IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2024-00246

First-tier Tribunal No: HU/50394/2023

THE IMMIGRATION ACTS

Decision & Reasons Issued:
On the 24 October 2024

Before

UPPER TRIBUNAL JUDGE HANSON

Between

BLERIM KALOTI
(NO ANONYMITY ORDER MADE)

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellant: Mr Ahmed of No 12 Chambers (Direct Access).
For the Respondent: Mrs Arif, a Senior Home Office Presenting Officer.

Heard at Birmingham Civil Justice Centre on 21 October 2024

DECISION AND REASONS

1. Mr Kaloti is a citizen of Albania born on the 17 August 1983 who appeals the respondent's decisions to (i) refuse his application for leave to remain in the UK on human rights grounds and (2) to revoke the deportation order made against him on the 25 July 2017.
2. Mr Kaloti is the subject of the deportation order as a result of his conviction at Birmingham Crown Court in May 2017 for possession of Cannabis with intent to supply, for which he received a sentence of 6 months imprisonment.
3. Rather than remain in Albania and make an application for revocation of the deportation order in due course, evidence given by Mr Kaloti to the First-tier Tribunal on 15 November 2023 was that his claim in his witness statement that he entered the UK in breach of the deportation order and has remined here since was incorrect. He is recorded as having stated he entered in 2016, was caught and deported back to Albania in 2017 but came back in 2019, again in breach of the deportation order.

© CROWN COPYRIGHT 2024

4. Mr Kaloti's immigration history, set out in the documents from the respondents Criminal Casework team record the following:

> The appellant arrived in the United Kingdom in 2016, via illegally entry and remained in the United Kingdom illegally until you were encountered by the police on 23 May 2017 with possession of controlled drug with intent to supply.
>
> On 26 May 2017 at Birmingham Crown Court, the appellant was convicted of possession with intent to supply controlled drug, class B, cannabis, for which the appellant was sentenced to 6 months imprisonment.
>
> On 29 June 2017 – Decision to Deport was served on the appellant, for which we received a signed a disclaimer indicating that the appellant did not wish to raise any reasons why you should not be deported.
>
> On 25 July 2017 a signed Deportation Order was served on the appellant under the Bournemouth Commitment.
>
> On 22 August 2017 – the appellant was deported to Albania.

5. This appears a more reliable history with the addition of Mr Kaloti's evidence he entered in breach of the deportation order in 2019 and has remained since.
6. It is not disputed Mr Kaloti was in a relationship with Ms Tafa or that he is the father of two children with Ms Tafa, Xhoi Kaloti, born on the 25 July 2011 and now aged 13, and Hazel Kaloti, born on the 23 February 2023 and now aged 20 months, who live with their mother and half-sister.
7. Procedure – The appeal could not start on time as a result of the appellant's representative's failure to comply with directions. This was an issue that was also commented upon by the judge of the First-tier Tribunal who heard the original appeal, and which has occurred in relation to two separate sets of directions before the Upper Tribunal. Such conduct is not acceptable at any time, and especially at this era of procedural rigour, in light of the need to make the best us of the time and stretched judicial resources available.
8. Mr Ahmed stated an up-to-date appeal bundle had been sent on the 18 October but it was not seen by either the Tribunal or Mr Arif. Even if it had been sent it was considerably outside the revised timetable for such evidence to be provided by the revised timetable of no later than 4.00pm 9 August 2024.
9. Ms Arif was provided with copy on the day and given time to consider the same. When the hearing recommenced, she did not object to the evidence coming in late and was asked if she had any cross examination. She asked for further time to consider this question which was given to her.
10. It was also the case that no request was made for an interpreter until an email was sent to Field House by no 12 Chambers on 18 October at 16:26, the Friday before the hearing on the Monday, in breach of the earlier direction for the provision of such a request to enable an interpreter to be booked.
11. Mr Ahmed was therefore directed, no later than 4.00pm 1 November 2024, to write to the Upper Tribunal to explain the failures of no 12 Chambers and why they should not be reported to the Bar Standards Board.

