IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2022-006239

First-tribunal No: HU/04885/2021

THE IMMIGRATION ACTS

Decision & Reasons
5th February 2024

Before

UPPER TRIBUNAL JUDGE MANDALIA

Between

MK
(ANONYMITY DIRECTION MADE)

Appellant

and

Secretary of State for the Home Department

Respondent

REPRESENTATION

For the Appellant: Mr N Ahmed, counsel, instructed by Peer & Co Solicitors
For the Respondent: Mr Tufan, Senior Home Office Presenting Officer

Heard at Field House on 11 August 2023

ORDER REGARDING ANONYMITY

Pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008, the appellant and his family, including parents, partner and children, are granted anonymity.

No-one shall publish or reveal any information, including the name or address of the appellant, likely to lead members of the public to identify the appellant and his family. Failure to comply with this order could amount to a contempt of court.

DECISION AND REASONS

INTRODUCTION

1. The appellant is a national of Zimbabwe. In January 2020 the appellant was convicted of two counts of possession of Heroin and Crack Cocaine with intent to supply and sentenced to two terms of 44 months imprisonment to run concurrently. In July 2020 he was sentenced for two counts of possession of Heroin, again, with intent to supply. He was sentenced to 26 months imprisonment to run concurrently. On 28 October 2021, the respondent made a decision to refuse the appellant's human rights claim. The appellant's appeal was dismissed by First-tier Tribunal Judge Hawden-Beal for reasons set out in her decision promulgated on 20 September 2022.

2. The decision of Judge Hawden-Beal was set aside by me for reasons set out in my error of law decision issued on 12 May 2023.

3. Having found that the decision of the FtT involved the making of an error on a point of law, pursuant to section 12(2)(b)(ii) of the Tribunals, Courts and Enforcement Act 2007, I directed that the decision in the appeal will be remade in the Upper Tribunal. By virtue of section 12(4) of that Act, I may make any decision which the FtT could make if it were re-making the decision and may make such findings of fact as I consider appropriate.

4. In my error of law decision I rejected many of the criticisms made by the appellant regarding the decision of Judge Hawden-Beale. However, I was satisfied that the judge did not adequately set out any reasoned findings as to whether the appellant is socially and culturally integrated in the United Kingdom, and whether there would be very significant obstacles to the appellant integration into Zimbabwe. They are a relevant consideration when considering whether there are very compelling circumstances, over and above those described in Exceptions 1 and 2 for the purposes of s117(6) of the Nationality, Immigration and Asylum Act 2002 ("the 2002 Act"). I was not satisfied that the error was immaterial to the outcome of the appeal.

PRESERVED FINDINGS

5. I preserved the following findings of the First-tier Tribunal:

   a. The appellant is not at risk upon return to Zimbabwe on international protection grounds for the reasons set out in paragraph [45] of the decision of First-tier Tribunal Judge Law promulgated on 10th March 2014.

   b. The appellant does not have a family life with his parents and siblings for the purposes of Article 8 ECHR. (paragraph [64] of the decision of First-tier Tribunal Judge Law and paragraph [74] of the decision of Judge Hawden Beal)

c. The appellant is a foreign criminal as defined in s117D of the 2002 Act.

d. Exception 1 set out in s117(4) of the 2002 Act does not apply because the appellant is unable to establish that he has been lawfully resident in the United Kingdom for most of his life.

