; [2019] Imm AR 1026 at para 84* I cited and agreed with that passage. The Secretary of State submitted that this approach was correct and should be endorsed as, whilst it acknowledges that rehabilitation can be

relevant, in terms of weight it will generally be of little or no material assistance to someone seeking to overcome the high hurdle of the very compelling circumstances test.

57. In the *RA* appeal, the Court of Appeal, while agreeing that rehabilitation will rarely be of great weight, did not agree with the statement that "rehabilitation will … normally do no more than show that the individual has returned to the place where society expects him … to be". They considered that it did not properly reflect the reason why rehabilitation is in principle relevant, namely that it goes to reduce (one element in) the weight of the public interest in deportation which forms one side of the proportionality balance.

58. Given that the weight to be given to any relevant factor in the proportionality assessment will be a matter for the fact finding tribunal, no definitive statement can be made as to what amount of weight should or should not be given to any particular factor. It will necessarily depend on the facts and circumstances of the case. I do not, however, consider that there is any great difference between what was stated in *Binbuga* and by the Court of Appeal in this case. In a case where the only evidence of rehabilitation is the fact that no further offences have been committed then, in general, that is likely to be of little or no material weight in the proportionality balance. If, on the other hand, there is evidence of positive rehabilitation which reduces the risk of further offending then that may have some weight as it bears on one element of the public interest in deportation, namely the protection of the public from further offending. Subject to that clarification, I would agree with Underhill LJ's summary of the position at para 141 of his judgment:

> "What those authorities seem to me to establish is that the fact that a potential deportee has shown positive evidence of rehabilitation, and thus of a reduced risk of re-offending, cannot be excluded from the overall proportionality exercise. The authorities say so, and it must be right in principle in view of the holistic nature of that exercise. Where a tribunal is able to make an assessment that the foreign criminal is unlikely to re-offend, that is a factor which can carry some weight in the balance when considering very compelling circumstances. The weight which it will bear will vary from case to case, but it will rarely be of great weight bearing in mind that, as Moore-Bick LJ says in *Danso* , the public interest in the deportation of criminals is not based only on the need to protect the public from further offending by the foreign criminal in question but also on wider policy considerations of deterrence and public concern. I would add that tribunals will properly be cautious about their ability to make findings on the risk of re-offending, and will usually be unable to do so with any confidence based on no more than the undertaking of prison courses or mere assertions of reform by the offender or the absence of subsequent offending for what will typically be a relatively short period." “

21. Recently, in *Yalcin v Secretary of State for the Home Department* [2024] 1 WLR 1626, Lord Justice Underhill explained:

“53. The starting-point is to identify the basic structure of the law in this area. At para. 47 of his judgment in *HA (Iraq)* Lord Hamblen approved the summary which I gave at para. 29 of my judgment in this Court:

> "(A) In the cases covered by the two Exceptions in subsections (4)-(5), which apply only to medium offenders, the public interest question is

answered in favour of the foreign criminal, without the need for a full proportionality assessment. Parliament has pre-determined that in the circumstances there specified the public interest in the deportation of medium offenders does *not* outweigh the article 8 interests of the foreign criminal or his family: they are, given, so to speak, a short cut. The consideration of whether those Exceptions apply is a self-contained exercise governed by their particular terms.

(B) In cases where the two Exceptions do not apply – that is, in the case of a serious offender or in the case of a medium offender who cannot satisfy their requirements – a full proportionality assessment is required, weighing the interference with the article 8 rights of the potential deportee and his family against the public interest in his deportation. In conducting that assessment the decision-maker is required by section 117C(6) (and paragraph 398 of the Rules) to proceed on the basis that 'the public interest requires deportation unless there are very compelling circumstances over and above those described in Exceptions 1 and 2'."

…

57. *NA (Pakistan)* thus establishes that the effect of the over-and-above requirement is that, in a case where the "very compelling circumstances" on which a claimant relies under section 117C(6) include an Exception-specified circumstance ("an Exception-overlap case")[9] it is necessary that there be something substantially more than the minimum that would be necessary to qualify for the relevant Exception under subsection (4) or (5): as Jackson LJ puts it at para. 29, the article 8 case must be "especially strong". That higher threshold may be reached either because the circumstance in question is present to a degree which is "well beyond" what would be sufficient to establish a "bare case", or – as shown by the phrases which I have italicised in paras. 29 and 30 – because it is complemented by other relevant circumstances, or because of a combination of both. I will refer to those considerations, of whichever kind, as "something more". To take a concrete example, if the Exception-related circumstance is the impact of the claimant's deportation on a child (Exception 2) the something more will have to be either that the undue harshness would be of an elevated degree ("unduly unduly harsh"?) or that it was complemented by another factor or factors – perhaps very long residence in this country (even if Exception 1 is not satisfied) – to a sufficient extent to meet the higher threshold; or, as I have said, a combination of the two.