The legal framework

12. The Immigration Act 2014 introduced sections 117C-117D as Part 5A of the 2002 Act, "expressing the intended balance of relevant factors in direct statutory form" (see *KO (Nigeria)* at paragraph 14). These provisions list the public interest considerations that must be considered by a court or tribunal required to determine whether a person's right to respect for private and family life under

article 8 of the Convention is unjustifiably interfered with by the deportation of a foreign criminal: see section 117A of the 2002 Act.

13. Section 117C is the relevant provision for the purposes of this appeal. It provides:

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

(1) The deportation of foreign criminals is in the public interest.

(2) The more serious the offence committed by a foreign criminal, the greater is the public interest in deportation of the criminal.

(3) In the case of a foreign criminal ("C") who has not been sentenced to a period of imprisonment of four years or more, the public interest requires C's deportation unless Exception 1 or Exception 2 applies.

(4) Exception 1 applies where (a) C has been lawfully resident in the United Kingdom for most of C's life (b) C is socially and culturally integrated in the United Kingdom, and (c) there would be very significant obstacles to C's integration into the country to which C is proposed to be deported.

(5) Exception 2 applies where C has a genuine and subsisting relationship with a qualifying partner, or a genuine and subsisting parental relationship with a qualifying child, and the effect of C's deportation on the partner or child would be unduly harsh.

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

14. The effect of section 117C is substantially reproduced in paragraphs 398-399 of the Immigration Rules, though in more detail. The governing paragraph, paragraph 398, identifies three categories of foreign criminal – described as serious offenders, medium offenders and other qualifying offenders (being those whose offending has caused serious harm or has been persistent). The appellant is a medium and not a serious offender.

15. Paragraph 399, which contains the equivalent to Exception 2, is described as applying as follows:

"399 This paragraph … applies if –

(a) the person has a genuine and subsisting parental relationship with a child under the age of 18 years who is in the UK, and

(i) the child is a British Citizen; or

(ii) the child has lived in the UK continuously for at least the seven years immediately preceding the date of the immigration decision; and in either case;

(a) it would be unduly harsh for the child to live in the country to which the person is to be deported; and

(b) it would be unduly harsh for the child to remain in the UK without the person who is to be deported; or

(b) the person has a genuine and subsisting relationship with a partner who is in the UK and is a British Citizen or settled in the UK, and

(i) the relationship was formed at a time when the person (deportee) was in the UK lawfully and their immigration status was not precarious; and

(ii) it would be unduly harsh for that partner to live in the country to which the person is to be deported, because of compelling circumstances over and above those described in paragraph EX.2. of Appendix FM; and

(iii) it would be unduly harsh for that partner to remain in the UK without the person who is to be deported."

16. In other words, while section 117C(5) poses a single composite question, "is deportation unduly harsh on the partner or child?" paragraph 399 of the Immigration Rules (addressing Exception 2) breaks this down into a two part question: would it be unduly harsh for the partner/child to live in the country to which the appellant is being deported (the "go scenario") and would it be unduly harsh for the partner/child to remain in the UK without the appellant (the "stay scenario"). In *HA (Iraq) v Secretary of State for the Home Department* [2022] UKSC 22, [2022] 1 WLR 3784 the Supreme Court affirmed that the single question in section 117C(5) should be interpreted consistently with paragraph 399. Accordingly, both scenarios must be addressed, and both must be satisfied for an appellant to be successful.

17. In *HA (Iraq)* the Supreme Court gave authoritative guidance on the approach to the question posed by section 117C(5) 2002 Act. In summary, first, when considering whether the effect of deportation would be unduly harsh, the decision-maker should adopt the following self-direction, namely, that the concept:

> "'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."

18. When applying this self-direction, decision makers should recognise that it involves an appropriately elevated standard and make an evaluative judgement of the effect of deportation on the qualifying child and/or partner in order to judge whether the elevated standard has been met on the facts and circumstances of the individual case being addressed: see paragraphs 41 and 44.