e. The appellant has a genuine and subsisting relationship with a qualifying child and it would be unduly harsh for the appellant's child to leave the UK and join the appellant in Zimbabwe. (paragraphs [79] of the decision of Judge Hawden Beal)

f. It would not be unduly harsh for the appellant's child to remain in the UK without the appellant. (paragraph [90] of the decision of Judge Hawden Beal)

g. The appellant has a genuine and subsisting relationship with a qualifying partner. (paragraph [82] of the decision of Judge Hawden Beal) It would be unduly harsh for the appellant's partner to leave the UK and join the appellant in Zimbabwe. (paragraph [83] of the decision of Judge Hawden Beal)

h. The appellant's relationship with his partner was formed when he had no right to be here and continues even though she knows he still has no right to be here and was subject of a deportation order made the year before their relationship began. The appellant's partner knew that and yet not only continued with that life but had a daughter with him and is currently expecting their second child in the full knowledge that there may come a time when he would have to leave the UK. (paragraph [83] of the decision of Judge Hawden Beal)

i. It would not be unduly harsh for the appellant partner to remain in the UK without the appellant. (paragraph [84] of the decision of Judge Hawden Beal)

j. Exception 2 set out in s117(5) of the 2002 Act does not apply. (paragraphs [79] to [90] of the decision of Judge Hawden Beal)

k. There is significant public interest in deporting the appellant because of the nature of the offences which he has committed. (paragraph [92] of the decision of Judge Hawden Beal)

l. The appellant was made the subject of a deportation order and the certification of his protection claim and the refusal of his human rights claim were upheld in 2014. This threat of deportation appeared to have had the desired effect because he did not reoffend until 2019, but when he did, he did so spectacularly and in such a way that it was clear that when it came to the crunch, neither the fact that he had a baby daughter and a deportation order hanging over him made the slightest difference to him in

terms of dissuading from keeping away from dealing in drugs. He clearly ignored the promise he had made to his mother, just as he had ignored the promises he had made to her in the past and he ignored the fact that his partner had made it clear that she would not be part of his life if he did re-offend. (paragraph [95] of the decision of Judge Hawden Beal)

m. "[The appellant's] mother and partner are desperate to believe that he has changed but his mother has acknowledged that he has broken his promise to her time and time again and his partner has accepted that he has broken his promise to her. His mother has been honest and said that she will continue to forgive him because she blames herself for his inability to find work because of his status and although his partner says that she will not and if he finds himself in the same position as he is in today, that she will not be here, I reluctantly must find that I do not find that part of her evidence to be credible. She is so concerned at the effect upon her daughter of the appellant being deported and of their long-term separation (and rightly so) that I am satisfied that she will continue to forgive him and support him just as does his mother, just to make sure that he stays here in the UK, even if he is in prison." (paragraph [96] of the decision of Judge Hawden Beal)

n. The appellant has not re-offended since his release in December 2021. Not offending and complying with the law, is a societal norm and a reasonable expectation of UK citizens and foreign nationals alike. The deportation order and the birth of his daughter had no deterrent effect upon him whatsoever and in the absence of his most recent OASYS report and the fact that his report from 2014 said that he was at high risk of re-offending (a prediction which he has gone on to fulfil, albeit some 6-7 years later), he is still a high risk of reoffending and is still a risk to the public. (paragraph [97] of the decision of Judge Hawden Beal)

o. There will be no breach of Article 3 by the appellant's removal to Zimbabwe. (paragraph [99] of the decision of Judge Hawden Beal)

APPLICATION FOR AN ADJOURNMENT

6. At the outset of the hearing before me, Mr Ahmed applied for an adjournment. He submits the appellant and his partner now have another child who was born on 24 February 2023. He submits the appellant should be afforded the opportunity of adducing further evidence regarding the birth of the appellant's daughter and the mental health of his partner. Mr Ahmed submits the tribunal may also be assisted by a report prepared by an independent social worker regarding the appellant's relationship with his partner and children. The application was opposed by Mr Tufan. Without making any concession, he is prepared to accept for the purposes of the hearing that the appellant is the father of another child who was

born on 24 February 2023. He submits the appellant has had ample opportunity to file and serve further evidence but has failed to do so.

