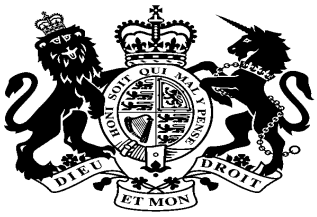

Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: HU/08752/2017

THE IMMIGRATION ACTS

Heard at Field House	**Decision Promulgated**
On 25 February 2019	**On 05 March 2019**

Before:

UPPER TRIBUNAL JUDGE GILL

Between

Mr N D Appellant
Also known as N B
(ANONYMITY ORDER MADE)

And

The Secretary of State for the Home Department Respondent

I make an order under r.14(1) of the Tribunal Procedure (Upper Tribunal) Rules 2008 prohibiting the disclosure or publication of any matter likely to lead members of the public to identify the appellant. No report of these proceedings shall directly or indirectly identify him. This direction applies to both the appellant and to the respondent and all other persons. Failure to comply with this direction could lead to contempt of court proceedings.
I make this order because it refers to the appellant's three minor children and a fourth child who is disabled.
The parties at liberty to apply to discharge this order, with reasons.

Representation:
For the Appellant: Mr A Ahbim of Cleveland Law Limited.
For the Respondent: Ms K Pal, Senior Home Office Presenting Officer

DECISION AND REASONS

1. The appellant, a national of Jamaica born on [~] 1986, has been granted permission to appeal against the decision of Judge of the First-tier Tribunal Thorne (hereafter the "judge" unless otherwise stated) who, in a decision promulgated on 2 August 2018 following a hearing on 9 July 2018, dismissed his appeal against the decision of the respondent of 29 July 2017 (hereafter the "Decision Letter") to refuse his human rights claim in his representations dated 2 May 2017 and undated letter received by the respondent on 22 April 2017. The Decision Letter also states that the respondent had decided to make a deportation order against the appellant.

2. Before the judge, the appellant claimed to fear persecution in Jamaica. The judge rejected the appellant's claim to fear persecution, finding that he was not a credible witness (para 45). The judge found that, at best, his asylum claim was speculative; at worst, entirely bogus. On these findings, he also found that the appellant had not established his humanitarian protection claim or his case under Articles 2 and 3 of the ECHR. These findings were not challenged in the grounds.

3. The grounds only challenge the judge's decision to dismiss the appellant's human rights claim under Article 8.

4. The Decision Letter states that the appellant has the following criminal convictions:

   (i) On 24 February 2005 (when he was 18 years 11 months old), he was convicted of assaulting a constable and possession of a Class C drug (cannabis). He was ordered to pay compensation and given a conditional discharge.

   (ii) On 11 December 2006 (when he was 20 years old), he was convicted at Snaresbrook Crown Court of possession of a Class C drug with intent to supply and four counts of possession of a Class A drug (cocaine) with intent to supply. On 22 February 2007, he was sentenced to 30 months' detention in a young offenders' institution.

   (iii) On 21 November 2016 (when he was 30 years 9 months old), he was convicted at Wood Green Crown Court of possession with intent to supply a Class B controlled drug (cannabis) and possession of another Class B controlled drug. On 22 March 2017, he was sentenced to 9 months imprisonment on each count, to be served concurrently.

5. The first page of the Decision Letter states that the respondent had decided to make a deportation order against the appellant under s.5(1) of the Immigration Act 1971 because his presence was not conducive to the public good. The third page of the decision letter states that the appellant's deportation was conducive to the public good and in the public interest *"because [he had] been convicted of drugs, which have caused serious harm"* and therefore, pursuant to para 398 of the Statement of Changes in the Immigration Rules HC 395 (as amended) (hereafter "Immigration Rules"), the public interest required his deportation unless an exception to deportation applies.

6. It is clear that the convictions mentioned in the Decision Letter were not the appellant's only convictions. The judge had before him the appellant's antecedents, printed from the police database on 6 July 2018 (hereafter the "PNC"). The appellant's criminal convictions are set out in chronological order at para 48 below.

The PNC also states that a protection from harassment order was made by Wood Green Crown Court on 5 June 2015 with an end date of 4 June 2025. The appellant was prohibited from contacting his brother, either directly or indirectly.

The applicable provisions

7. No doubt the respondent invoked the power under s.5(1) because the automatic deportation provisions in s.32 of the UK Borders Act 2007 did not apply. This is because the automatic deportation provisions apply if the individual concerned received a sentence of imprisonment of at least 12 months (s.32(2)) and the sentence was imposed on or after the passing of the UK Borders Act 2007 on 30 October 2007 (Terrelonge [2015] UKUT 00653 (IAC)).

8. Section 117A-D of the Nationality, Immigration and Asylum Act 2002 (the "2002 Act" apply to any assessment of an offender's human rights claim if he is a *"foreign criminal"* as defined in s.117D(2), i.e. if:

   (i) he has been sentenced to a term of imprisonment of at least 12 months; or

   (ii) he has been convicted of an offence that has caused serious harm; or

   (iii) he is a persistent offender.

9. Para 398 of the Immigration Rules also applies if the offender falls within (i)-(iii) above, albeit that para 398(c) uses the phrase "*persistent offender with a particular disregard for the law*" as opposed to "*persistent offender*". Both phrases must mean the same thing.

10. There are two exceptions to deportation in the case of a person who relies upon Article 8. The family life exception is provided for in s.117C(5) of the 2002 Act (Exception 2) and para 399(a) and (b) of the Immigration Rules. The private life exception is provided for in s.117C(4) of the 2002 Act (Exception 1) and para 399A of the Immigration Rules. An offender who falls within para 398(b) or (c) can rely upon the proviso to para 398 if he is unable to meet the requirements of the two exceptions. In that case, he would need to show that there are very compelling circumstances, over and above the exceptions.

11. The relevant provisions are set out in the Appendix to this decision.

12. The judge found, at para 62, that:

> "62. … [The appellant] has in the past been sentenced to a period of imprisonment between 12 months and 4 years. By virtue (inter alia) of his most recent offending, he is also a persistent offender who shows a particular disregard for the law."

Immigration history

13. The appellant arrived in the United Kingdom on 14 June 1990 at the age of 4 years, in order to join his mother. On 26 July 1994 he was granted indefinite leave to remain ("ILR").

14. The appellant had had a previous appeal. This was an appeal against an earlier decision to deport him, dated 11 July 2007. The appeal was first heard before a

panel of the First-tier Tribunal (Judge of the First-tier Tribunal Aujla and Dr J O de Barros). This panel remitted the case to the respondent for reconsideration.