The evidence

19. In his latest witness statement dated 18 October 2024 Mr Kaloti states he has now been in the United Kingdom for over five years, since he re-entered in 2019. At [4] he states the primary reason for fighting the Secretary of State’s decision is the well-being of his daughter Xhoi Kaloti, who he claims has been a central part of his life for the past five years. The appellant claims that he has been a father in every sense of the word to Xhoi, forming what he describes as a strong and

irreplaceable bond with her and providing her with emotional support, stability, and guidance through her formative years. He also refers to having fathered another daughter with Adelaja Tafa, Hazel Kaloti.

20. Mr Kaloti states if he was removed from the UK the impact upon Xhoi will be emotionally devastating. He claims he helps with the school, is there to comfort her when needed, and that she spends time with him on the weekends and sleeps over. He states that if he is deported it would not only disrupt her routine but also create a void that no one else could fill as his daughter has a deep reliance on him for material and emotional security.

21. Mr Kaloti states that the pain of being separated would cause his daughter immense emotional stress potentially affecting her schooling, social relationships, and sense of security, and that she looks up to him as her primary male role model and that losing his support during the critical years would have a long lasting effect on her emotional and psychological development, especially given the critical period of adolescence she is currently in.

22. The appellant refers to another child, Xhoi's half-sister, Aila, who is the daughter of Adelaja but of whom he is not the father. She is 11 years of age and he claims to provide emotional and practical support for her and to have taken the role of a second father in her life.

23. Mr Kaloti claims if he was deported it would shatter the supportive environment Aila has come to depend on and states the emotional fallout from a sudden and forced separation would leave both girls confused, hurt, and emotionally unstable, claiming "both have a long way to go before either of them can live without me".

24. Mr Kaloti also claims he makes a contribution as a parenting father figure and in conclusion writes:

> 14. In conclusion, I plead with the honourable judge to consider the emotional devastation my removal would cause to both my daughter and her half-sister. They are young, vulnerable children who need me in their lives. I am not merely a figure in the background—I am a father to my daughter and her half sister who lives with her. My removal would disrupt their emotional and psychological development, leaving them without the support they need at this crucial time in their lives.
>
> 15. The best interests of these children demand that I remain in the UK, where I can continue to provide the love, care, and guidance that I have given them for years. I humbly ask the court to allow my appeal. I am a changed man and this is evidenced by the letters of my child's mother and our family friends.

25. In her witness statement dated 18 October 2024 Adelajda Tafa confirms that she is the mother of Mr Kaloti's children, that she settled in the UK, and that she has a daughter from a previous relationship.

26. Ms Tafa refers to Mr Kaloti's offending but claims that he is a changed man who regrets his past actions and who has worked hard to leave that part of his life behind him, and today is a caring, loving, and devoted father and partner focused on his family.

27. Ms Tafa states it would be "incredibly unfair" to continue punishing Mr Kaloti for something he had already paid the price for as it was something that happened a long time ago, and he has demonstrated he is a different person. Ms Tafa states his crime did not hurt anybody and he never intended to cause harm, his punishment has been served, and he surely should be given the opportunity to continue to build his life in the UK.

28. In relation to Xhoi, Ms Tafa states that daughter is 13 years of age, and that there is a close bond between them. Ms Tafa states Mr Kaloti is actively involved

in her upbringing, he helps with school, encourages her, support her emotionally, and that she relies on him for guidance and comfort and is certain that losing him would cause her immeasurable emotional pain.

29. Ms Tafa states Xhoi is at a crucial age where she needs the support of both parents and that if her father was removed she would feel abandoned, confused and heartbroken. Ms Tafa claims she would be left with deep emotional scars that could affect her for the rest of her life and would disrupt her schooling, social life, and emotional development.

30. In relation to her other daughter Aila, currently 11 years of age, it is accepted Mr Kaloti is not this child's father although he is viewed by her as having a similar role. It is said Mr Kaloti takes the children for picnics, helps them with their schoolwork, and ensures they are growing up in a safe and caring environment.

31. Ms Tafa refers to Mr Kaloti, having family and friends in the UK, claims he has no ties left in Albania and that returning him there would not only be emotionally devastating for him and their family, but that he could not maintain the same level of involvement and support from abroad.

