Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: RP/00159/2017

THE IMMIGRATION ACTS

Heard via Skype for Business at Field House	**Decision & Reasons Promulgated**
On 17 July 2020	**On 18 August 2020**

Before

UPPER TRIBUNAL JUDGE ALLEN
UPPER TRIBUNAL JUDGE RINTOUL

Between

GM
(ANONYMITY DIRECTION MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellant: Ms A Harvey, instructed by Oaks Solicitors (Rowlandson House)
For the Respondent: Mr T Melvin, Senior Home Office Presenting Officer

DECISION AND REASONS

1. This appeal comes before us as a consequence of remittal to the Upper Tribunal from the Court of Appeal as set out in the Court's order of 30 January 2020. It is clear from paragraph 8 of the statement of reasons that the earlier decision of the Upper Tribunal of 3 June 2019 was set aside and the matter was remitted for reconsideration.

2. In brief, the appellant is a citizen of Kosovo, born in 1972, who first came to the United Kingdom in 1991 and was granted asylum in 1997 followed by indefinite leave to remain in 1999. He has a longstanding partner, VD, who is also from Kosovo but is now a British citizen, and they have twin daughters, V1 and V2, born in the United Kingdom on 27 May 2006, who are also British citizens.

3. Following the appellant's conviction in July 2016 for conspiracy to steal, he was sentenced to 27 months' imprisonment. On 21 August 2017 a decision was taken to cease the appellant's refugee status and refuse his human rights claim. On 28 October 2017 a deportation order was signed and was sent with full reasons on 30 October 2017. The appeal to the First-tier Tribunal was successful, but that decision was overturned by the Upper Tribunal in a decision which was itself set aside by the Court of Appeal.

4. The essential issue before us is whether it would be unduly harsh for the appellant's partner and children to remain in the United Kingdom without the appellant. We will set out the relevant legal provisions in detail later in this decision.

5. We heard oral evidence from three witnesses. The first was the appellant's sister IM, who made a statement dated 17 July 2020. She was content for this to be her evidence before the Tribunal. Ms Harvey had a few supplementary questions.

6. The witness said that she lived with her mother and looked after her each week and all her spare time was spent with her. As to whether her mother could manage without her, it was very difficult, as she had set out in her statement. Her mother had various health issues and was getting worse, so she needed quite a bit of help. She had arthritis and sight problems and was aged 76. The appellant provided support for her and for her mother. They were a close-knit family and spent every Sunday together and whenever he was needed the appellant was around and specifically when she herself was away he was around to help their mother.

7. She was sure he would not reoffend because they were very well brought up and educated and whatever happened it was very unprecedented for their family. He did not need to offend.

8. As to what support she would be able to provide in the future she said that at the time when her brother was incarcerated his release was imminent and she gave support to her nieces and all the family were affected. He was going to be coming back to his family and they had done their best but it was difficult. She was not a parent. She had full-time work and her job was very demanding and she also had to look after her mother. She thought that if the appellant were removed to Kosovo the girls would deteriorate. They relied strongly on his love and support and presence as set out in her statement. Their fears were already very evident and it would be a nightmare for them. As to the effect on the appellant's wife she was very gentle and suffered from depression and it would be back to square one with her fears. They

were a very loving family and his wife would not be able to live without him. They were very close and she needed him and could not cope with the children by herself.

9. On cross-examination the witness was asked whether there was any indication of deterioration in the children's schoolwork or activities since the deportation notice and she said yes, they had become very emotional and fearful and questioning. They had a fear of abandonment and looked up to the appellant. It was put to her that there was no evidence of their schoolwork suffering since the Home Office's decision, and she said they saw it as something that needed to be done and they carried on with it. It was unclear what would happen to them. They would have no male figure for strong support.

10. It was put to her that the appellant's wife travelled quite regularly to Albania or Kosovo without her husband for lengthy periods and she was asked how that related to her saying that they could not be apart. She said that when the appellant's wife visited her sister it was a holiday and was different, there was no comparison. She had gone once in the school holidays. They had not gone last year. The last time was the summer of 2018 for four or five weeks to visit her sister. She was asked whether the appellant's wife had coped then and said it was a visit to family and only for a short while.