15. The appellant appealed against the reconsidered decision made on 20 December 2007. His appeal was allowed on human rights grounds (Article 8) by a panel of the First-tier Tribunal (Judge of the First-tier Tribunal Cockrill and Mr C Thursby) (hereafter the "2008 Panel") in a decision promulgated 8 April 2008.

16. The judge summarised the findings of the 2008 Panel at para 5 of his decision, as follows:

    (i) The appellant used cannabis very regularly and had been using cocaine since he was 17 years old.

    (ii) The appellant has been in the United Kingdom a very long time and all his meaningful ties are here. He has no family living in Jamaica.

    (iii) It is not in the interests of the appellant or of his son (C1) for the appellant to be deported.

    (iv) The appellant "*has learnt a good deal from his time in custody and has appreciated the major impact on his own and others' lives of his wrongdoing."*

    (v) The appellant "*should be in no doubt as to the very serious consequences for himself and his family if he engages in any further criminal conduct*."

The judge's decision

The judge's summary of the evidence

17. In summarising the facts of the appellant's claim before him, the judge referred to the appellant's past and present partners as "W1", "W2" and "W3", to his children as "C1", "C2" etc) and to the appellant as "A". To avoid confusion, I shall use the same terms (no disrespect is intended), save that I shall refer to the appellant as "the appellant".

18. The appellant's private life claim was based on private life said to have been developed in the United Kingdom since his arrival on 14 June 1990 at the age of 4 years, in order to join his mother, and the difficulties that he will encounter on being returned to Jamaica.

19. His family life claim was based on his relationships with his three children (C1, C2 and C3) by two women (W1 and W2). His relationships with W1 and W2 had broken down by the date of the hearing before the judge. At the time of the hearing before the judge, he said that he was in relationship with a third woman (W3) who has a son by another man (C4) and who was expecting the appellant's child on 25 January 2019.

20. C1, C2 and C3 were born, respectively, as follows: C1 in 2007, C2 in October 2010 and C3 in March 2012. C1 was 11 years old at the date of the hearing before the judge. He had been taken into care. The appellant had not seen C1 for 5 years and last saw W1 in 2010. W1 had remarried.

21. The appellant's relationship with W2 commenced in 2009 and broke down in 2016 because he had been selling drugs from her house whilst the children (C2 and C3) were present. The appellant saw C2 and C3 every weekend. His probation officer told him that he was permitted to do so.

22. The appellant's relationship with W3 (his current partner) began in December 2016. She is a British citizen. C4 was 7 years old at the date of the hearing before the judge (which means he was born in 2011). C4 was disabled suffering from global development deficiencies and saw his own father regularly. As at the date of the hearing before the judge, W3 and the appellant had never lived together. His bail conditions required him to live at his mother's house.

23. The appellant's family life claim was also based on his relationships with his mother, his brother and his sister. A court order prohibited him from seeing his brother.

24. The judge heard oral evidence from several witnesses, i.e. the appellant, W3, his mother, his sister and three friends. He had a statement from the appellant's step-father.

25. In oral evidence, the appellant said, inter alia, that his mother would, if necessary, go with him to Jamaica and help him establish himself. In oral evidence, W3 said, inter alia, that she visited the appellant in detention, that he was very close to C4 and helped him a lot and that she was unemployed but a full-time carer for C4. C4 received Disability Living Allowance and she received a carer's allowance. If the appellant were to be deported to Jamaica, she would not join him in Jamaica.

26. The appellant's mother said she was born in Jamaica on 24 February 1964 which means she was 54 years old at the date of the hearing before the judge. She had no family left living in Jamaica. The appellant was part of a close knit family unit in the United Kingdom. She had not been to Jamaica since 2007. She does not know what has happened to her father's house in Jamaica. She financially supports the appellant by giving him money. She works for a housing association earning £25,000 a year. She could continue assisting the appellant financially if he were deported to Jamaica.

27. The appellant's sister said she was very close to the appellant. The appellant's deportation would cause upset to her and the rest of the family. She was born in the United Kingdom and had never been to Jamaica. She worked as a receptionist earning £22,000 a year.

28. The appellant's friends spoke highly of him.

The judge's assessment of the Article 8 claim

29. The judge assessed the evidence at paras 62-70 of his decision. At para 70, he said that he had considered the decision of the 2008 Panel in line with the guidance in Devaseelan v SSHD * [2002] UKIAT 702 but that it was of little assistance because it had been decided so long ago under a different statutory framework.

30. Paras 62-69 of the judge's decision read:

> "Findings of fact

62. After considering all the evidence I am satisfied that A has in the past been sentenced to a period of imprisonment between 12 months and 4 years. By virtue (inter alia) of his most recent offending, he is also a persistent offender who shows a particular disregard for the law.

63. In relation to 399(a) of the Rules, (and the associated statutory provisions) I make the following findings:

    a. A does not have a genuine and subsisting parental relationship with C1. As A made clear in his oral evidence, C1 had been taken into care and he has had no contact with him for the last 5 years.

    b. A does have a genuine and subsisting parental relationship with C2&3. I am willing to accept that he is their father and that he sees them every weekend. However, it appears from what he said that this arrangement has not been in place for very long as social services were understandably worried about his having sold drugs in the house whilst they were present. Moreover, I have seen inadequate evidence required by statute to establish that these children are British citizens or that they have lived in the UK for 7 years. I have not seen copies of their passports (or their mother's passport) or heard evidence or seen a witness statement from their mother. I have seen a letter purporting to be from their mother but I give it little weight as it stated that she was still in a relationship with A when it was accepted by A that they were not. I therefore conclude that it has not been established that C2&3 are qualifying children under the rules or the statute.

    c. It may be that A has a bond with C4 but I am not satisfied that he has a genuine and subsisting parental relationship with C4 for the purposes of the Rules or statute. He is not the biological father and has not stepped into the shoes of C4's natural father. C4's biological father still plays an important role in his life and sees him regularly.

64. Even if I am wrong about my analysis set out above in relation to C2, 3 & 4, I conclude that it would not be unduly harsh for these children to remain in the UK without A. C2&3 live with their mother and see A only once a week. C4 lives with his mother and sees his own father regularly. Moreover A does not live with C4 and his mother.

65. I also conclude that it is in the best interests of C1 to remain as he has been for the last 5 years with no contact with A. I also conclude that it is in the best interests of C2&3 and 4 to remain with their respective mothers. However even if I am wrong about this and it is in the best interests of these various children to have A playing some sort of continuing or future role in their lives, I conclude that their interests are outweighed by the public interest in deporting foreign criminals.