32. In her final paragraphs headed 'Conclusion', Ms Tafa writes:

> 11. Blerim is a changed man. He has become a devoted father and a reliable partner, and he plays an irreplaceable role in the lives of both of our daughters. His removal would cause deep emotional harm to our children, particularly our 13-year-old daughter, who relies on him every day for love, support, and guidance. They would be left without a father, and the emotional damage this would cause cannot be overstated.
>
> 12. I respectfully ask the honourable Judge to consider the best interests of our children and to allow Blerim to remain in the United Kingdom, where he can continue to be the loving and supportive father they need. Their emotional well-being depends on his presence in their lives, and I plead with the court to allow him to stay.

33. I have seen a copy of birth certificate recording the birth of Hazel Kaloti on 23 February 2023 showing Mr Kaloti as the father and Ms Tafa as the mother.

34. I have also seen an undated letter from Xhoi in the following terms:

> My name is Xhoi Kaloti, I am writing for my dad, I want my dad to stay here with me because I am very connected with him and he is the most precious person of my life. I want him to stay with me for ever. I meet him during the week, specifically on weekends, we spend all time together he and my sister to.
>
> Please don't send him back I need to more then everything else in my life.

35. I have also seen a number of character references and letters in support and letters from the school, one in respect of Xhoi confirming that their records show she lives with her mother Ms Tafa, dated 17 July 2024, and one from another school relating to Aila dated 18 July 2024 confirming Mr Kaloti is registered as the first emergency contact for the child. I have also seen a number of photographs showing Mr Kaloti with Hazel and the other girls.

Discussion and analysis

36. As Mr Kaloti was sentenced to a period of six months imprisonment he does not fall within the definition of a foreign criminal as defined in section 117 D of the UK Border's Act 2007, as a result of which the order to deport him was made pursuant to section 3(5) Immigration Act 1971. That provision reads:

5) A person who is not a British citizen is liable to deportation from the United Kingdom if—

(a) the Secretary of State deems his deportation to be conducive to the public good; or

(b) another person to whose family he belongs is or has been ordered to be deported.

37. The statement made by Ms Tafa “that it is unfair that Mr Kaloti should be further punished for his offending” is a comment without merit. Mr Kaloti was convicted, sentenced, and serve that sentence. That was his punishment. He is subject to an order for deportation that is deemed by the Secretary of State to be conducive to the public good. That is a concept which the Secretary of State is tasked to define and enforce, with particular emphasis upon the fact it is the public good as a whole not just that of one individual such as Mr Kaloti. The decision to deport is therefore not as a result of a desire to punish but the enforcement of a legal right.

38. I accept that within the family the legal niceties may not be seen as important as it is clear this family will do everything in their power to prevent Mr Kaloti from being deported to Albania.

39. It is a preserved finding that Mr Kaloti has a genuine subsisting relationship with Xhoi, as that was the only basis on which he sought to oppose the Secretary of State’s decision before the First-tier Tribunal.

40. Before me Mr Ahmed raised the question of whether Mr Kaloti has a genuine and subsisting relationship with the other two children, in addition.

41. Whether a person has a genuine subsisting parental relationship is a question of fact as found by the Court of Appeal in Secretary of State for the Home Department v AB (Jamaica) and AO (Nigeria) [2019] EWCA Civ 661. It is a highly fact specific judgement.

42. Lord Justice Singh who gave the lead judgement with which the other members of that Court agreed approved the finding of Upper Tribunal judge Grubb in R (RK) v Secretary of State for the Home Department [2016] UKUT 00031 at [42] in which he found:

> “42. Whether a person is in a ‘parental relationship’ with a child must, necessarily, depend on the individual circumstances. Those circumstances will include what role they actually play in caring for and making decisions in relation to the child. That is likely to be a most significant factor. However, it will also include whether that relationship arises because of their legal obligations as a parent or in lieu of a parent under a court order or other legal obligation. I accept that it is not necessary for an individual to have ‘parental responsibility’ in law for there to be a relevant factor. What is important is that the individual can establish that they have taken on the role that a ‘parent’ usually plays in the life of their child.