11. There was no re-examination.

12. The next witness was the appellant, who adopted his statement. Again, Ms Harvey had a few further questions for him.

13. He was asked how he could be confident that he would not offend again and he said that he had made a mistake and admitted it and was remorseful and could only look ahead. He had caused hurt and pain to all dear to him and he would not put them through it again.

14. He was referred to correspondence from his employer in the bundle and said that he had told them exactly what had happened and showed them all the paperwork and that he was on bail with an uncertain future. They had taken him back afterwards, having told him before sentencing that they were willing to employ him on his return. He had applied to be allowed to work and they had taken him back. His employer had said it was out of character for him to be in prison. He would be able to do what he had done before and he had said he was not damaged and was fine to work.

15. When he was in prison his family had visited him as often as was allowed and he had called them every day, in the morning before school.

16. He had not talked to the children then about him being in prison but later on and had said why they had not told them, as they were shielding them. They were only 10 when he went to prison. He thought that they had seen signs such as barbed wire

and guards and then they tried to brush it off and it was easier then but they had been aware.

17. He was asked what support he thought his wife would have and he said there would be none. She was very special and needed help in everyday life and struggled with the security part of life. When he was away she had jammed chairs under the door handles. She was very insecure when he was not around and it affected her emotional state. Also there would be financial issues as she could not work all the time and needed time with the children. He had always provided most of the income.

18. He was asked who could help her and said there was no-one in their life. You found out in hard times and everyone had their own issues. His sister had tried before. There would not be any support from anyone. He was asked what he thought would happen to them and he said insecurity, financial problems and it would be quite detrimental. His wife had grown up without her mother and separated from her siblings. She would suffer a lot and the girls would be lost. They saw him as their idol. In lockdown there had been no signs of deterioration: there had been major improvement and it was not to his credit: one of his children had achieved the highest achievement points for her house in school.

19. On cross-examination the appellant confirmed that they always had a big family dinner on Sundays and that it was like a religious event and it was at his mother's. Her house was three minutes' drive away. They had discussed the impending deportation. He was asked why he thought his sister, who had helped his wife previously, could not do so again if needed. He said that is was a matter of physical presence. She would not be in their house and also work took her away and she lived her life and had no children and was not married and valued her freedom. She did not want a burden in her life. She knew she could not replace the parents and offered temporary distractions over a fourteen month period and then he had returned. She could not and would not do it for a long period.

20. He agreed that his sister had financed his wife's trip to Kosovo in 2018. He had not been able to travel. It was a treat and it was the cheapest way and they had stayed with an aunt. It was put to him that his wife and children had gone to Kosovo in ten out of fourteen years and he said it was not regular and it was a stopover to the seaside and there were cheaper holidays in Albania. He was asked whether they usually spent four weeks and he would come for a week or two and he said it was more than the final week for him and it depended on when he could get a holiday. Their tickets were bought well in advance as they were cheaper and his were at the last minute, so more expensive. It was put to him that he said his wife could not be without him but she had spent lengthy periods in the last decade being all right and he said they were not lengthy periods but a week or two. The trip in 2018 was to treat the girls. It should be contrasted with a separation for a lifetime and there was no comparison.

21. Ms Harvey had no re-examination.

22. The final witness was the appellant's partner, VD. She adopted her statement as her evidence-in-chief.

23. As regards what she had said in her statement about her husband not reoffending she said it was because she knew him very well and had seen his remorse and regret and was totally sure he would not do it again. When he was in prison and she visited with the girls they had not talked to them about him being in prison. The girls had asked but they had been trying to protect them. She was trying to buy time. She had told them she would explain when they grew up. They talked about it now and knew that he had been a prisoner and that he had made a very stupid mistake. They loved him so much. He fulfilled all her needs and she was so secure with him and still could not believe his mistake. She said that everyone deserved a second chance and he was the best father that she had ever seen and did not know what she would do without him and how she would support the children.

24. She was referred to the fact that Dr King had recommended counselling and she had had some and there was a waiting list. She said she had explained everything to Dr King and that it helped for the moment but she still needed it ongoing. It helped on a day-to-day basis rather than with regard to her whole life.

25. If her husband were removed there was no-one on whom she could call for support. She had no parents and was not very close to her sisters and her mother-in-law was very old. Her sister-in-law had her own life.