66. In relation to 399(b) of the Rules, (and the associated statutory provisions) I make the following findings:

    a. A does not claim to have a genuine and subsisting relationship with W1, 2 or 3.

    b. In relation to W4, it has not been established that she is his partner as defined under the Rules. They are not married and have not lived together for a period of 2 years. In fact they have never lived together.

    c. In any event even if W4 is A's partner, I conclude that it has not been established that it would be unduly harsh for W4 to remain in the UK

> without A. She is a British citizen as is her son. They can obtain assistance from the state to help look after C4. In addition C4's natural father lives in the UK and continues to play and *[sic]* important role in his life.
>
> 67. In relation to 399A of the Rules, (and the associated statutory provisions) I make the following findings:
>
> a. I accept that A has been lawfully resident in the UK for most of his life.
>
> b. However, I do not accept that he is socially and culturally integrated in the UK. He is a persistent offender who despite being given a chance by the Tribunal on the last occasion a deportation order was made against him and after promising that he was a reformed character, nonetheless re-offended by selling drugs.
>
> c. In addition it has not been established that there would be very significant obstacles to his integration into Jamaica. He is a citizen of Jamaica who speaks the language of that country. He is a fit young man. There is inadequate evidence to establish that he would not be able to find employment and accommodation in Jamaica or would not be able to call upon the emotional and financial assistance of his family in the UK to help him in the early stages of his integration into Jamaica. For reasons given above I also conclude that he is not at risk of persecution or harm in that country.
>
> 68. In light of all of the aforesaid findings therefore I conclude that A does not benefit from the exceptions to deportation contained in the Immigration Rules. Therefore the next question is whether A has established that his case exhibits very compelling circumstances which outweigh the public interest in deportation. The case law above makes it clear that "the scales are heavily weighted in favour of deportation and something very compelling (which will be 'exceptional') is required to outweigh the public interest in removal."
>
> 69. By reference to s.117(b) of the statute, there is inadequate evidence that A is able to financially provide for himself in the UK. I accept that he has no relatives in Jamaica, but for reasons given above it has not been established that there would be very significant obstacles to his integration into Jamaica. Moreover although he may have a relationship with a number of his own and other's children in the UK and has a relationship with W4, I conclude that these do not constitute an exemption to deportation under the Rules. I also conclude that there is nothing in the nature of these relationships which constitute very compelling circumstances which outweigh the public interest in removal."

31. At paras 66.b and c, the judge was plainly referring to "W3" and not "W4", since he did not assign "W4" to anyone.

<u>The grounds</u>

32. There are four grounds. However, there are two separate aspects to ground 3, which I have called "ground 3.a" and "ground 3.b".

33. In summary, the grounds are:

(i) (Ground 1) The judge's finding at para 62 that the appellant is a persistent offender who has shown a particular disregard for the law was irrational, given that the appellant's convictions were 11 years apart and in light of para 26 of Court of Appeal's judgment in SC (Zimbabwe) v SSHD [2018] EWCA Civ 929 which rejected the submission made on the Secretary of State's behalf that the status of "*persistent offender*" once acquired can never be lost and that, in applying s.117D(2)(c) of the 2002 Act a court or tribunal was required to attribute significant weight to the Secretary of State's view.

(ii) (Ground 2) The judge materially erred in law in his approach to the welfare of the appellant's children. In particular:

(a) He failed to make any adequate findings as to the best interests of the appellant's children.

(b) In the alternative, he failed to take into account factors relevant to the assessment of the best interests of the children and consequently in assessing proportionality. The judge was required to discharge his duty to treat the best interests of the appellant's children as a primary consideration and to consider their human rights in substance and not merely in form.

(iii) (Ground 3.a) The judge materially erred in law in his assessment of the appellant's private life claim. The appellant is a 32-year old who has lived in the United Kingdom for over 28 years, having arrived at the age of 4 years from Jamaica. He was granted ILR in July 1994. He has never left the United Kingdom. He has never maintained any ties in Jamaica and has no social or cultural ties with Jamaica.

(iv) (Ground 3.b) The judge failed to consider whether the appellant's children were British by birth under s.1 of the British Nationality Act 1981 as biological children of a man with settled status.

(v) (Ground 4) The judge failed to consider the entire facts that were before him and apply the "*current jurisprudence*". In this regard, ground 4 proceeds to quote para 12 of EB (Kosovo) [2008] UKH 41 which passage (the grounds state) was quoted and applied by Sedley LJ in VW (Uganda) v SSHD [2009] EWCA Civ 5. In particular, the grounds rely upon the passages to the effect that:

> "… the material question in gauging the proportionality of a removal or deportation which will or may break up a family unless the family itself decamps is not whether there is an insuperable obstacle to this happening but whether it is reasonable to expect the family to leave with the appellant" (para 24 of VW (Uganda))

In view of this "*current jurisprudence*", ground 4 contends that it would be wholly unreasonable to expect appellant to return to Jamaica. The judge's decision was inadequately reasoned and perverse.

When one considers the passages quoted at paras 21-23 of the grounds, it is clear that the crux of ground 4 is that it is unreasonable for family life to be enjoyed in Jamaica between the appellant and W3.

Submissions

34. In relation to ground 1, Mr Ahbim submitted that, given that there was a gap of 11 years between the appellant's first conviction and his most recent conviction, the judge's finding that the appellant was a persistent offender was irrational. Although he accepted that the judge also found that the appellant had in the past been sentenced to a period of imprisonment between 12 months and 4 years, he submitted that the error in finding that the appellant was a persistent offender was material.

35. In relation to ground 2, I asked Mr Ahbim what evidence there was before the judge of the impact on the appellant's children of his deportation. Mr Ahbim submitted that the judge had found that the appellant had a very close relationship with his children and that the children would be devastated. I then asked Mr Ahbim to take me to the judge's decision and draw my attention to such findings. Mr Ahbim referred me to para 63 of the judge's decision but I noted that the judge did not make the findings contended by Mr Ahbim at para 63.

36. Mr Ahbim then submitted that it would not be in the best interests of the appellant's children if he were to be deported. It would be preferable for the children to have both parents in the United Kingdom. He submitted that the judge did not attach sufficient weight to the parental relationship between the appellant and his children. His removal would end the parental relationship.

37. I asked Mr Ahbim again whether there was any evidence before the judge of the impact on the children of the appellant's deportation. Mr Ahbim accepted that there was no report from any social worker but he said that the judge had heard oral evidence. I noted that the grounds did not contend that there was oral evidence before the judge of the impact on the children. I also noted the judge's summary of the oral evidence, at paras 11-22 of his decision. At para 16, he recorded that W3 had given evidence that C4 was very close to the appellant and that the appellant helped her a lot with C4. At para 20, he recorded that the appellant's sister had said that deportation would cause upset to her and her family.