,,,

62. … I agree that it would in principle conduce to transparent decision-making if the tribunal identified with precision in every case what the something more consisted of; but that will not always be straightforward. The proportionality assessment is generally multi-factorial and requires a holistic approach. A tribunal must of course in its reasons identify the factors to which it has given significant weight in reaching its overall conclusion. It is no doubt also desirable that it should indicate the relative importance of those factors, but there are limits to the extent to which that is practically possible: the factors in play are of their nature incommensurable, and calibrating their relative weights will often be an artificial exercise. It would in my view place an unrealistic burden on tribunals for them to have to decide, and specify, in every case whether the something more consists of the Exception-

> specific circumstance being present to an elevated degree, or of some other circumstance or circumstances, or a combination of the two. There may be cases where for some reason peculiar to the case this degree of specificity is necessary; but I do not believe that there is any universal rule. We should not make decision-making in this area more complicated than it regrettably already is."

THE EVIDENCE

22. I have been provided with copies of the bundles that were relied upon by the parties previously before the FtT. In advance of the hearing before me, I have also been provided with what is described as "new evidence" by the appellant's representatives, which comprises of an updated psychological report prepared by Joanne Lackenby, a response for the Home Office for a FOI request, and a Human Rights Watch report. The appellant, his mother and brother gave evidence before me. I also heard evidence from Joanne Lackenby. The oral evidence is set out in my record of proceedings.

23. There is a considerable volume of evidence before me. It is entirely impractical for me to burden this decision with a reference to each piece of evidence, written or oral, but for the avoidance of doubt I have had regard to all the evidence set before me in reaching my decision.

<u>The appellant</u>

24. The appellant adopted his witness statement. He maintains he is a national of Rwanda, albeit he cannot remember much about his family's life in Rwanda before they came to the UK. He states he has been unable to work and earn a living since his release from prison and has been unable to build a life for himself. He confirms that despite those difficulties, he has not engaged in any criminal activity, and he considers that to be a part of his life in the past. He states that he has taken up every opportunity he was offered whilst he lived in Approved Premises, and always reported as required. Between April 2017 and the beginning of 2019 he lived with a cousin and received some limited financial support (£30/week) from his brother, Rashid. The appellant was moved to shared Home Office accommodation in Leicester in 2019. His brother has provided him with an old laptop that he has used to teach himself basic software development, and in the future he would like to get a job in 'IT'. The appellant describes the difficulties that he has faced and states that despite the significant financial and emotional difficulties he has experienced, he has never been tempted to commit crimes again. He claims that he finds it pretty easy to stay out of trouble and feels like a completely different person from the young man who was convicted of so many offences. He states he does not have any contact with people involved in illegal activities now and he wants to live a positive and productive life. He describes the close relationship he has with his family, including niece and nephew, and the emotional support they provide. He states that without them to speak to, he would be isolated and he feels that his mental health would deteriorate. He deeply regrets his offending and he claims he feels emotional and overwhelmed when he thinks about how the victims were affected. The appellant claims his memories of his

childhood in Rwanda are of painful and traumatic experiences and he would have no idea where to start. He claims to know nothing of the culture and way of doing things in Rwanda, as he has not lived there since he was a child.

25. In his oral evidence the appellant confirmed he currently lives in a shared house with five others and that he receives £38.50 each week. His bother and mother take food to him when they visit. His mother visited him about six times during 2023, but he has not seen her for the past three months because the appellant's sister had lost her baby and his mother has been supporting her. The appellant confirmed his brothers also visit him, and that he maintains contact with his family by phone when he has 'credit'. The appellant said that he is currently in Home Office accommodation, but if he could, he would prefer to live closer to his mother in Glasgow so that he can support her.