43. Although Mr Kaloti is the father of Hazel there is very little evidence as to the role or activity he plays in the child’s life, possibly because it is accepted Ms Taja is the primary care of all three children. It was not disputed before me, however, that Mr Kaloti will be able to see the child when he visits Ms Taja’s house. The evidence I have referred to above makes no mention of any role Mr Kaloti plays in caring for or making decisions for Hazel at this time.

44. In relation to Aila, Mr Kaloti is not the child’s father and his role appears to be an involvement with the child in what can be termed as contact visits when the elder children spend time with him together having picnics or when he is at the

property, but there is again no evidence of whether Mr Kaloti has a caring role or makes any decisions in relation to this child.

45. It is not claimed there is any genuine or subsisting partner relationship between Mr Kaloti and Ms Tafa.

46. It was accepted earlier that it would be unduly harsh for Xhoi to have to leave the UK to live in Albania as it would probably for any of the children, as their primary carer mother has been granted refugee status from Albania in the UK. The issue is whether it will be unduly harsh for Mr Kaloti to be deported and for them to remain in the UK upon any qualifying child.

47. The Secretary of State's position, when considering the best interests of Xhoi in the reasons for refusal letter is stated as follows:

> It is acknowledged that your absence could result in some negative emotional impact on her, but they will continue to live with her mother who will support her as she adapt to life without face-to-face contact with you and she will continue to attend school where they will have the stability and support which is necessary to complete her education.
>
> There is no evidence that your deportation would result in your child losing all contact with you. It is acknowledged that it is not the same as remaining in the family home, or even living
> separately but in the same country, but it is considered that you could maintain contact with your child through modern means of communication and there is no evidence that they would be unable to visit you overseas in a neighbouring country to Albania, if she wishes to do so.
>
> Consequently, it is not accepted that it would be unduly harsh for your child to remain in the
> United Kingdom without you.

48. As indicated during the course of his submissions to Mr Ahmed, I accept that the effect of Mr Kaloti being removed from the UK would be harsh upon the children. The issue was whether the higher threshold of undue harshness had been met on the facts.

49. This issue has to be evaluated only with reference to the children leaving Mr Kaloti's criminality aside at this stage.

50. I accept the guidance provided by the Supreme Court in HA (Iraq) v Secretary of State for the Home Department [2022] UKSC 22 and KO (Nigeria) and Others v Secretary of State for the Home Department [2018] UKSC 53 that unduly harsh "*does not equate was uncomfortable, inconvenient, undesirable or merely difficult. Rather, it poses a considerably more elevated threshold. 'Harsh' in this context, denotes something more 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".*

51. If one considers the best interests of all these children, in relation to their emotional and physical needs, it would be for them to be brought up benefiting from positive input from both a father and a mother.

52. It cannot be disputed that all these children have a very loving caring and devoted mother who will always do her best for them, whatever the circumstances, and who has provided quality care in Mr Kaloti's absence in relation to the two older children, and in relation to whom there is insufficient evidence to show that she would not continue to do so in the future, whatever the circumstances.

53. There is not in this case, as one would ordinarily see in deportation cases involving children of a similar nature, any evidence from an independent social worker or a child and adolescent psychologist commenting upon the comments

made in the lay witness statements regarding possible long-term psychological/emotional impact of Mr Kaloti's removal. However, I do not consider it appropriate to exercise the power held by the Tribunal to adjourn and call for additional evidence. The parties have known the issues at stake for some considerable time, Mr Kaloti is represented by legal representatives, and the Tribunal is entitled to proceed on the basis that it has available to it all the evidence and information he intends to rely upon in support of his appeal.

54. It is not suggested Mr Kaloti's removal will cause any physical harm to any of the children, as I am sure their mother will ensure that does not happen. The core of the claims relates to psychological and emotional harm. In this regard I note the decision in MI (Pakistan) v Secretary of State for the Home Department [2021] EWCA Civ 1711, in which Lady Justice Simler, who gave the lead judgement with whom the other members of the Court agreed, found it hard to understand why a different Upper Tribunal considered potential enormous emotional harm with a high degree of emotional dependence to be insufficient to satisfy the undue harsh test. The emphasis on an evaluative exercise that accounts for the individual parental bond and the corresponding emotional harm suffered was endorsed by the Court. That is the approach I have taken.