26. She said that sometimes she helped with her husband's mother but not much, as she had to deal with her own life. The girls had missed him a lot previously and one of them had suffered anxiety and cried at bedtime and they felt very secure with him and he was like a hero to them. His English was better than hers, so he helped with homework and activities. He made a good atmosphere in their family. She did not believe she could support them on her own. It had been very hard before but they had known he was coming back and if he were not then she did not think she could cope with that. She was experiencing constant and increasing anxiety and she did not want her children to grow up without parents.

27. In cross-examination the witness was asked whether she had any friends from the jobs she had done and said she did not. As regards the parents of other children when they were carrying out activities she said they took and collected and used to meet people at the park but not on an ongoing basis. As regards her work colleagues she had never gone out with them and it was for work and not for her social life.

28. Her sister in the United Kingdom lived in London and she had not seen her for three or four years. They had never been close and had grown apart. They had come to the United Kingdom together and their relationship was all right at the start but in

time her sister became very difficult and got upset with her all the time and it was from her sister's side and not hers.

29. Her sister in Kosovo visited the United Kingdom sometimes. She was closer to her than the other sister but not in comparison to some siblings. They had not grown up together and had never been attached to each other. Her sister lived in Kosovo with her family and she lived in the United Kingdom. Her sister had health problems including being overweight. She had not talked to her while her husband was in prison and she had no support.

30. It was put to her that she had visited her sister in 2018, and she said that when her husband came out of prison her sister had contacted her and they had picked up again. They were not very close. They perhaps spoke once a month or two months. She probably spoke to her brother once or twice a year. As she had said, she had not had contact with her other sister for three or four years. She saw her mother-in-law and her husband's sister every Sunday mostly. The children came too. They were a very close-knit family and she was very close with her husband's family. His mother was very old and his sister worked long hours and looked after their mother.

31. She was asked what had changed from their earlier support when her husband was in prison and she said that was different as it was for a year, in contrast to the rest of one's life. Her mother-in-law was getting older and more tired and her sister-in-law had a job and an independent life. Although they were close to them they could not replace her husband. They lived twenty minutes' walk away, close by.

32. She had not had contact with Social Services when her husband was in prison. She did not want medication. She had tried not to get support and had ticked off the days for a year. She begged that he be not removed as he was all that she had and he would not do it again.

33. She was currently taking Citalopram, having begun in the summer of 2018. It was put to her that there was nothing in her medical records to show she had problems before 2018 and she was asked whether it was fair to say that the problems diagnosed by the GP were solely with regard to her husband's immigration matter rather than underlying health matters. She said that she had never needed to take antidepressants before. She had not been able to cope and she had gone to the GP. The dose had increased. She was getting help including offers of medical help now and hoped that they would be able to reopen soon. The GP had referred her to iCope (community psychology) and they thought she needed longer help. They thought she needed a longer treatment.

34. It was put to her that she had known since 2016 that deportation was intended and she was asked whether there was any reason why she had not had treatment before 2018. She said that she had been trying to cope herself. She had not had experience of going to court, it was very difficult for her and she could see she was going to crack.

35. On re-examination, with regard to the GP's letter of 2 July 2020 in the bundle, she was asked why she had not wanted medication. She said it was as it was addictive and she was a weak person. They were chemicals and not good for you. She had studied medicine for two and a half years in Kosovo until everything was closed and she had come to the United Kingdom.

36. With regard to her sister-in-law she said she was a lovely girl but worse than the witness at taking responsibility and hence she had no children and was not married. Therefore, she believed her sister-in-law when she said that she could not look after the children. She could hardly look after her mother.

37. On questions from us the appellant agreed that she and her siblings were brought up separately. It was fair to say with regard to support networks and friendships that she had no close friends beyond the family.

38. In his submissions Mr Melvin relied on the refusal letter of 2017 and his written submissions and the skeleton argument. The issue was quite a narrow one: whether it would be unduly harsh for the appellant's wife and children to remain in the United Kingdom if he was removed to Kosovo. The evidence today had emphasised the appellant's wife's inability to cope if he was removed and it was said to be detrimental to her health and that of the children. On behalf of the respondent it was argued that the evidence did not bear out that the high threshold set out in the undue harshness test was crossed. The appellant's sister said his children's health had deteriorated or would do so but that was not borne out by them or by the school. It was accepted that they would be distressed, but there was no evidence of medication or treatment or health issues in respect of their father's removal. He had been released on licence in 2017. The evidence was wildly exaggerated with regard to the effects on the wife and children.