26. In cross-examination, the appellant confirmed he currently takes over-the-counter painkillers for a back injury. He said that he had some counselling when he was in prison about his traumatic experiences in Rwanda but has not spoken to the doctor about any counselling since his release. The appellant confirmed he has a friend in Leicester that he plays football with, but spends most of his time in the library, park or gym. Other than the back-pain, he considers himself to be fit and well. The appellant confirmed that at home, the family spoke Swahili and English, and in Rwanda they also spoke Rwandese. He said that if he is returned to Rwanda, he would not know where to start because he was young when left and it has now been 27 years since he left. In re-examination, the appellant said that he has forgotten most of the languages that he previously spoke and has been speaking English for the last 27 years.

<u>Joanne Lackenby</u>

27. Joanne Lackenby is a Chartered Forensic Psychologist. She has prepared three reports. The first is dated 1 June 2013, the second is dated 19 April 2022 and the third is dated 4 January 2024.

28. She was referred to the respondent's review dated 18 May 2022 in which the respondent noted the Tribunal has previously concluded in 2013/14 that the appellant's deportation would not be in breach of Article 8 and there is a "lack of any real significant change to the Appellants circumstances". She was asked whether that is a view she shares. Ms Lackenby explained that when the decision was made in 2013, the appellant was in closed conditions. The Parole Board then recommended a move to open prison conditions that was accepted and the appellant worked for a charity for two years. Following a review by the Parole Board in 2015, the appellant was released from prison. Since 2015 he has been living in the community, initially in London and then in Leicester, an area that was unfamiliar to him. He is said to have lived in impoverished conditions and was supervised by the probation service. His attendance and engagement have been nothing less than excellent, and so in her

view, there have been significant changes to the appellant's circumstances since the previous decisions.

29. Ms Lackenby said that the level of compliance demonstrated by the appellant is relatively uncommon. There is a high level of recall but the appellant has been in the community for 8½ years without a single breach, in circumstances where things have been difficult. That is uncommon. She said that the appellant would usually have been encouraged to engage in employment, education services and to engage with housing providers and voluntary work to promote living a lifestyle that avoids convictions. He has been unable to access those services because of his immigration status.

30. Asked about the appellant's ability to maintain relationships with his family by electronic means, Ms Lackenby explained that the best example is the impact on everyone during the Covid pandemic. It is possible to maintain contact by electronic means but that is simply not the same. There is a huge difference between those who make a conscious choice to live continents apart, and those forced to do so. Ms Lackenby was referred to the appellant's evidence that he has not had any counselling for his mental health since his release from prison. She said that he continues to report residual symptoms of trauma that he manages, but when returned to the seat of that trauma, the trauma can increase. It does not surprise her that he is coping and although she cannot predict the future, it would not surprise her if the trauma increased on return to Rwanda.

31. Ms Lackenby was asked about the assessment of the risk the appellant presents now. She said that he was young when the offences were committed and they were in the context of a chaotic life and impoverished circumstances. He is now older and the most significant factor that weighs against risk, is the progress he has made since his release. Risk is contained in custody but the test is what happens after a person is released. The appellant has proved that over 8 ½ years after his release, he can abstain from any offending and there is no concern that the risk is increasing.

32. In cross-examination, Ms Lackenby accepted that licence conditions imposed manage the risk of reoffending albeit people are often recalled for reoffending whilst they are on licence. She explained that licence conditions are necessary because they help manage risk. If someone has offended because of drug and alcohol, conditions such as testing can reveal breaches and they can be recalled. The conditions are necessary to protect the public. She said that a person that has a genuine family life would be adversely affected by deportation. It will have a significant detrimental effect. As to any adverse impact on the appellant, Ms Lackenby said that it is difficult to speculate but there could be an impact on his symptoms of trauma that could trip him into depression.

Zam Zam Juma (aka Mama Majera)

33. The appellant's mother adopted her witness statement. She confirmed that she has previously tried to apply for a Rwandan passport for the appellant. The application was made before the appellant was first sent to prison in 2004/5. She explained that before the hearing, she had last seen the appellant about two months ago and she had seen the appellant about

six times during 2023. She confirmed that she has a 'heart problem', and works two jobs as a cleaner, working approximately 40-45 hours each week. She was asked why some members of the family have Rwandan passport but others do not. She explained that when she made the applications in 2004/5, she sent the forms but did not have photographs for everyone. She has not tried to remake the applications with photographs.