7. I refused the application. The outstanding issues in the appeal are readily apparent from my 'error of law' decision that was issued to the parties on 12 May 2023. That decision itself post-dates the birth of the appellant's second child. On 11 August 2023, the appellant's representatives sent a letter to the Tribunal seeking permission for 'oral evidence to be given by the appellant and/or other witnesses who had given evidence before the FtT'. No further witness statements were attached. There is no reference the possibility of an independent social workers report or medical evidence being required to address the appellant's relationship with his partner and children, or any concerns regarding the mental health of his partner. It is incumbent on representatives to ensure, absent good reason, that relevant evidence is provided in a timely manner. In my judgement it cannot be in the interests of justice or in accordance with the overriding objective for there to be further delay.

SENTENCING REMARKS

8. Before I turn to the evidence, I have been provided with a copy of the judge's sentencing remarks following the appellant's conviction in January 2020 of two counts of possession of Heroin and Crack Cocaine with intent to supply. When the appellant was sentenced on 5 February 2020, His Honour Judge Morris said:

> "…You are 27 years of age and this is your second conviction for supplying drugs, class A drugs. You were stopped by the police in a car transporting some £4750 worth of heroin and cocaine, a considerable amount of it. You pleaded guilty at the earliest opportunity and so you will get full credit for your plea. It is accepted that this was a significant role, category three. There are two commodities here and the starting point is four-and-a-half years, going up to seven years but that is after a trial.
>
> In my view, your previous conviction means that the starting point after trial would have been five-and-a-half years. That is 66 months, so giving you credit for your plea of guilty, the sentence is reduced by one-third to 44 months. That makes three years eight months in all. You will pay the victim surcharge…."

THE EVIDENCE

9. At the hearing before me I had the benefit of the evidence that was relied upon by the appellant before First-tier Tribunal Judge Hawden-Beal that included a witness statement made by the appellant, a joint statement made by his parents, and a witness statement made by his partner who I refer to as [CB]. I have had regard to the evidence set out in those statements and the additional documents that were relied upon by the appellant that were in the bundle before the First-tier Tribunal.

THE ORAL EVIDENCE AND SUBMISSIONS

10. I heard oral evidence from the appellant and both his parents. The evidence is recorded in the record of proceedings and what follows is a summary only.

11. In his oral evidence the appellant adopted his witness statement dated 19 January 2022. He confirmed that he now has two children. His daughter, who I refer to as [ZZ] was born on 24 February 2023. He claims that he sees both his daughters every day. He said that his relationship with the Childrens' mother, [CB], has its *"ups and downs but at the moment we are getting on for the sake of the children"*. He claimed that [CB] has been diagnosed as suffering anxiety and depression and is currently prescribed medication. He claims [CB] is fragile because of concerns that their daughter may have some health problems. The appellant explained that as well as the support that he provides, [CB] also receives support from his family and, to a more limited extent, from her mother. He mother lives in Peterborough, and the appellant claims, has health problems that limit the assistance she can provide to her daughter.

12. The appellant said that he takes his eldest daughter to the school and to the park. Some nights she will stay with him overnight and he takes her to school the following morning. On other occasions he collects her from her mother and takes her to school. They have a flexible arrangement and he assists whenever assistance is needed. The appellant explained that he is not permitted to live with his partner and children because he was released on licence in December 2021 with a tag and bailed to another address. As for his offending, he expresses remorse and states he is now old enough to understand that what he did was wrong, and he has learned from his mistakes. He wishes to work and move on with his life so that he can support his children.

13. The appellant said that he has never returned to Zimbabwe since his arrival in the UK in 2003. He claimed he has no one there who could provide him with any support.

14. In cross-examination, the appellant maintained that he has now learnt from his past mistakes. Although he had offended repeatedly in the past, he has not been in trouble since his release in December 2021. The appellant maintained there is no fixed routine for the number of times his children stay with him overnight.

15. The appellant claimed he cannot remember whether he had attended school in Zimbabwe and that he does not have any clear recollection of life in Zimbabwe. He could not remember where the family lived in Zimbabwe. He does not know whether he has any aunts, uncles or extended family in Zimbabwe. He believes his mother had a sister in Zimbabwe.