39. It was accepted that he was in a genuine and subsisting relationship with his partner and children and he was a good father but that was not sufficient. His partner's evidence did not fit well with the close-knit family evidence. She said no-one would support her, but the family had done so in the past and there had not been any Social Services involvement. There had been no real attempt with regard to medication until the deportation hearings began in 2018. It was only after the error of law hearing in January 2019 that a psychologist had been employed, at Counsel's recommendation. Before 2014 there was little or no evidence of medical or mental health problems for the appellant's partner and little before his trial or imprisonment. She was on medication in respect of her anxiety and solely with regard to his immigration situation. There was no direct issue with the credibility of the relationship, but their evidence was exaggerated and not in line with the facts.

40. With regard to the expert evidence there was the report from Dr King, the psychologist, which pointed more to a personality disorder and a recommendation with regard to very expensive treatment for this and it would take up to two years.

It was rebuttal evidence that had only been instigated in 2019. On behalf of the respondent it was argued that the support was not likely to be withdrawn. It should be contrasted with the evidence of the regular holiday visits to Kosovo to be with family members, with the partner going with the children and the appellant joining them later. Even with the deportation pending it had been for a considerable period of time. In contrast with the evidence of Dr King, set out at pages 107 to 108 of the bundle, there were the regular trips to Kosovo and evidence of her anxiety, for example what the appellant said about her jamming a chair under a door handle when he was not there. This was contradictory.

41. With regard to the independent social worker's report, medication had been prescribed for the appellant's partner and counselling recently but none of this had taken place before Ms Deacon's report of 4 June 2018. Little weight was given to the extensive findings including with regard to the wife's mental health and that of the children. Ms Deacon was not a psychiatrist and was not medically trained and the point of making a comparison to the death of a parent was extreme.

42. Her addendum report of February 2019 expressed concerns about emotional instability with references to the appellant's partner needing to leave her job but this should be contrasted with her working previously. She could drive and she could take the children to after school activities. The school records did not bear out the claimed problems for the children. They were doing very well academically. Little weight should be attached to the report. The Tribunal had the evidence with regard to the prescription. The case law had been put in and the test was one of undue severity or bleakness. This case did not cross the threshold, indeed it came nowhere near. The appeal should be dismissed.

43. In her submissions Ms Harvey referred to her detailed skeleton, which she would highlight picking up points from the evidence. There was agreement as to the test in this case concerning the effect on the family and whether it would be unduly harsh and then whether there were very compelling circumstances over and above, so the human rights of all had to be considered at that point.

44. The best interests of the children were key and they had written letters which were at pages 77 and 78 of the bundle. There were two parallel issues, the surface diagnosis of the family and the deep history informing understanding of the family's situation.

45. With regard to the claimed exaggeration by the appellant's sister it was relevant to note her qualifications as set out at paragraph 5 of her statement. She had studied counselling and psychotherapy as a part-time student and received a diploma in integrative counselling and psychotherapy and had worked as a volunteer counsellor at Westminster Adult Education Service. She was not held out as an expert, but these were not the comments of a person lacking understanding of the dynamics of the issue.

46. The appellant's partner was the survivor of her mother's murder by her father. Her siblings had been older and she had been brought up by her grandparents, unaware of the family history until she was 10. She had been halfway through a medical degree when she had to flee to the United Kingdom with a sister and that relationship had subsequently fallen apart.