Rashid Majera

34. The appellant's brother confirmed the content of his letter dated 29 April 2022 is true and correct. He confirmed that he sees the appellant about every three months when he has time off from university. He is studying a Digital Interaction Degree at the University of Dundee. He maintains contact with the appellant by phone and video calls.

35. In cross-examination, he confirmed he moved to Dundee about two years ago and when he completes his degree, he will move to wherever he can get a job. He was asked whether he will maintain contact with the appellant by telephone if the appellant is deported. He said that like with other relatives, you can lose contact, and relationships can break down when you do not meet face-to-face.

Other evidence

36. Although they were not all called to give evidence, I have had regard to the witness statements of the appellant's siblings that are in Part C of the hearing bundle. There is further evidence that is relied upon by the appellant before me in Part B of the hearing bundle. That includes a letter from Michelle Davinson from the National Probation Service dated 8 January 2024.

DECISION

37. The submissions made by Mr Bates and Mr Furner are a matter of record and there is nothing to be gained by repeating them in this decision. I have been provided with a skeleton argument settled by Mr Furner dated 10 January 2024. I am grateful to Mr Bates and Mr Furner for their clear and helpful submissions, both in writing and at the hearing before me although I have not found it necessary to refer to each and every point they raised.

Nationality

38. In his decision dated 19 October 2022, the respondent refers to the appellant's immigration history. The respondent refers to the decision served upon the appellant on 16 November 2012 refusing his human rights claim. The appellant exhausted his rights of appeal against that decision on 27 November 2014. The respondent refers to the steps then taken by the respondent to obtain the necessary documents to facilitate the appellant's removal to Rwanda. At paragraph [62] of the decision the respondent notes that on 28 January 2016, the Rwandan authorities did not accept the appellant to be a Rwandan citizen. The respondent refers to the information provided by the appellant in response to a request that

the appellant provide any evidence to corroborate his claim to be a Rwandan national. Notwithstanding the respondent does not accept the appellant to be a national of Rwanda, the respondent reached his decision on the basis that the appellant will be removed to Rwanda.

39. The evidence of the appellant's mother, which I accept, is that some members of the family have been issued with a Rwandan passport and others have not. She explained that when she applied for passports in 2004/5 some of the applications were not accompanied by photographs. Perhaps unsurprisingly, passports were not issued, but there appears to have been no attempt to renew the applications for a Rwandan passport with the relevant evidence of nationality and photographs.

40. It is common ground between Mr Bates and Mr Furner that I should proceed to determine the appeal on the premise that the appellant is a national of Rwanda and that his deportation will be to Rwanda.

Article 8

41. The respondent accepts the appellant has established a private life in the UK given his length of residence. The appellant concedes that any interference with those rights would be prescribed by law and in pursuit of a legitimate aim (the prevention of crime and disorder) for the purposes of Article 8(2) ECHR. The only remaining issue for the Tribunal therefore is whether the deportation would be proportionate in all the circumstances.

42. The appellant is a foreign criminal who has been convicted of an offence and sentenced to a period of imprisonment of 4 years or more. Part 13 of the Immigration Rules makes provision for revocation of the deportation order if there are very compelling circumstances which would make a decision not to revoke the deportation order a breach of Article 8. Part 5 of the Nationality, Immigration and Asylum Act 2002 applies where a Tribunal is required to determine whether a decision breached a person's right to respect for private and family life under Article 8 and as a result would be unlawful under s6 of the Human Rights Act 1998. In cases concerning the deportation of foreign criminals the Tribunal must, in particular, have regard to the considerations listed in s117C of the Act. Section 117C(6) of the Act provides:

> "In the case of a foreign criminal who has been sentenced to a period of imprisonment of at least 4 years, the public interest requires deportation unless there are very compelling circumstances, over and above those described in Exceptions 1 and 2." *(my emphasis)*

43. As Underhill LJ recently confirmed in *Yalcin* in a 'serious offender' case, as here, a full proportionality assessment is required, weighing the interference with the Article 8 rights of the appellant and his family against the public interest in his deportation.