16. The appellant was asked why his partner, who previously provided a statement, has not attended the hearing to give evidence and support the appeal. The appellant claims that is because she has young children and they were not advised that his partner should attend. He confirmed his

partner lives about a ten minute walk away from where he lives. Beyond referring to age, the appellant was unable to tell me what it is about the health of CB's mother, that prevents her seeing her daughter and grandchildren more often. The appellant explained that at the moment his parents help the appellant and his children. When asked if there are any reasons why that help and support could not continue if the appellant is deported, the appellant claimed they are barely getting by now, and it would be hard. The appellant confirmed that he is supported financially by his parents and they also provide help with buying things such as the children's clothing. He believes that if he is deported and his parents have to provide him with financial support in Zimbabwe, they will not have as much money to assist and support their grandchildren.

17. The appellant's father adopted his witness statement dated 16 January 2022. He claims that neither he nor his wife have ever returned to Zimbabwe, and they no longer have a home there. They previously lived with his parents, but they have since passed away. He said that it would be very difficult to continue supporting the appellant financially if he is deported to Zimbabwe. They have four children, who all live with them. He confirmed the appellant attended school in Zimbabwe for three or four years and although the appellant was familiar with the culture in Zimbabwe, after the family moved to the UK, the children have become accustomed to the culture here. He confirmed the appellant spoke Shona when they lived in Zimbabwe.

18. In cross-examination the appellant's father confirmed the appellant attended school in Marondera for three or four years. He confirmed that his wife has family, but none in Zimbabwe. She has a sister who lives in the UK and who had visited them abut a month ago. The appellant was home when she visited and had spoken to her. She lives in Peterborough, about five miles away from them. She has three children aged 34, 31 and 29, who live in Zambia or South Africa. The appellant's father confirmed his grandchildren often come and stay with them overnight. He claimed that it would be very difficult for them to help care for their grandchildren if the appellant is deported to Zimbabwe. They support the appellant financially at the moment because they all live together. He claimed it would be very difficult to support the appellant if he is returned to Zimbabwe.

19. The appellant's mother adopted the witness statement she had jointly made with the appellant's father. She said that she no longer has contact with anyone in Zimbabwe and has no assets or property there. She claimed it would be impossible to support the appellant if he is returned to Zimbabwe because they only have enough to support the family living together in the UK. She confirmed the appellant sees his children regularly and that they stay overnight frequently. She confirmed that if the appellant is deported she would continue to support and spend time with her grandchildren and they would be around if CB ever needed any help. In cross-examination she confirmed that she has a sister who lives in the UK. She said that she would be unable to support the appellant in Zimbabwe because her earnings are only enough to support the family that lived

together here. They would be unable to support, in effect, two households. She believes the appellant would find it difficult to adjust to life in Zimbabwe. She believes the appellant was about 11 years old when he arrived in the United Kingdom. He had attended primary school in Zimbabwe and spoke Shona. She confirmed that she and her husband still speak Shona and the appellant speaks a little Shona but is not fluent.

20. The parties closing submissions are set out in the record of proceedings and there is nothing to be gained by setting out those submissions at any length in this decision.

21. In summary, Mr Tufan submits that on the evidence the appellant has not established that he is socially and culturally integrated in the UK. The history of his offending behaviour is relevant to that question. He submits the appellant has also failed to establish that there are very significant obstacles to his integration into Zimbabwe. He received primary education there and his mother confirms that he is able to speak some Shona. He is supported in the UK by his family and there is no reason why that support could not continue in Zimbabwe. Mr Tufan submits the evidence here falls short of establishing that there are very compelling circumstances over and above those described in Exceptions 1 and 2, and that the public interest here requires the appellant's deportation.