47. There was the expert and the family evidence. The family was extremely functional, but the question was, if the appellant were taken out of the picture, the effect on his partner. It was the case that Counsel had advised the commissioning of a psychologist's report on the basis of a need identified because of the extreme facts. Dr King had been accepted as an expert and she set out her workings and described all the tests she had done and the basis for her diagnosis. There was reference at paragraph 1.2 of the report to the appellant's partner being thought to be at genetic risk of developing enduring mental health concerns. At paragraph 1.3 there were recommendations for therapeutic intervention which would be long-term and needed to be for at least two years. The appellant's partner had never had the sort of work that was thought to be needed. She carried baggage but it was a highly functional family unit. There were the circumstances of not telling the children about their father being in prison despite visits and the children had taken on huge responsibility for their mother's mental health. The appellant's partner had said she did not want counselling on Skype as she did not want her children upset. There was a risk of meltdown as before and an inability to look after the children. What was said by Dr King at paragraph 3 of the opinion section of the report was prescient with regard to her employer being unlikely to tolerate bad days for any length of time. That was what had happened.

48. There were then the reports of Ms Deacon of 2018 and 2019. The children were coming up to their GCSE years. They were identified as high achievers and they were at risk of losing the protective factor of their school. There was reference in the addendum report to social care and assistance available to the family. As regards the point made by Mr Melvin that this was old evidence, the underlying problems had not been addressed and the appellant had been back for three years, so it was normal for them to have him at home. So the expert evidence was that the appellant's partner would not be able to cope if he were deported and would not be able to look after the children. They would go from being a high-functioning family unit to not functioning. This met the undue harshness test.

49. With regard to the "without more" point in Imran, there was also the next line "we emphasise …" and that was the "without more". Reference was made to paragraph 82 of the skeleton. There was nothing ordinary about the wife's history of trauma, also she had been a refugee, and that supplied the "without more" and met the test.

50. If the Tribunal disagreed then it was necessary to consider Article 8 at large and very compelling circumstances. Reference was made to the guidance in NA (Pakistan). The appellant had lived in the United Kingdom for 29 years, since the age of 18, having come as a refugee. The relationship had been formed when he had ILR, so it

was not precarious. All his family had fled, and his mother was very dependent on him, as could be seen from her evidence, and the evidence also set out the role of the appellant's sister in respect of their mother. It would be hard for her without the appellant and there were only three old aunts otherwise in Kosovo. There was evidence in the bundle from the IOM about returns to Kosovo, very high unemployment, very low salaries and lack of social security benefits in general unless there was disability or old age. The appellant would not be able to help the family and he would need their help. The test was met if one took all their rights together. On all the evidence he was remorseful and faced up to his crimes and told his employer what had happened, while he was on bail. He had made efforts to make amends, as could be seen from his evidence and there was no risk of future offending. He was fully integrated in the United Kingdom and could and would provide for himself and there would be no need for benefits. As regards the public interest there was little to favour deportation. The appeal should be allowed.

51. We reserved our decision.

52. As the parties agree, the issue in this case is whether it would be unduly harsh for the appellant's partner and children to remain in the United Kingdom if he is returned to Kosovo. This arises as a consequence of section 117C of the Nationality, Immigration and Asylum Act 2002. It is made clear there at (3) that in the case of a foreign criminal who has not been sentenced to a period of imprisonment of four years or more, the public interest requires his deportation unless Exception 1 or Exception 2 applies.

53. Under (5) Exception 2 applies where the appellant 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 his deportation on the partner or child would be unduly harsh.

54. As we have noted above, it is accepted that the appellant has a genuine and subsisting relationship with both his partner and his children and therefore the applicability of the undue harshness test in this case is the main issue that we have to consider. We also, however, have to consider, as Ms Harvey pointed out, whether there exist very compelling circumstances such as to render the appellant's removal from the United Kingdom contrary to Article 8 of the European Convention on Human Rights.

55. It is clear from what was said by the Supreme Court in KO (Nigeria) [2018] UKSC 53, that the test of undue harshness is a high test involving a degree of harshness going beyond what would necessarily be involved for any child faced with the deportation of a parent. In Patel [2020] UKUT 45 (IAC), it was noted that nationality (in the form of British citizenship) is a relevant factor when assessing whether the "unduly harsh" requirements of section 117C(5) are met. It is, however, not necessarily a weighty factor. All depends on the facts. Thus, it was said, some substantial interference

with the rights and expectations that come with being British is possible, without the position becoming one of undue harshness to the child.