44. I accept, as Mr Furner submits that the previous decision of the panel of the FtT promulgated on 3 July 2013 forms the starting point. It is not determinative. The appellant was serving a sentence of imprisonment at that time. The panel found the appellant's family ties to the UK to be "very slight". The appellant has set out in his witness statement, the

contact that he has with his mother and siblings, and the emotional support in particular, that they provide. The appellant has continued to maintain contact with his family since his release in July 2015 and although it is understandable that the appellant would prefer to live near his mother and siblings if were able to do so, he has continued to live apart from his family and the support they have been able to provide has been limited. The appellant has undoubtedly established a private life in the UK, but on the evidence before me, that is limited. He lives in shared accommodation and in his evidence before me, he said that he spends most of his time indoors. He goes to the library, has walks in the park, plays football and regularly goes to the gym. The private life the appellant has established is what I would describe on the evidence before me as minimal, albeit I accept that is because of the limitations placed upon him by his current living arrangements.

45. The panel of the FtT referred to the pre-sentence report and the OASys assessment completed on 24 September 2009. The OASys assessment summarised the risk of serious harm to the public if the appellant were in the community to be 'high'. The panel considered the appellant's claim to be a reformed man and they noted that, to his credit, he has completed some relevant courses satisfactorily.

46. There has been a significant passage of time since the decision of the panel of the FtT. The appellant was released from his custodial sentence in March 2015, but detained under immigration powers until granted bail by the FtT on 30 July 2015. The appellant was released into Approved Premises, and thereafter lived on a temporary basis with a cousin in London before being dispersed to accommodation in Leicester. The appellant has spent a considerable period living in the community and there is no evidence of any further criminal activity or convictions. An OASys assessment completed on 28 April 2022 records the appellant has demonstrated a very positive attitude towards his supervision and engaged well in supervision. It is said that he has shown a much more mature attitude and now openly admits that at the time of the offences, he did not care about the impacts of his actions. He is now said to have a strong sense of right and wrong and clearly considers the impacts of his actions. It is said the appellant demonstrates a very high level of motivation to avoid re-offending in future and is assessed as having the necessary skills to achieve that. The assessment identifies a risk to the general public, but the likelihood of serious offending over the next two years is said to be 'low'.

47. The most recent OASys assessment is consistent with the most recent letter dated 8 January 2024 relied upon by the appellant from Michelle Davinson, a Probation Service Officer. She has been supervising the appellant since May 2023 and she has had no concerns with his compliance. She confirms the appellant has attended all his planned employments *(sic)* and he engage well in sessions. She states his risk remains low in all categories. She confirms the appellant has completed a Thinking Skills Programme and work around Victim Empathy. She states he has shown a strong commitment to avoiding re-offending and identifies how he has changed and does not to want to go back to his previous

lifestyle and negative feelings. She states the appellant continues to have a strong desire to be able to work or further his education however is prevented from doing so because of his immigration status rather than a lack of motivation.

48. Although the Tribunal's findings as to the appellant's offending history and the seriousness of the index offences remain the starting point, given the passage of time, and in particular, the lengthy period the appellant has now lived in the community, I do not consider myself bound by the decision of the FtT panel promulgated in July 2013. For the avoidance of any doubt I have considered for myself whether there are very compelling circumstances which would now make a decision not to revoke the deportation order a breach of Article 8.

49. The appellant is a 'serious offender' (having been sentenced to a period of imprisonment of at least four years) and therefore the public interest requires his deportation unless there are very compelling circumstances, over and above those described in Exceptions 1 and 2, set out in s117C of the 2002 Act. It is useful to begin by briefly considering the two Exceptions and to determine the extent, if any, to which the appellant might rely upon the matters referred to in those Exceptions.

50. As far as Exception 1 is concerned, the appellant arrived in the UK in 1997 aged 15. He is now 41. On a purely arithmetical calculation, I accept the appellant has been resident in the UK for most of his life.

51. It is now well established that the question whether a foreign criminal is socially and culturally integrated in the United Kingdom is to be determined in accordance with common sense. I accept the submission made by Mr Furner that the appellant's family's integration into UK society was not seamless, with the involvement of social services and serious questions about the appellant's mother's capacity to parent. The appellant has, as Mr Furner acknowledges, several convictions dating from 2001, during his adolescence. I have already referred to the sentencing remarks of His Honour Judge Pawlak who noted that since February 2001, when he was 18, the appellant had regularly been committing offences - usually to do with cars and some dishonesty. He noted the courts had sentenced the appellant to detention or imprisonment on four separate occasions previously and that within a few months of being sentenced in June 2005 to sixteen weeks' imprisonment for yet another offence of driving whilst disqualified, the appellant was involved in the very serious index offences. The judge described the index offences as unsurprising, and the next stage of the appellant's criminal career having noted the pattern of gradually escalating seriousness. There is very limited evidence before me regarding the appellant's social and cultural integration. The focus of the appellant's adolescent years in the UK appears to have been his engagement in criminal activity, leading to a lengthy custodial sentence.