22. Mr Ahmed submits the appellant has now been living in the UK for over 20 years and his offending started when he was young. Mr Ahmed refers to the decision of the Court of Appeal in *CI (Nigeria) v Secretary of State for the Home Department* [2019] EWCA Civ 2027, in which the Court confirmed the impact of offending and imprisonment upon a person's integration in the UK would depend not only on the nature, frequency and duration of the offending, but also on whether and how deeply the individual was socially and culturally integrated in the UK to begin with.

23. Mr Ahmed submits all of the appellant's immediate family are in the UK and he has established a family life with his partner and children. He is accustomed to life in the UK and has very little knowledge about life in Zimbabwe.

THE ISSUE

24. The appellant has appealed the respondent's decision to refuse a human rights claim and to refuse to revoke the deportation order under s.82 of the Nationality, Immigration and Asylum Act 2002 on the ground that the decision is unlawful under s.6 of the Human Rights Act 1998.

25. Mr Ahmed has filed and served a skeleton argument dated 11 August 2023. He states that in remaking the decision in this appeal, the Upper Tribunal will need to determine:

    a. Whether the appellant is socially and culturally integrated in the UK; and

    b. Whether there would be very significant obstacles to the appellant's integration into Zimbabwe

26. I add, as I said in my error of law decision, that if the appellant is unable to establish that Exception 1 as set out in s117C(4) of the 2002 Act applies, whether the appellant is socially and culturally integrated in the United Kingdom, and whether there would be very significant obstacles to the appellant integration into Zimbabwe are nevertheless relevant when considering whether there are very compelling circumstances for the purposes of s117C(6) of the 2002 Act.

27. As to whether a foreign criminal is socially and culturally integrated in the United Kingdom, in *SC (Jamaica) v Secretary of State for the Home Department* [2022] UKSC 15, Lord Stephens (with whom Lord Reed, Lord Lloyd-Jones, Lady Arden and Lord Hamblen agreed) said:

> "51. … I agree with the formulation of the question at para 77 of *CI (Nigeria)* that a judge should simply ask whether, having regard to his upbringing, education, employment history, history of criminal offending and imprisonment, relationships with family and friends, lifestyle and any other relevant factors, the individual was at the time of the hearing socially and culturally integrated in the UK."

DECISION

28. In reaching my decision I have had regard to all the evidence before me, whether or not it is referred to. I have had regard, in particular to the evidence of the appellant and his parent's who all attended the hearing of the appeal. I have had the opportunity of hearing their oral evidence and seeing that evidence tested in cross-examination. Although I have also been provided with a statement made by the appellant's partner, CB, she did not attend the hearing and there has been no opportunity to test her evidence. I also have a letter from CB's sister, who I refer to as AF, and from the appellant's sister who I refer to a SK. They too did not attend the hearing. That impacts upon the weight that I attach to their evidence.

29. I recognise that there may be a tendency by a witness to embellish evidence because although the core of the claim may be true, he/she believes that by embellishing their evidence, the claim becomes stronger. Although I do not go as far as to say that the appellant was being dishonest in his evidence, I found that he was vague in some of his responses and he did not appear to be a witness who was being entirely candid and forthcoming in his evidence. Although he was a child at the time, the appellant was not entirely forthcoming about the time that he had previously spent in Zimbabwe, despite having arrived in the UK in August 2003, when he would have been 11 years old. I accept that both the appellant's parents are honest and credible witnesses. They were clear and consistent in the evidence that they gave, and I am quite satisfied that they were genuinely seeking to assist the Tribunal reach its decision. They did not hesitate in their answers, and they were in my judgment, quite candid and honest in their responses. Where they express a view or belief, I am quite satisfied that it is a genuinely held view or belief.