55. I accept as Lord Justice Peter Jackson stated in HA (Iraq) that section 31(9) of the Children's Act 1989 defines harm as ill-treatment or the impairment of health or physical, intellectual, emotional, social or behavioural development.

56. In HA (Iraqi) the appellant's wife was in full-time employment as the primary breadwinner of that close-knit family and the appellant was the primary caregiver, taking the children to and from school, preparing their lunches, and well known to the school and involved in making decisions about their schooling, health and quality-of-life. His absence from the family was state described as being "very disruptive and difficult" there was concrete evidence about the physical, financial and emotional effects his absence had on the children when he was in prison, and the improvements that had it materialised on his return. That included evidence by way of a report from Hampshire Children's Services were provided independent support for the extent and the impact separation from their father had only children, both emotionally and educationally, when he was in prison.

57. The quality of the evidence in HA (Iraq) was materially different from that available in this appeal. I do not dispute that the parents are the best people to know how their children may react, especially Ms Tafa. I do not doubt that the older children will be distressed if Mr Kaloti's appeal fails, especially his daughter Xhoi. As stated above I accept that the effect on the child will be harsh. What I do not find made out on the evidence is that the impact of his deportation upon the children will be sufficient to enable me to find it will be unduly harsh when all the relevant facts are taken into account as a whole.

58. There is insufficient evidence to establish that during his period of imprisonment the impact upon the older children would support such a finding. There is insufficient evidence to show any independent support for the extent of any impact separation from Mr Kaloti would have on the children, insufficient evidence of any impact upon their personal or social development or education, or to show that their mother would not be able either herself or with the assistance of the school to ensure that the children were able to understand what had happened and to continue as they had previously, albeit without Mr Kaloti's physical presence. The subjective claims made by Mr Kaloti and Ms Tafa to this effect have to be considered in light of the clear desires that he is not deported, and they are doing everything to prevent this happening. The views expressed by Xhoi I accept are from the heart, as a daughter would express in relation to her father but are not in themselves determinative.

59. Mr Ahmed in his skeleton argument set out the relevant issues to be considered in the following terms:

a. Whether Mr Kaloti's convictions necessitates a deportation to Albania meets the requirements of the unduly harsh test it is considered in section 117C(5) in respect of his relationship with the qualifying child.
b. Whether the public interest override the relationships in any consequences as a result of his removal.

60. I have answered the first of those questions in the negative, in that although harsh it has not been shown to be unduly harsh. It is noted, as stated above, that the issue raised by Mr Ahmed in his skeleton argument only concerned a child Xhoi.
61. It is at this stage that the public interest comes into play as a result of the nature of Mr Kalot's offending. I accept there is only evidence of one offence having been committed, that relating to possession of cannabis with intent to supply which, despite there being no evidence of any previous criminal record, resulted in a sentence of six months imprisonment.
62. It is not disputed that Mr Kaloti has family life with his two biological children and a private life with his partner, the other child, and his friends in the UK, sufficient to engage article 8 (1) ECHR.
63. When one considers the checklists in Razgar [2004] UKHL 27 one arrives at the fifth question which is the proportionality of the decision.
64. The Secretary of State maintains the decision is proportionate. The First-tier Tribunal found that Mr Kaloti's offence had caused significant harm. Although Mr Ahmed tried to suggest that was not a preserved finding I indicated to him it is in my view and that, in any event, the supply of drugs is an offence that will cause significant harm, especially in light of the fact that cannabis is now much stronger than before leading to psychosis, greater dependency, medical interventions, involvement of criminal organisations, and other related issues.
65. Two other points in favour of the Secretary of State also relate to the deterrent element as there is a strong public interest in deterring individuals from becoming involved in drug offences, especially foreign nationals who need to understand that if they do there is a likelihood they will be removed from the UK. There is also a much stronger deterrent element in discouraging people from re-entering the UK in breach of a deportation orders as Mr Kaloti wilfully did in this case.
66. It is also the case that Mr Kaloti is unable to meet both the section 117 C exceptions, a factor that has to be considered together as all the other relevant parts.
67. A person who is subject to a deportation order would ordinarily be banned from re-entering the United Kingdom for a period of 10 years, and be required to make an application for the order to be revoked from abroad, setting out his case which can be considered by the Secretary of State and, if warranted, the deportation order revoked. Mr Kaloti did neither of these but chose to re-enter the UK unlawfully and has remained with precarious status since.
68. If one looks at the positive points in his favour those include his role within the family, the wishes of the children and Ms Tafa that he remain so they can continue their lives together, his private life with friends, the fact he has not reoffended since the index offence, his claim to be a reformed character although we only have his and Ms Tafa's word for that, and his desire to be a good citizen if he is allowed to remain.
69. I accept the seriousness of the offence is relevant to whether the decision is proportionate and that Mr Kaloti was sentenced to 6 months imprisonment at the