38. In relation to ground 2, Mr Ahbim relied upon s.117B(6) of the 2002 Act which he submitted applies in deportation cases.

39. In relation to ground 3.a, Mr Ahbim submitted that the judge's finding that the appellant was not socially and culturally integrated was irrational, given that the appellant had lived in the United Kingdom since the age of 4 years and was now 32 years old.

40. When I pointed out that the judge's finding that the appellant was not socially and culturally integrated in the United Kingdom was not challenged *in terms* in the grounds, Mr Ahbim submitted that the intention of ground 3 was to contend that the appellant was culturally and socially integrated in the United Kingdom and that he had no ties in Jamaica having left Jamaica at the age of 4 years.

41. In relation to ground 3.b, the judge had accepted that the appellant had been granted ILR in 1994 and yet said that the appellant had not established that his three children were British citizens.

42. In relation to ground 4, Mr Ahbim submitted that the judge had failed to place sufficient weight on the appellant's length of residence in the United Kingdom since the age of 4 years and that the judge's decision was irrational because the appellant had no ties to Jamaica.

43. I heard briefly from Ms Pal.

44. In response to Ms Pal's submissions, Mr Ahbim submitted that the judge's finding that there would not be very significant obstacles to the appellant's reintegration in Jamaica was irrational, given that the appellant had no ties in Jamaica and would have difficulty finding accommodation and employment, notwithstanding the fact that he speaks English which is also spoken in Jamaica.

45. Mr Ahbim submitted that the judge's finding at para 68, that there were no very compelling circumstances over and above Exception 1 and Exception 2 as provided for in s.117D, was irrational, given the factors that were in the appellant's favour, in particular, that he had arrived in the United Kingdom at the age of 4 years. The compassionate circumstance was that the appellant had no ties to Jamaica which is a foreign country to him. The judge erred when he found that the appellant's compassionate circumstances did not outweigh the public interest.

46. I reserved my decision.

Assessment

Ground 1

47. The judge found that the appellant was a persistent offender but gave no reasons for his finding. Ground 1 contends that the judge's finding that the appellant was a persistent offender who has shown a particular disregard for the law was irrational, given that the appellant's convictions were 11 years apart and in light of para 26 of Court of Appeal's judgment in SC (Zimbabwe).

48. However, the submission that the appellant's convictions were 11 years apart ignores the fact that he had other convictions. The appellant's convictions are set out below. The Decision Letter mentions those that are italicised below. The PNC mentions all the offences below except for the convictions of 24 February 2005.

Date of conviction	(Age)	Offence(s)	Sentence
24.02.2005	*18*	*Assault of a constable, Possession of Class C drugs (cannabis)*	*Compensation conditional discharge*
08.09.2005	19	Possession of Class C drugs (cannabis)	Fine, costs, forfeiture and destruction.
03.11.2005	19	Possession of Class C drugs (cannabis)	Fine, costs, forfeiture and destruction.
10.05.2006	20	Theft from a motor vehicle, Driving whilst uninsured, Driving without a licence and Failing to surrender to custody	Community order (12 months), compensation, endorsement of licence
11.12.2006 (sentenced 22.02.2007)	*20*	*Possession (Class A and Class C drugs) with intent to supply*	*30 months (YOI), Forfeiture*

15.06.2009	23	Possession of Class B drugs	Fine or 1 day (served), forfeiture
06.08.2010	24	Possession of Class B drugs	Fine, victim surcharge, costs, forfeiture
21.11.2016 (sentenced 22.03.2017)	*31*	*Possession with intent to supply (Class B) x 2*	*9 months, forfeiture and destruction, victim surcharge*

49. It is plain that the only significant gap was the $6^1/_2$ year gap between the 2010 conviction and the 2017 convictions. This is much less than the gap of 11 years contended in the grounds. Whilst it may be that sentences for offences of simple possession of drugs are less severe for sentencing purposes than sentences for offences of possession with intent to supply, the fact is that every single one of the above convictions is a relevant conviction for the purpose of deciding whether the appellant is a persistent offender with a particular disregard for the law.

50. In Chege ("is a persistent offender") [2016] UKUT 00187 (IAC) Upper Tribunal considered the meaning of "*persistent offender*". The judicial head-note reads:

> "1. The question whether the appellant "is a persistent offender" is a question of mixed fact and law and falls to be determined by the Tribunal as at the date of the hearing before it.
>
> 2. The phrase "persistent offender" in s.117D(2)(c) of the 2002 Act must mean the same thing as "persistent offender" in paragraph 398(c) of the Immigration Rules.
>
> 3. A "persistent offender" is someone who keeps on breaking the law. That does not mean, however, that he has to keep on offending until the date of the relevant decision or that the continuity of the offending cannot be broken. A "persistent offender" is not a permanent status that can never be lost once it is acquired, but an individual can be regarded as a "persistent offender" for the purpose of the Rules and the 2002 Act even though he may not have offended for some time. The question whether he fits that description will depend on the overall picture and pattern of his offending over his entire offending history up to that date. Each case will turn on its own facts."

51. The decision in Chege was approved by the Court of Appeal in SC (Zimbabwe). Thus, the fact that there was a $6^1/_2$ year gap between the appellant's conviction in 2010 and his convictions in 2017 is a relevant fact but not the only relevant fact.

52. However, an important factor in the instant case is that the appellant committed the offences of which he was convicted on 21 November 2016 following his successful appeal in April 2008. The 2008 Panel noted, at para 36 of its decision, that:

> "… The appellant was involved in drug dealing with a view to financial gain. He had used cannabis very regularly and has been using cocaine since he was aged 17…."

53. The panel then proceeded to find that the appellant "*has learnt a good deal from his time in custody and has appreciated the major impact on his own and others' lives of his wrongdoing"* and that *"he has now learnt his lesson and will settle down on release from custody".*

54. Furthermore, when the appellant received his 9-month sentence of imprisonment on 22 March 2017, the sentencing judge said as follows:

> "… you were convicted by the jury of an offence of possessing cannabis with intent to supply, an offence that dates back to the 10'h February last year. On that occasion the police attended your address where, at the time, you were with certainly at least one of your children together with a quantity of drugs. There was cannabis in your bedroom next to your bed, alongside a number of self-sealed bags; in the living room there were further amounts of cannabis, also in a self-sealed bag, as well as cannabis on the mantelpiece. The total quantity is said to be just over 30 grams, worth on the street [sic] around £300. Other items were also found in the address consistent with drug supply; scales were recovered, a large quantity of the self-sealed bags of the sort that were used to contain the cannabis that was recovered, and also a large quantity of cash - £4,570 - which was found in a blue plastic bag on top of the safe in the bedroom. And it is quite clear from that evidence that you've been involved in street level dealing, although I actually discount what's said in the pre-sentence report about messages on your phone because, as I recall, there was absolutely no evidence of that.
>
> You're now 30 years of age and you have been before the courts many times before for drug offences. They are in the main convictions for possessing drugs but you do also have a conviction for possessing drugs with intent to supply in 2007. You received a custodial sentence in relation to that offence and, notwithstanding that, you continued to find yourself before the courts for drug offences again, albeit only for possession. "
>
> (my emphasis)

55. Whilst the appellant said in evidence before the 2008 Panel that he had been using cannabis since the age of 17 years, the Pre-sentence Report dated 14 March 2017 (the "PSR") which was before the judge states that the appellant had informed the author of the PSR that he had been using cannabis since the age of 11 years. Importantly, the author of the PSR said that the appellant had stated that "*his cannabis [use] was not problematic*" and that he had not expressed any motivation to address his drug use.