52. The appellant has undoubtedly formed relationships in the UK but his conduct between 2001 and 2015 taken in isolation would militate against a finding that he is socially and culturally integrated in the United Kingdom. It cannot however be taken in isolation, and I have had regard to the

evidence before me regarding the appellant's conduct and activities since his release into the community in July 2015. The appellant was initially prevented from engaging in voluntary work because of conditions imposed by the respondent. The respondent's decision was quashed by the Upper Tribunal, a decision reaffirmed by the Supreme Court. The appellant has been living in Home Office accommodation for a number of years and I accept his evidence to the effect that he has used the last few years constructively, to learn new skills that will assist him in the future. Looking at the evidence before me holistically, and having regard to the appellant's upbringing, education, employment history, history of criminal offending and imprisonment, together with the relationships he has with family and friends, I am persuaded that the appellant is now socially and culturally integrated in the UK.

53. I do not accept however that the appellant would encounter very significant obstacles to re-integration in Rwanda. I remind myself that the assessment of 'integration' calls for a broad evaluative judgement as set out by Sales LJ in *SSHD -v- Kamara* [2016] EWCA Civ 813, at [14]. In his witness statement, the appellant claims he cannot remember much about his family's life in Rwanda, and he avoids thinking about that time because the memories that he has are painful. The appellant refers to the attempt by the respondent to document the appellant in 2016 and he speculates that the authorities declined to accept he is a Rwandan national because of his convictions. I accept the appellant was a child when he left Rwanda, but he was not so young that he would not have any knowledge about life there. The appellant has acquired at least some skills that will assist him secure employment. The appellant was able to speak some Swahili, albeit limited. The panel of the FtT noted in paragraph [45] of their decision that the appellant admitted to understanding French up to a point and being fluent in Kirwandan and English. There was also repeated reference in the evidence before the Tribunal of the family being fluent in Swahili.

54. In reaching my decision, I have borne in mind the report of Ms Lackenby and her opinion that return to Rwanda would have a debilitating impact on the appellant's mental health as a result of the reduction in the quality of the support he can engage in with his family. I have already referred to the evidence before me regarding the contact the appellant has with his mother and siblings and I have borne that in mind. I have also had due regard to the opinion expressed by Ms Lackenby of a significant risk that symptoms of PTSD could re-emerge due to being returned to the source of his traumatic experiences. However as she accepted in cross-examination, it is difficult to speculate upon what the impact of deportation to Rwanda may be. Although there will inevitably be some disruption for the appellant to begin with, I find the appellant would be able, within a reasonable period, to find his feet and exist and have a meaningful life within Rwanda. Having heard the appellant give evidence, I find that he has been managing his mental health and there is nothing that will prevent him from engaging fully in life in Rwanda. I am quite satisfied the appellant has gained an insight into his mental health and developed strategies so that he knows how to cope. There will inevitably be a period of adjustment, but in my judgement he could adjust to life in Rwanda within a reasonable timescale. The appellant has acquired skills

that he will be able to continue to develop in Rwanda. He has benefitted from financial support from his siblings and there is no reason why that cannot continue. I accept life in Rwanda will not be easy initially, but I do not accept he could not cope. Having considered the evidence as a whole, whilst I accept that he will naturally encounter some hardship in returning to Rwanda, I do not consider that hardship to approach the level of severity required by s117C(4)(iii).

55. The appellant therefore fails to meet the first exception to deportation. The appellant is not in a genuine and subsisting relationship with a qualifying partner and neither does he have a genuine and subsisting parental relationship with a qualifying child. Exception 2 is therefore irrelevant. The appellant therefore fails to meet the statutory exceptions to deportation in every respect.

56. The test in s117C(6) is a proportionality test, balancing the rights of the appellant against the public interest in his deportation. The scales are nevertheless weighted heavily in favour of deportation.