bottom end of the range, which can be taken into account. The sentence is, however, the starting point and not determinative of the proportionality assessment.

70. In terms of the claimed rehabilitation, rehabilitation cannot in itself constitute very compelling circumstances and case law tells us that the cases in which it could make a significant contribution are likely to be rare – see Velasquez v Secretary of State for the Home Department [2015] EWCA Civ 845, although in HA (Iraq) it was accepted it was a factor that was capable of attracting some weight although in general it is likely to be of little or no material weight although if there is evidence of positive rehabilitation it could have a bearing on whether deportation is necessary to protect the public. I have therefore taken the evidence of lack of further evidence of drug-related offending into account, although re-entering in breach of the deportation order and remaining in the UK illegally is an ongoing issue.

71. Contact will have to be maintained in the future by indirect means and by visit for the children to him when funds and time permit. I accept that is not as good as the contact they currently enjoy but that, as with the best interests of the children is not the determinative factor.

72. There are elements of Mr Kaloti's case which deserve proper weight being given to them, particularly the best interests of the children, and their own stated desire that he is permitted to remain. That decision cannot, however, be made on the basis of the wishes of individuals within a family unit as otherwise it will be impossible for the Secretary of State to deport anybody whose family members want him or her to stay. It is for that reason those matters need to be weighed against those relied upon by the Secretary of State in a comprehensive balancing exercise which I have undertaken.

73. In EYF (Turkey) v Secretary of State for the Home Department [2019] EWCA Civ 592 it was found that if less than 10 years have elapsed since the deportation order was made there is a presumption that it will be maintained but no presumption to the contrary exists. In this case a deportation order was made on 25 July 2017 and the 10-year period will not expire until 24 July 2027. The presumption is therefore in favour of the deportation order remaining in force.

74. There is also a strong public interest in maintaining order as noted in Secretary of State for the Home Department v MR (Pakistan) [2018] EWCA Civ 1598 and IT (Jamaica) v Secretary of State for the Home Department [2016] EWCA Civ 932 @ [57] where Lady Justice Arden, with whom the other members of the Court Agreed wrote:

> *57.* I therefore reject Mr Howells' submission that undue harshness can be determined on any other basis. I conclude that the commencement of section 117A to D of the 2002 Act does not mean that a different and lower weight is to be given to the public interest in applications to revoke a deportation order following deportation than in other deportation situations. As I have explained, the result is that the same standard must apply in this case as in a pre-section 117A to D case like *ZP (India).*

58. Having undertaken the required balancing exercise, I find the Secretary of State has discharged the burden of proof upon her to show the refusal of Mr Kaloti's application for leave to remain in the United Kingdom on human rights grounds, and subsequent refusal of his application to revoke the deportation order against him, is proportionate.

59. On that basis I dismissed the appeal.

Notice of Decision

60. Appeal dismissed.

C J Hanson

Judge of the Upper Tribunal
Immigration and Asylum Chamber

23 October 2024