56. In relation to the risk of re-offending, the author of the PSR stated that the appellant scored 64% which equated to a medium risk of risk of re-offending. However, the dynamic factors in his case (illicit drugs use, negative peers, lack of employment/finance) led him to assess the risk of re-offending as high.

57. I have concluded that, whilst the judge should have given reasons for his finding that the appellant was a persistent offender, there was ample evidence before him for him to reach the finding that the appellant was a persistent offender, given:

    i) that the appellant has used cannabis very regularly and had been using cannabis (according to the evidence he gave the 2008 Panel) since the age of 17 years but, according to the information he gave the author of the PSR, since the age of 11 years;

    ii) that there was no evidence before the judge that the appellant had ceased taking drugs;

iii) that the author of the PSR assessed him to pose a high risk of re-offending and that there was no evidence before the judge that the dynamic risk factors in his case had reduced;

iv) that the appellant had said to the author of the PSR that "*his cannabis [use] was not problematic*" and that he had not expressed any motivation to address his drug use;

v) that it is clear from the sentencing remarks dated 22 March 2017 that cannabis was found in the appellant's bedroom next to this bed, along with a number of sealed bags, and cannabis was also found on his mantelpiece;

vi) that the decision of the 2008 Panel plainly put him on notice that, if he engaged in further criminal conduct, "*he should be in doubt as to the very serious consequences or himself and his family life*". Nonetheless, he was subsequently convicted, in November 2016, of offences of possession with intent to supply Class B drugs; and

vii) that, at the date of the hearing before the judge, there was a 10-year court order in place prohibiting the appellant from seeing his brother. This was a protection from harassment order. Such orders are not made lightly.

58. I place particular reliance upon the fact that the appellant had not expressed to the author of the PSR any motivation to address his drugs use, that there was no evidence before the judge that the appellant had ceased taking drugs, that the appellant was assessed in the PSR as posing a high risk of re-offending and there was no evidence before the judge that the dynamic risk factors in his case had reduced. These are very important considerations when viewed against the background history of criminal convictions.

59. I have concluded that, on the evidence that was before him, the judge could not have reached any finding other than that the appellant was a persistent offender with a particular disregard for the law, on any legitimate view. His finding simply cannot be said to be irrational, on any legitimate view. His error was in failing to give any reasons for his finding. This is not sufficient for his finding to be set aside.

60. It has not been suggested on the appellant's behalf that the error in finding that the appellant was a persistent offender means that s.117A-D of the 2002 Act and para 398 of the Immigration Rules do not apply. Any such argument could have no purchase for the following reasons:

(i) the judge made an alternative finding, which has not been challenged, that the appellant had been sentenced in the past to a period of detention between 12 months and 4 years. Plainly, the judge was referring to the sentence of 30 months' detention in a young offenders' institution imposed on 22 February 2007. Sentences of detention in a young offenders' institution fall to be taken into account in deciding whether an individual is a foreign criminal, pursuant to s.117D(4)(2) of the 2002 Act.

Mr Ahbim accepted that the appellant had been sentenced in the past to a period of detention between 12 months and 2 years. In Johnson [2016] UKUT 00282 (IAC), the Upper Tribunal held (Turner J and Upper Tribunal Judge Jordan) that an earlier period of imprisonment of four years or more may be relied upon in order to invoke para 398(a) of the Immigration Rules even if the

sentence for a later offence results in a period of imprisonment of less than 4 years. The same reasoning must apply by analogy to invoke para 398(b) of the Immigration Rules.

(ii) In the further alternative, the respondent decided that the appellant's convictions for drug offences had caused serious harm. Given that the sentencing judge said that the appellant had had a significant role in street dealing of Class B drugs, the appellant fell within s.117D(2)(c)(ii) of the 2002 Act and para 398(c) of the Immigration Rules as an offender whose offending had caused serious harm, on any legitimate view.

61. To summarise, I have concluded that the judge did not materially err in law in finding that the appellant is a persistent offender. If I am wrong and he did err in law, the appellant's Article 8 claim still fell to be considered under s.117A-D and para 398 for the two alternative reasons given in the preceding paragraph at (i) and (ii).

62. I therefore reject ground 1.

Ground 3.b

63. I will deal with ground 3.b next. This contends that the judge erred in failing to consider whether the appellant's children were British citizens by reason of the fact that they were the children of the appellant who had settled status.

64. Given that the Decision Letter disputed the appellant's claim that his children were British citizens, the appellant should have produced evidence that they were British citizens.

65. However, the Decision Letter accepted that the appellant had been granted ILR on 26 July 1994.

66. The grounds contend that this means that the appellant's children were British citizens. However, this would depend upon whether a deportation order had been made against the appellant. This is because the making of a deportation order invalidates a person's ILR pursuant to s.5(1) of the Immigration Act 1971. Even if an appeal is subsequently allowed by the Tribunal, this does not result in the ILR being reinstated (George [2014] UKSC 28).

67. I am satisfied that a deportation order has not been signed at any time against the appellant. This is because the automatic deportation provisions in s.32 of the UK Borders Act 2007 did not apply.

68. Given that a deportation order has not been made against the appellant, the appellant's ILR has not been invalidated.

69. On this basis alone, the judge should have found that the appellant's children were all British citizens. Accordingly, contrary to his finding at para 63.b., C2 and C3 are British citizens. The judge erred in finding that it had not been shown that they were British citizens.

70. However, I am satisfied that this error is not material for the following reasons:

(i) the judge went on to consider whether the appellant's deportation would be unduly harsh on the children;

(ii) for the reasons given at paras 72-86 below, the judge did not materially err in law in his consideration of the appellant's family life claim based on his relationship with his children, i.e. Exception 2 in s.117C(5) of the 2002 Act and para 399(a) of the Immigration Rules; and

(iii) the judge did not decide the appeal on the basis that it would not be unduly harsh for the children to leave the United Kingdom. If he had done so, the fact that the children were British citizens would have meant that it would have been necessary for him to have taken into account the fact that the children will lose the benefit of growing up in the country of their birth and nationality in order to reach his finding that it would not be unduly harsh for the children to leave the United Kingdom. As he did not, this issue simply does not arise.