57. There are four factors that are relied upon by Mr Furner that in his submission establish ‘very compelling circumstances over and above those described in Exceptions 1 and 2’ so that the public interest that requires the appellant’s deportation is outweighed. First, Mr Furner submits the evidence now before me stablishes that the appellant poses a low risk of re-offending or causing serious harm. He refers to the OASys assessment completed in April 2022, the evidence of Ms Lackenby and the most recent letter from Michelle Davinson, the Probation Service Officer. Mr Furner submits that despite the challenges faced by the appellant since his release in July 2015, and over a period of nearly nine years during which the appellant has now been at large, he has not only remained free of offending, but he has also maintained a positive and pro-social lifestyle generally. The appellant, he submits, has now been tested in the community over a very long period and demonstrated beyond question that he does not pose a risk of engagement in crime and disorder.

58. Second, there has been a significant delay on the part of the respondent in making a decision upon the appellant’s application to revoke the deportation order. The application was made in April 2015, largely in reliance on developments over the preceding two years, and in particular the appellant’s conduct while in open conditions and the determination of the Parole Board on 30 March 2015. Relying upon the decision in *EB (Kosovo)* Mr Furner submits that during the delay between 2015 and the respondent’s decision in October 2021, the appellant has developed closer and deeper personal and social ties in the UK, the delay undermines the relevance of the precariousness of his status in the UK and the weight to be accorded to the public interest in immigration control. He submits the respondent was aware the appellant is at large, yet the respondent took no steps to actually deport him. Furthermore, the sheer passage of time is such that the index offence was committed in 2005, when the appellant was 24, now some 19 years ago and he is now 42. Mr Furner submits that although the offences were extremely serious the significance to the proportionality assessment now is inevitably dimmed by its historic nature.

59. Third, deportation would result in the appellant being removed from the UK, in effect the only country he has ever known; to Rwanda, a country he has not seen since he was 15, and which holds powerful traumatic memories for him. Mr Furner acknowledges the appellant's integration into life in the UK was very far from ideal. However, he submits proper regard must also be had to the sheer length of his residence here, much of which was lawful, and (in particular) his blameless and positive conduct over the past seven years, the powerfully negative impact of deportation on his mental health and the rehabilitation he has worked so hard to achieve. There will also be, Mr Furner submits, an impact on the appellant's family in the UK, almost all of whom are now British, and with whom he maintains very strong bonds.

60. Finally, Mr Furner submits 'deterrence' cannot be relied upon here because judgments of the European Court of Human Rights, not cited by the British courts which have relied upon deterrence in Article 8 cases, indicate that deterrence is not one of the factors relevant to the Article 8 proportionality assessment; and the relevance of deterrence has been routinely adopted by the courts as a matter of legal reasoning, and in the absence of any evidence as to whether or not such a deterrent effect exists. Dr de Noronha has reviewed the academic literature and evidence in relation to the deterrent value of deportation in the UK and concludes that he has been unable to find available academic research into the effectiveness of deportation policy as a deterrent against crime in the UK.

61. As far as deterrence is concerned, I have borne in my what was said by Lord Hamblen in paragraph [59] of his judgment in *HA (Iraq)*, regarding the relevance of wider policy consideration of public concerns to the legitimate aim of the prevention of crime and disorder. However, as Mr Bates submits, s117C(2) of the 2002 Act, makes it clear that the more serious the offence committed, the greater is the public interest in deportation. I have referred to the sentencing remarks of His Honour Judge Pawlak in paragraph [7] of this decision. The judge outlined the nature of the index offences, noting that the contribution of each of the defendants, including the appellant, to society is to increase the risk to law-abiding people of their becoming victims of senseless and brutal crime. The Judge expressed the clear view that the appellant remaining in this country is to the detriment of this country, and against the public interest. Having regard to the appellant's offending history, and the sentencing remarks of His Honour Judge Pawlack there can be no doubt that the appellant has shown in the past, a singular lack of regard for the criminal law and indeed the safety and well-being of people in the UK. They are matters that weigh heavily against the appellant.

62. I have already found that the appellant has failed to establish that there would be very significant obstacles to his integration in Rwanda and I attach due weight to the length of time the appellant has spent in the UK. His early years in the UK were mired by criminal activity and the last 8½ years have been set in the context of a valid Deportation Order.