56. Undue harshness in this case is argued with respect to the appellant's daughters on the basis of the situation of their mother, who came to the United Kingdom as a refugee from Kosovo and the survivor of the murder of her mother by her father in her presence (albeit as a small baby). There is a thorough and detailed psychological report by Dr Tracy King, in her report dated 2 April 2019. Dr King concludes that the appellant's wife suffers from dependent personality disorder, avoidant personality style and schizoid personality style. Clinical syndromes are suggested by her profile in the areas of major depression (recurrent, severe) and generalised anxiety disorder. It is said that she is unusually dependent, self-effacing and non-competitive. She is dependent and vulnerable if separated from those who provide support and likely to resent those on whom she must depend if they are critical or disapproving. She has an isolated and distorted sense of self along with dysphoric and fatalistic thoughts and these are said to be highly indicative of a major depressive disorder for VD. She is highly anxious and this is in all life circumstances, is apprehensive every day and has somatic signs of insomnia, exhaustion and aches and pains. She is inclined to lean on others for support and under stress may claim that even the simplest of responsibilities are too demanding. It is said that her early life experiences have led to fragmented personality formation and this would require long-term treatment of at least two years to offer a fair/good prognosis for change and until her personality is stabilised she will be at high risk of frequent mental health destabilisation that would impact her care of the children. It is said that even after treatment to some degree she will be at risk of relapses in mental health concerns given her age and point of treatment.

57. Dr King considers that as a first step it would be advisable to implement methods to ameliorate her current state of clinical anxiety, depressive hopelessness and difficult aspects of her personality functioning by therapeutic intervention. The appropriate treatment is less likely to be available on the NHS and may have to be sourced privately and self-funded. Fees would be in the region of £100 per session and she would require at least two years' worth of weekly treatment. Whilst her current counselling will be supportive through her period of acute destabilisation, she will not gain personality change or trauma processing from a counselling approach and these are the underlying issues that maintain her mental health concerns. As a lone parent she would be at high risk of a fast escalation in mental health concerns placing her children at risk of neglect and a lack of emotional attunement. They would also be at risk of being isolated from the community as she would struggle to engage with others and would be unlikely to help seek appropriately. It is her personality profile and mental health concerns that would escalate at the loss of her husband to deportation. It is said that loss to her is a retriggering of her early traumatic losses in life and her early losses have created a dependent need for her that is targeted solely towards her husband. Potentially the girls would be at risk of losing two parents, one to deportation and one to long-term enduring mental health concerns. Her husband being deported is worse for her than him being in prison as the deportation

is indefinite, she cannot visit him and speak to him as frequently due to cost implications, and concerns as to the safety of women, particularly her children, in Kosovo. Previously she could see him weekly and have daily telephone contact and there was an end in sight for them to reunite. It is also said that given that her father was reported to have schizophrenia she has a genetic risk of enduring mental health concerns evolving over time.

58. There are also two reports from Sally-Anne Deacon, an independent social worker, the first being a best interest report for the children dated June 2018 and the second an addendum report from 7 February 2019. Ms Deacon suggests that should the appellant be returned to Kosovo history would suggest that there would be a protracted, if not permanent decline in VD's mental health which is likely to compromise her current highly skilled levels of parenting and that the children would not only therefore lose their father but would experience a mother who is not as emotionally and practically available for her children as she has always been. Ms Deacon in her second report refers to grave concerns she has about VD's ability to be emotionally available to her children should her partner be removed to Kosovo. If her employment ceased, regular visits to Kosovo enough to maintain the family unit and emotionally satisfy all parties would be beyond the family's financial means. Ms Deacon considered it to be possible that should VD's mental health deteriorate to the extent feared, though the family would be offered the support of social care it was also likely due to high thresholds and issues around resourcing that once safeguarding concerns had been eliminated the case would be closed. She did not consider that support from voluntary agencies would be adequate when considering the family's potential need.

59. There was also a letter from Dr Marcus Craven, the appellant's partner's GP, dated 2 July 2020. He states that she first presented to them with symptoms of depression in July 2018 and they elected to start her on Citalopram. She came off it for a while but then presented in February 2019 with a significant deterioration in her symptoms and went back onto Citalopram and was also given a short course of hypnotic medication service. When he saw her again in September 2019 she remained low and anxious and they elected to increase the antidepressant medication dose. He also notes that she accessed community psychology (iCope) with which he understood she had had nine sessions and was referred to the women and health counselling service of iCope where she received additional support during a further ten sessions.