71. I therefore reject ground 3.b as it does not establish a material error of law.

Ground 2

72. I turn now to ground 2. This concerns the appellant's family life claim based on his relationship with his children. It therefore concerns Exception 2 in s.117B(5) and para 398(a) of the Immigration Rules.

73. Mr Ahbim's reliance upon s.117B(6) of the 2002 Act in relation to ground 2 is misconceived, as s.117B states, in terms, that it applies "In the case of a person who is <u>not</u> liable to deportation" (my emphasis).

74. As can be seen from paras 35-37 above, I pressed Mr Ahbim to explain what evidence was before the judge to show the impact on the appellant's children of his deportation. He acknowledged that there was no social worker's report. He could only refer me to the judge's summary of the oral evidence of W3 and the appellant's sister. W3 said that C4 was very close to the appellant and that the appellant helped her a lot with C4. However, given that C4 saw his own biological father regularly and the judge's unchallenged finding that the appellant did not have a genuine and subsisting parental relationship with C4, W3's evidence simply takes the appellant's case nowhere. It simply cannot be said, from the judge's summary of the evidence of the appellant's sister, that the sister was speaking about the impact on the appellant's children when she said that the appellant's removal would cause upset to her and her family. In any event, feelings of upset are not enough to show that it would be unduly harsh for a child to be separated from his or her biological parent in a deportation case.

75. Given the judge's unchallenged findings that:

(i) the appellant did not have a genuine and subsisting parental relationship with C1 as C1 had been taken into care and the appellant had not seen C1 for the last 5 years; and

(ii) the appellant did not have a genuine and subsisting parental relationship with C4 because C4's biological father still plays an important role in his life and sees him regularly,

ground 2 can only relate to C2 and C3.

76. However, there was no expert report before the judge, for example, in the form of a social worker's report, concerning the impact on C2 and C3 of the appellant's deportation. None of the witnesses who gave oral evidence gave any oral evidence about the impact on C2 and C3 of the appellant's deportation. The judge said that he had letters from C2 and C3 in which they said that they loved the appellant and did not want him to be deported (para 22 of the judge's decision).

77. In his assessment at paras 63-65, the judge was considering whether the effect of the appellant's deportation on C2 and C3 would be unduly harsh, i.e. whether Exception 2 in s.117C(5) of the 2002 Act applies. Pursuant to para 399(a), he had to assess whether it would be unduly harsh for C2 and C3 to live in Jamaica and whether it would be unduly harsh for C2 and C3 to remain in the United Kingdom without the appellant. It is only if it is unduly harsh for C2 and C3 to live in Jamaica and for them to remain in the United Kingdom without the appellant that the appellant can succeed under para 399(a) of the Immigration Rules and therefore s.117C(5).

78. At para 65, the judge found that it would be in the best interests of C2 and C3 to remain with their mother. In effect, he found that it would not be in their best interests to leave the United Kingdom and live in Jamaica. Accordingly, if the appellant is deported, C2 and C3 would be separated from the appellant. The question then was whether the impact on C2 and C3 of being separated from the appellant would be unduly harsh. The judge found, at para 64, that it would not be unduly harsh for C2 and C3 to remain in the United Kingdom without the appellant.

79. I do not accept the contention in ground 2 that the judge failed to make adequate findings as to the best interests of the appellant's children. He plainly found that it would be in their best interests for them to remain in the United Kingdom and, by that finding, that it would not be in their best interests for them to leave the United Kingdom.

80. Whilst it may be said that the judge ought to have considered whether it would be in the best interests of C2 and C3 for the appellant to continue to remain in the United Kingdom and continue to see them once a week, he plainly contemplated this in the final sentence of para 65. Para 65 reads:

> "I also conclude that it is in the best interests of C1 to remain as he has been for the last 5 years with no contact with A. I also conclude that it is in the best interests of C2&3 and 4 to remain with their respective mothers. However even if I am wrong about this and it is in the best interests of these various children to have A playing some sort of continuing or future role in their lives, I conclude that their interests are outweighed by the public interest in deporting foreign criminals."

81. Mr Ahbim did not challenge the judge's reasoning in the final sentence of para 65. However, I am aware that, pursuant to the Supreme Court's judgment in KO (Nigeria) and others v SSHD [2018] UKSC 53, the judge (through no fault of his own as he did not have the benefit of the judgment in KO (Nigeria)) erred in law in taking into account the public interest in assessing whether it would be unduly harsh for C2 and C3 to remain in the United Kingdom without the appellant, which is what he was plainly doing at para 65.

82. This issue could not have been raised in the grounds as the grounds were settled before the judgment in KO (Nigeria) was delivered on 24 October 2018. However, Mr Ahbim did not raise it at the hearing either.

83. I have nevertheless considered whether the judge's error, in taking into account the public interest in the final sentence of para 65, is material.

84. The meaning of the phrase "unduly harsh" was considered by the Supreme Court in KO (Nigeria). At para 23 of its judgment), the Supreme Court said:

> "23. … the expression "unduly harsh" seems clearly intended to introduce a higher hurdle than that of "reasonableness" under section 117B(6), taking account of the public interest in the deportation of foreign criminals. Further the word "unduly" implies an element of comparison. It assumes that there is a "due" level of "harshness", that is a level which may be acceptable or justifiable in the relevant context. "Unduly" implies something going beyond that level…. One is looking for a degree of harshness going beyond what would necessarily be involved for any child faced with the deportation of a parent…."
>
> (my emphasis)

85. At para 27, the Supreme Court approved of the guidance given in MK (Sierra Leone) v SSHD [2015] UKUT 223 (IAC) as to the meaning of the phrase "*unduly harsh*". Para 27 reads:

> "27. Authoritative guidance as to the meaning of "unduly harsh" in this context was given by the Upper Tribunal (McCloskey J President and UT Judge Perkins) in *MK (Sierra Leone) v Secretary of State for the Home Department* [2015] UKUT 223 (IAC), [2015] INLR 563, para 46, a decision given on 15 April 2015. They referred to the "evaluative assessment" required of the tribunal:
>
> > "By way of self-direction, we are mindful that 'unduly harsh' does not equate with uncomfortable, inconvenient, undesirable or merely difficult. Rather, it poses a considerably more elevated threshold. 'Harsh' in this context, denotes something severe, or bleak. It is the antithesis of pleasant or comfortable. Furthermore, the addition of the adverb 'unduly' raises an already elevated standard still higher."
>
> (my emphasis)

86. If the judge had not taken into account the public interest in the final sentence in para 65, he could not have reached any conclusion other than that the evidence did not show that it would be unduly harsh for C2 and C3 to remain in the United Kingdom without the appellant, on any legitimate view. Whilst they will inevitably miss the appellant and be emotionally affected by his deportation and whilst they may well be permanently separated from the appellant and thus be deprived of seeing their biological father, there was simply no evidence before the judge to show that the emotional and psychological impact on C2 and C3 would be anything other than that which is ordinarily to be expected by the deportation of a parent, much less that it meets the threshold of being harsh, let alone the elevated threshold of undue hardship. This is so even if one leaves aside the fact that C2 and C3 do not live with

the appellant, that they only see him once a week and that this arrangement had not been in place for long at the date of the hearing before the judge.