30. The appellant is the father of ZK who was born on 2 August 2017 and is now six years old. Despite the absence of a birth certificate, I am also

prepared to accept and find for the purposes of this decision that the appellant is also the father of ZZ who was born on 24 February 2023. The appellant's evidence regarding the birth of his youngest daughter is consistent with the evidence of his parents regarding the birth of their second granddaughter. I pause to note that there is a preserved finding that the effect of the appellant's deportation on ZK would not be unduly harsh. There is nothing in the evidence before me to establish that the same does not apply to ZZ. Mr Ahmed does not claim that some additional factor is relevant to ZZ that was not previously considered when the judge considered whether Exception 2 set out in s117C(5) of the 2002 Act applies.

31. In reaching my decision, I have throughout had regard to the best interests of the appellant's minor children, ZK and ZZ as a primary consideration. The leading authority on section 55 remains *ZH (Tanzania) v Secretary of State for the Home Department* [2011] UKSC 4. In her judgment, Lady Hale confirmed that the best interests of a child are "a primary consideration", which, she emphasised, was not the same as "the primary consideration", still less "the paramount consideration". As a starting point, I readily accept that the best interests of a child are usually best served by being with both or at least one of their parents. Although the appellant's evidence is that CB's mental health if fragile because of concerns that their daughter may have some health problems, there is no evidence before me regarding the health of either child. There is no evidence to identify what those health problems may be, any diagnosis, or of any treatment being received.

32. The appellant does not live with his partner, CB. I accept the appellant's daughters regularly spend time with the appellant and his family, and I find that the arrangements are flexible so that the appellant and his parents are able to support CB as required. It is clear from the evidence before me and I find that CB has managed admirably well to meet the children's needs with the support that she has received from the appellant and his family. During the time the appellant was incarcerated, his family and his parents in particular, continued to support CB. I was left in no doubt that the appellant's parents love their granddaughters very much and whilst I accept their evidence that things would not be the same if the appellant were deported, I have no doubt they would continue to maintain their relationship with their granddaughters and would provide support to CB whenever possible.

33. I accept that CB will have found it difficult to manage work and her commitment to her daughters. It is clear from the evidence and I find that she has a familial support network available to her comprising of her own mother and the appellant's family. I do not underestimate the difficulties that the appellant's absence will pose and I can well understand that she does not want her daughters growing up in a 'single parent' household. CB claims that she suffered with depression previously when the appellant was in prison. I have no doubt that she is anxious because of her work and commitment towards her children, but there is an absence of evidence to support a claim that she has been diagnosed as suffering from anxiety and

depression. There is no medical evidence before me to establish that she has required any particular course of treatment in the past or that she is prescribed medication. There is also no evidence before me that either of the children has any physical disability.

EXCEPTION 1; S 117C(4) OF THE 2002 ACT

34. It is accepted that the appellant has not been lawfully resident in the UK for most of his life and therefore Exception 1 cannot apply. I have nevertheless considered whether the appellant is socially and culturally integrated in the United Kingdom and whether there would be very significant obstacles to his integration in Zimbabwe.

35. It is now well established that the question whether a foreign criminal is socially and culturally integrated in the United Kingdom is to be determined in accordance with common sense. *SC (Jamaica v SSHD, at* [51] In *CI Nigeria*, at [58] the Court of Appeal confirmed a person's social identity is not defined solely by their social ties, but by familiarity with and participation in the shared customs, traditions, practices, beliefs, values, linguistic idioms and other local knowledge which situated a person in a society or social group and generated a sense of belonging. As far as offending behaviour is concerned, Leggat LJ said:

> "61. Criminal offending and time spent in prison are also in principle relevant in so far as they indicate that the person concerned lacks (legitimate) social and cultural ties in the UK. Thus, a person who leads a criminal lifestyle, has no lawful employment and consorts with criminals or pro-criminal groups can be expected, by reason of those circumstances, to have fewer social relationships and areas of activity that are capable of attracting the protection of "private life". Periods of imprisonment represent time spent excluded from society during which the prisoner has little opportunity to develop social and cultural ties and which may weaken or sever previously established ties and make it harder to re-establish them or develop new ties (for example, by finding employment) upon release. In such ways criminal offending and consequent imprisonment may affect whether a person is socially and culturally integrated in the UK.
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> 62. Clearly, however, the impact of offending and imprisonment upon a person's integration in this country will depend not only on the nature and frequency of the offending, the length of time over which it takes place and the length of time spent in prison, but also on whether and how deeply the individual was socially and culturally integrated in the UK to begin with. In that regard, a person who has lived all or almost all his life in the UK, has been educated here, speaks no language other than (British) English and has no familiarity with any other society or culture will start with much deeper roots in this country than someone who has moved here at a later age. It is hard to see how criminal offending and imprisonment could ordinarily, by themselves and unless associated with the breakdown of relationships, destroy the social and cultural integration of someone whose entire social identity has been formed in the UK. No doubt it is for this reason that the current guidance ("Criminality: Article 8 ECHR cases") that Home Office staff are required to use in deciding whether the deportation of a foreign criminal would breach article 8 advises that:

> "If the person has been resident in the UK from a very early age it is unlikely that offending alone would mean a person is not socially and culturally integrated."”

36. The appellant arrived in the UK in August 2003 aged eleven. I accept the appellant is likely to have established some social and cultural links to the UK between the age of eleven *(when he arrived)* and sixteen *(when he was first convicted)*, and that during that period he attended Barnfield West Academy in Luton. He appears to have lived with his parents and siblings. He has been unable to work in the UK because of his immigration status.

37. Between 31 March 2009 *when the appellant was 16)* and 17 May 2011, the appellant was convicted on nine occasions for thirteen offence. The appellant had committed four offences of theft, eight offences relating to the police/courts/prisons and one drug offence during that time. On 19 August 2011 he was then convicted at Peterborough Crown Court for possession of drugs with intent to supply and received a sentence of 25 months imprisonment. The appellant was served with a signed deportation order in May 2013, and his appeal against a decision to refuse his international protection claim was dismissed in March 2014.

38. I accept the appellant met CB in 2015. His daughter ZK was born in August 2017. Despite the fact that he was the subject of a deportation order and had become a parent, the appellant was again convicted of drug offences *(possession with intent to supply)* in January and July 2020, which again resulted in custodial sentences.

39. The appellant’s inability to work is as a result of his immigration status. To that end, I have considered what is said by the appellant’s mother in her supplementary witness statement dated 8 September 2022. She sets out the circumstances in which the appellant’s parents and two of his siblings came to be recognised as refugees, but the appellant and another of his siblings were not so recognised. I have also had regard to the content of the letter from Lauren Housden, a Probation Practitioner, dated 17 January 2022. She confirms that since release from custody, the appellant has presented as motivated to engage with all services available to him. The appellant claimed the motivation behind his offending was often lack of financial income and inability to work legally. In her opinion, the appellant understands the importance of being a parent and the need for him to now lead a pro social lifestyle, supporting those who depend on him. She states the appellant express remorse for his previous offending behaviour, accepting that illegal sources of income, including dealing illicit substances places himself, others, and his family at risk.

40. Standing back and looking at the evidence in the round, although finely balanced, I am just persuaded the appellant is socially and culturally integrated in the United Kingdom. Despite the number of convictions the appellant has amassed, the lengthy terms of imprisonment imposed, and the abject absence of the appellant engaging in activities of a positive nature, he has maintained relationships with members of his family, and he has established other social relationships, including with CB and his children.