60. From the evidence it appears to us that the family managed when the appellant was in prison. Support was provided to the appellant's partner and the children by the appellant's sister. She gave evidence before us as noted above and as with the other two witnesses we found her evidence to be entirely credible. We accept that though she was able to provide some support previously, it would be a different matter now, given the ongoing obligations she has towards her mother, with whom she lives and whose health is deteriorating, and her own busy life: she has a demanding job and wishes to be independent and to live her own life. The only support she can provide is very limited. VD has no contact with her sister in the United Kingdom, and

though she has visited her sister in Kosovo periodically, of course she is as geographically remote as her partner would be were he to be deported.

61. We do not attach any real significance to the fact that she was able to take the children on holiday every year for a number of years to see her sister in Kosovo. She was on her own with the children and with her sister in her family household for a period of perhaps two or three weeks on each occasion and that is a very different matter indeed from coping with a permanent separation of the kind that is likely to be the case if the appellant is deported.

62. We found it significant in addition to the psychological, medical and social work evidence that the appellant's partner in response to questions from us said that she had no friends outside the family. We accept that. It is consistent with Dr King's report. That may or may not be a reflection of the very difficult childhood and upbringing she had, but it is a relevant factor in assessing her circumstances overall.

63. It seems to us, looking at the medical and other evidence, that the threshold of undue harshness is crossed in this case. The very particular circumstances of the appellant's partner, including the tragedy of her father murdering her mother, the fact of growing up without her siblings, the fact of coming to the United Kingdom as a refugee and the problems which have come to the surface in particular in light of her partner's impending deportation, as fully set out in particular in Dr King's report, are such, as it seems to us, to indicate that it would be unduly harsh for her and for the children for them to be separated from the appellant. It is clear from Dr King's report that there is a significant risk of a considerable deterioration in VD if her partner is removed; it appears that the emotional dependence on the appellant is considerably greater than would be usual, given VD's particular personality disorder. Equally, we are satisfied that the effect on her would be significantly greater, in line with Dr King's report.

64. The implications of that for the children are also of clear significance. They coped previously and it seems probably worked out where their father was, and they continue to cope and of course he is present in their lives at the moment and the previous separation was, as all realised, temporary only. They would now be faced with a permanent separation and living with a mother who on the evidence simply would not cope and the implications for them would be seriously detrimental to their welfare, there no longer being anyone else able to take a parental role.

65. The overall conclusion we have reached about the family as a whole is that it is the appellant's constant presence and support that underpins the stability of VD, and consequently the children, that is the whole family.With him permanently absent, we conclude, on the basis of the reports provided to us, that VD will be unable to cope to such an extent that she will not be able to support the children who will then suffer seriously.This is a case therefore that goes in our view materially beyond the normal consequences of deportation on a family. In any case there is going to be upset, heartache, unhappiness and very likely an adverse impact on the lives of children

and partners. But in this case it goes very much more than that in our view, to an extent where it would not just be harsh on the children and on their mother but unduly harsh. As a consequence we consider that the undue harshness test is made out and the appeal is allowed on that basis.

66. As a consequence, we need not come to detailed findings on Article 8 outside the Rules, although it does seem to us that as the undue harshness test is met it is no real step from that to find very compelling circumstances. As Ms Harvey argued, to the evidence of undue hardship can be added the good conduct of the appellant while in detention and thereafter. He has shown proper remorse, has taken significant steps to make amends, and there is no risk of re-offending. He is fully integrated into the United Kingdom, where he has lived since 1991, has a good employment history, and there is no indication of a need for reliance on public funds. His presence is of real importance to the lives of not only his children and partner but his mother also. In all the circumstances, the very compelling circumstances test is met and the appeal is allowed on that basis also.

Notice of Decision

The appeal is allowed on human rights grounds.

Direction Regarding Anonymity – Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008

Unless and until a Tribunal or court directs otherwise, the appellant is granted anonymity. No report of these proceedings shall directly or indirectly identify him or any member of his family. This direction applies both to the appellant and to the respondent. Failure to comply with this direction could lead to contempt of court proceedings.

Signed  12 August 2020

Upper Tribunal Judge Allen