87. I therefore reject ground 2.

Ground 4

88. I shall turn next to ground 4, since this also relates to the appellant's family life claim, this time his family life claim with W3.

89. I draw the inference that Ground 4 concerns the appellant's family life claim with W3 because there can be no other reason for the passages from EB (Kosovo) and VW (Uganda) being quoted.

90. To the extent that para 24 of the grounds, which contends that it is unreasonable to expect the appellant to return to Jamaica, concerns the appellant's private life claim, I will consider this in the context of ground 3.a which plainly does concern his private life claim. Likewise, Mr Ahbim's submissions on ground 4 properly concern the appellant's private life claim.

91. As I have said above, the crux of ground 4 is that it is unreasonable for family life to be enjoyed in Jamaica between the appellant and W3. This ground is wholly misconceived. Whilst EB (Kosovo) and VW (Uganda) are plainly still good law, the test in the case of a person subject to deportation action who relies upon his rights under Article 8 is not whether it is *reasonable* to expect him and his partner to live outside the United Kingdom but whether deportation would be *unduly harsh* on the partner (Exception 2 in s.117C(5)). By virtue of para 399(b) of the Immigration Rules, this calls for an assessment of whether it would be unduly harsh for the partner to live in the country to which the deportee is to be deported and whether it would be unduly harsh for the partner to remain in the United Kingdom without the deportee.

92. As the Supreme Court said at para 23 of KO (Nigeria), the expression "*unduly harsh*" is clearly intended to introduce a higher hurdle than that of "*reasonableness*". It is therefore misconceived to rely upon cases which concern reasonableness of a partner leaving the United Kingdom to enjoy family life in another country.

93. Further and in any event, the grounds did not challenge the judge's finding that the appellant had not established that W3 was his partner.

94. I therefore reject ground 4.

Ground 3.a

95. At the hearing, Mr Ahbim submitted that the judge's finding that the appellant was not socially and culturally integrated in the United Kingdom was irrational. When I pointed out that this was not raised in the grounds, he submitted that this was the intention of ground 3. I am just about persuaded that he is right, i.e. that ground 3 raises an implicit challenge to the judge's finding that the appellant was not socially and culturally integrated in the United Kingdom.

96. If one focuses *only* on the fact that the appellant has lived in the United Kingdom since the age of 4 years, then there may be some force in the challenge to the

judge's finding that the appellant was not socially and culturally integrated in the United Kingdom. However, that is not the only factor that falls to be considered. Even assuming that the appellant has never left the United Kingdom, the judge relied upon the fact that appellant is a persistent offender in reaching this finding.

97. Given that the appellant arrived at the age of 4 years, that (according to the information he gave the author of the PSR) he has been using drugs since the age of 11 years and given the history of his criminal convictions, I simply cannot say that the judge's finding that the appellant was not socially and culturally integrated in the United Kingdom was irrational.

98. In any event, even if the judge erred in law in finding that the appellant is not socially and culturally integrated in the United Kingdom, this is not material unless he shows that the judge also erred in law in reaching his finding that there would not be very significant obstacles to his reintegration in Jamaica.

99. Ground 3.a relies, inter alia, upon the fact that the appellant is now 32 years old, he has never left the United Kingdom since; he has never maintained any ties in Jamaica; and he has no social or cultural ties with Jamaica. However, whilst all this is correct, the fact is that the appellant gave evidence that his mother would go to Jamaica with him to help him establish himself (para 14 of the judge's decision) and his mother gave evidence that she would continue to provide him with financial support if he were deported (para 19 of the judge's decision). Given this evidence that was before the judge, the fact that the appellant speaks English which (it was accepted before me) is spoken in Jamaica and that he is a fit young man, it simply cannot be said that his finding that the appellant had not established that there would be very significant obstacles to his reintegration in Jamaica is irrational.

100. I therefore reject ground 3.a.

101. At the end of his submissions, Mr Ahbim submitted that the judge's finding that there were no very compelling circumstances over and above the Exceptions was irrational, given the factors that were in the appellant's favour, in particular, that he had arrived in the United Kingdom at the age of 4 years. He submitted that the compassionate circumstance was that the appellant had no ties to Jamaica which is a foreign country to him. The judge erred when he found that the appellant's compassionate circumstances did not outweigh the public interest.

102. However, there was no challenge in the grounds to the judge's finding that there were no very compelling circumstances over and above the Exceptions.

103. Nevertheless, I have considered the submission.

104. In NA (Pakistan) and others v SSHD [2016] EWCA Civ 662, the Court of Appeal held that a deportee could rely, by way of very compelling circumstances, on factual matters falling within the scope of the Exceptions as well as any factual matters which fall outside the scope of the Exceptions in order to demonstrate that there are very compelling circumstances over and above the Exceptions.

105. However, it would be necessary for a person subject the deportation action to show that there are features which made his Article 8 claim "*especially strong*", in the case

of an offender sentenced to a period of imprisonment of less than 4 years but at least 12 months (para 29 of the judgment) or (in my view, by analogy with the reasoning in NA (Pakistan)) in the case of a persistent offender; and "*an especially compelling kind … going well beyond what would be necessary to make a bare case of the kind described in Exceptions 1 and 2*" in the case of an offender sentenced to a period of imprisonment of at least 4 years (para 30 of the judgment).