63. Mr Bates accepts there has been no further offending by the appellant, but he submits, it was a significant offence that resulted in a lengthy sentence with longstanding licence conditions. As the Supreme Court

highlighted in *HA*, the time elapsed since the index offence was committed and the appellant's conduct during that period is a relevant consideration. I accept that very much to the appellant's credit, there is no evidence before me that the appellant has engaged in criminal activity and he has not been convicted of any further offending since his release in July 2015. The most recent OASys assessment and the letter from Michelle Davinson establishes there have been no concerns regarding the appellant's compliance and he has engaged well with the Probation Service. The risk of serious harm remains 'low' and the appellant, to his credit, has shown a strong commitment to avowing re-offending and does not want to go back to his previous lifestyle. The period during which the appellant has demonstrated that he is able to abstain from offending is considerable and I attach due weight to that in my proportionality assessment.

64. I also acknowledge and attach due weight to the delay in reaching a decision upon the appellant's application to revoke the deportation order. The appellant has however been the subject of a deportation order since 13 November 2012, and he was well aware that appeal against the respondent's decision to refuse his human rights claim had been dismissed in July 2013. He had only just exhausted his rights of appeal on 27 November 2014 when on 2 April 2015 he made the application for revocation of the deportation order. In September 2015 the respondent reached a decision to refuse to treat the application as a fresh claim. The respondent agreed to withdraw that decision in October 2015 and agreed to reconsider the matter. There was then a delay until May 2021 when the appellant's representatives were invited to provide up-to-date information. A response was received in July 2021 and a decision was made on 19 October 2021. I accept, as Mr Bates submits that during this time, the appellant was aware there was an extant deportation order and the appellant could have no legitimate expectation that the application would succeed. Mr Bates submits it has strengthened the family life and the ability of the appellant to say he has not reoffended. Part of the delay was the difficulties in getting documentation.

65. There has, I accept been delay, but that delay has been to the appellant's advantage because it has given him at least some opportunity to demonstrate his ability not to engage in offending behaviour. I give due weight to the delay, in favour of the appellant. During that period of delay, the appellant, I accept, has demonstrated that he has the ability to abstain from offending and I give him due credit for that. I accept he has modified his behaviour and that is a factor that weighs in his favour.

66. The underlying decision follows an application by the appellant to revoke the Deportation Order. Mr Furner submits the general position that those deported should serve a re-entry ban of 10 years unless the deportee can show a breach of Article 8 ECHR provides a useful benchmark when considering the delay. I accept that 10 years have passed since the deportation order was signed, but simply taking the view that as 10 years has passed, the public interest has considerably diminished is to ignore the fact that a foreign national who is subject to a deportation order should normally apply from outside the UK after they have been deported. In any event, even once 10 years have passed, as the Court of Appeal said in *EYF*

(Turkey) v Secretary of State for the Home Department [2019] 4 W.L.R 69, there is no presumption in favour of or against revoking a deportation order The question of revocation of a deportation order depends on the circumstances of the individual case.

67. Standing back, I attach due weigh to the evidence before me of rehabilitation, and the reduced risk of re-offending that has been demonstrated by the appellant that weigh in his favour. The appellant has demonstrated that he can abstain from offending, even in challenging circumstances. However, throughout, the appellant has been under the threat of deportation and I would not go as far as to say that on the evidence before me I can make a finding that the appellant is unlikely to re-offend.

68. In reaching my decision I have also had regard to the fact that the appellant now accepts responsibility for his actions, has matured and expresses remorse. I have had regard to the letters provided by the appellant's family expressing their support for the appellant and the evidence of Ms Lackenby that the appellant's compliance since his release is relatively uncommon.

69. In my final analysis, I find the appellant's protected rights, whether considered collectively with rights of others that he has formed associations with, or individually, are not in my judgement such as to outweigh the public interest in the appellant's removal having regard to the policy of the respondent as expressed in the immigration rules and the 2002 Act. Even giving credit to the appellant for his conduct since his release, and the factors that weigh in his favour, I am not satisfied that the public interest is weakened to the point where it is capable of being outweighed by the appellant's Article 8 claim. I am satisfied that on the facts here, the decision to refuse to revoke the deportation order is not disproportionate to the legitimate aim and I therefore dismiss the appeal on Article 8 grounds.

Notice of Decision

70. The appeal is dismissed.

V. Mandalia
Upper Tribunal Judge Mandalia

Judge of the Upper Tribunal
Immigration and Asylum Chamber

8 April 2024