106. At paras 33 and 34 of NA (Pakistan), the Court of Appeal said:

> "33. Although there is no 'exceptionality' requirement, it inexorably follows from the statutory scheme that the cases in which circumstances are sufficiently compelling to outweigh the high public interest in deportation will be rare. The commonplace incidents of family life, such as ageing parents in poor health or the natural love between parents and children, will not be sufficient.
>
> 34. The best interests of children certainly carry great weight, as identified by Lord Kerr in *HH v Deputy Prosecutor of the Italian Republic* [2012] UKSC 25; [2013] 1 AC 338 at [145]. Nevertheless, it is a consequence of criminal conduct that offenders may be separated from their children for many years, contrary to the best interests of those children. The desirability of children being with both parents is a commonplace of family life. That is not usually a sufficiently compelling circumstance to outweigh the high public interest in deporting foreign criminals. As Rafferty LJ observed in *Secretary of State for the Home Department v CT (Vietnam)* [2016] EWCA Civ 488 at [38]:
>
> > "Neither the British nationality of the respondent's children nor their likely separation from their father for a long time are exceptional circumstances which outweigh the public interest in his deportation.""
>
> (my emphasis)

107. There was simply nothing before the judge that showed that there were features about the appellant's family life claim in connection with Exception 2 that made his family life claim especially strong. There was no evidence before the judge to show that the disruption or upset caused to his children would be any more than that which a chid will naturally feel on being separated from his or her biological parent if the parent is deported.

108. In relation to the appellant's private life claim under Exception 1 and para 398(b) of the Immigration Rules, I have said that the judge did not err in law in finding that there would not be very significant obstacles to his reintegration in Jamaica. The fact that he has lived in the United Kingdom for a lengthy period since the age of 4 years is a relevant feature of his private life claim for the purposes of deciding whether he has very compelling circumstances over and above the Exceptions. This is because Maslov v Austria (1638/03) (2009) INLR 47 (to which I was not referred; indeed, I was not referred to any of the authorities I have mentioned save for EB (Kosovo) and VW (Uganda), both of which were irrelevant)) fell to be considered.

109. However, given the judge's finding, that the appellant was a persistent offender with a particular disregard for the law, this feature of the appellant's Article 8 (i.e. his lengthy residence since the age of 4 years) simply does not make the distance in showing that his Article 8 claim is especially strong, considering his private life and family life

claims individually and collectively. To put it in the language used in Strasbourg jurisprudence, the very serious reasons required to justify deportation in the appellant's case, as someone who has had lengthy residence in the United Kingdom since the age of 4 years with settled status for almost all of his residence, were founded on the judge's finding that he is a persistent offender. To put it in the language of s.117C(6) of the 2002 Act and para 398 of the Immigration Rules, the appellant had not shown, on the evidence before the judge, that there are very compelling circumstances, over and above the exceptions, in his particular case.

110. The appellant's appeal is therefore dismissed.

Decision

The First-tier Tribunal's decision did not involve the making of any error of law sufficient to require it to be set aside.

Accordingly, the decision of the First-tier Tribunal to dismiss the appellant's appeal against the respondent decision on asylum grounds, humanitarian protection grounds and human rights grounds stands.

Signed
Upper Tribunal Judge Gill

Date: 1 March 2019

APPENDIX

Sections 117A-D of the 2002 Act provide as follows:

"**117A Application of this Part**

(1) This Part applies where a court or tribunal is required to determine whether a decision made under the Immigration Acts—

(a) breaches a person's right to respect for private and family life under Article 8, and

(b) as a result would be unlawful under section 6 of the Human Rights Act 1998.

(2) In considering the public interest question, the court or tribunal must (in particular) have regard—

(a) in all cases, to the considerations listed in section 117B, and

(b) in cases concerning the deportation of foreign criminals, to the considerations listed in section 117C.

(3) In subsection (2), "the public interest question" means the question of whether an interference with a person's right to respect for private and family life is justified under Article 8(2).

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

(1) The maintenance of effective immigration controls is in the public interest.

(2) It is in the public interest, and in particular in the interests of the economic well-being of the United Kingdom, that persons who seek to enter or remain in the United Kingdom are able to speak English, because persons who can speak English—

(a) are less of a burden on taxpayers, and

(b) are better able to integrate into society.

(3) It is in the public interest, and in particular in the interests of the economic well-being of the United Kingdom, that persons who seek to enter or remain in the United Kingdom are financially independent, because such persons—

(a) are not a burden on taxpayers, and

(b) are better able to integrate into society.

(4) Little weight should be given to—

(a) a private life, or

(b) a relationship formed with a qualifying partner,

that is established by a person at a time when the person is in the United Kingdom unlawfully.

(5) Little weight should be given to a private life established by a person at a time when the person's immigration status is precarious.

(6) In the case of a person who is not liable to deportation, the public interest does not require the person's removal where—

(a) the person has a genuine and subsisting parental relationship with a qualifying child, and

(b) it would not be reasonable to expect the child to leave the United Kingdom.

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

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

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

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

(4) Exception 1 applies where—

(a) C has been lawfully resident in the United Kingdom for most of C's life,

(b) C is socially and culturally integrated in the United Kingdom, and

(c) there would be very significant obstacles to C's integration into the country to which C is proposed to be deported.

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

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

(7) The considerations in subsections (1) to (6) are to be taken into account where a court or tribunal is considering a decision to deport a foreign criminal only to the extent that the reason for the decision was the offence or offences for which the criminal has been convicted.

117D Interpretation of this Part

(1) …

(2) In this Part, "foreign criminal" means a person—

(a) who is not a British citizen,

(b) who has been convicted in the United Kingdom of an offence, and

(c) who –

(i) has been sentenced to a period of imprisonment of at least 12 months,

(ii) has been convicted of an offence that has caused serious harm, or

(iii) is a persistent offender.

Paras 398, 399 and 399A of the Immigration Rules provide as follows:

398. Where a person claims that their deportation would be contrary to the UK's obligations under Article 8 of the Human Rights Convention, and

(a) the deportation of the person from the UK is conducive to the public good and in the public interest because they have been convicted of an offence for which they have been sentenced to a period of imprisonment of at least four years;

(b) the deportation of the person from the UK is conducive to the public good and in the public interest because they have been convicted of an offence for which they have been sentenced to a period of imprisonment of less than 4 years but at least 12 months; or

(c) the deportation of the person from the UK is conducive to the public good and in the public interest because, in the view of the Secretary of State, their offending has caused serious harm or they are a persistent offender who shows a particular disregard for the law,

the Secretary of State in assessing that claim will consider whether paragraph 399 or 399A applies and, if it does not, the public interest in deportation will only be outweighed by other factors where there are very compelling circumstances, over and above those described in paragraphs 399 and 399A.

399. This paragraph applies where paragraph 398(b) or (c) 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 7 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.

399A. This paragraph applies where paragraph 398(b) or (c) applies if –

(a) the person has been lawfully resident in the UK for most of his life; and

(b) he is socially and culturally integrated in the UK; and

(c) there would be very significant obstacles to his integration into the country to which it is proposed he is deported.