41. I do not however accept that the appellant would encounter very significant obstacles to re-integration in Zimbabwe. The assessment of 'integration' calls for a broad evaluative judgement. In *SSHD -v- Kamara* [2016] EWCA Civ 813, Sales LJ said, at [14]

> "In my view, the concept of a foreign criminal's "integration" into the country to which it is proposed that he be deported, as set out in section 117C(4)(c) and paragraph 399A, is a broad one. It is not confined to the mere ability to find a job or to sustain life while living in the other country. It is not appropriate to treat the statutory language as subject to some gloss and it will usually be sufficient for a court or tribunal simply to direct itself in the terms that Parliament has chosen to use. The idea of "integration" calls for a broad evaluative judgment to be made as to whether the individual will be enough of an insider in terms of understanding how life in the society in that other country is carried on and a capacity to participate in it, so as to have a reasonable opportunity to be accepted there, to be able to operate on a day-to-day basis in that society and to build up within a reasonable time a variety of human relationships to give substance to the individual's private or family life."

42. The appellant arrived in the UK in August 2003 aged 11. The evidence before me is limited. The appellant's evidence was that he cannot remember whether he went to school in Zimbabwe. He simply recalls playing with other children and said that he does not have a clear memory of his life in Zimbabwe. His father's evidence was that the appellant had attended school in Zimbabwe for three or four years and had a good grounding of Zimbabwean culture when the family lived in Zimbabwe. The evidence of the appellant's parents is that the appellant spoke Shona in Zimbabwe and his mother confirmed the appellant continues to speak a little Shona. Where the evidence of the appellant is inconsistent with the evidence of his parents, I find that the parents evidence is more reliable and I accept what they say about the appellant's early years in Zimbabwe. The appellant plainly spent the early years of his life in Zimbabwe and I find that he attended school there.

43. I must be satisfied that there are 'very significant obstacles' not just 'obstacles' to the appellant's integration in Zimbabwe. Although I accept the appellant was a child when he arrived in the UK, I do not accept the appellant's claim that he has no knowledge at all of life in Zimbabwe. I accept the appellant's immediate family (parents and siblings) are in the UK and that the appellant's parents are recognised as refugees and that they no longer have any connections to Zimbabwe. The appellant has plainly received education in the UK, and there is no evidence before me that he has any health impairment that would prevent him form being able to work in Zimbabwe. He has gained skills during his time in the UK, and the account that he provided to the Probation Service is that he is motivated to turn his life around. He is, I find, familiar with the culture having been raised and lived with his parents throughout his life. He speaks Shona and although he may not be as fluent as he was when he first left Zimbabwe, in Zimbabwe his grasp of the language and his ability to communicate will improve rapidly. I find the appellant already has some understanding of how life in Zimbabwe is carried on. I find that in the

short term, the appellant's parents will provide him with some financial support so that he will be able to secure accommodation or housing whilst he finds employment. He does not have any physical disability.

44. Life in Zimbabwe will not be easy for the appellant initially, but I do not accept the appellant could not cope. Having considered the evidence as a whole, whilst I accept that he will naturally encounter some hardship in returning to Zimbabwe, he will not be entirely without support and I do not consider any hardship to approach the level of severity required by s117C(4)(iii). I find the appellant will have the capacity to participate in life in Zimbabwe and be able to operate on a day-to-day basis in that society. He will, I find, build up within a reasonable time a variety of human relationships to give substance to his private and family life.

S 117C(4) OF THE 2002 ACT

45. I have considered whether there are very compelling circumstances over and above those described in Exceptions 1 and 2. Drawing the threads together I must consider all the circumstances and balance the factors that weigh in favour of, and against the appellant.

46. Here, I accept the status of the appellant's parents' and at least two of his siblings as refugees presents difficulties with their ability to maintain an on-going relationship with the appellant in the way that they are accustomed to, and means that they will be unable to travel to Zimbabwe to visit the appellant. The fact that the appellant is the subject of a deportation will impact upon his ability to visit the UK. I accept there is no evidence before me that the appellant has offended again. I have no doubt that he appellant will miss his family, and in particular, his daughters and I am prepared to accept that the passage of time since the appellant was made the subject of a deportation order must serve to temper the public interest.

47. However there is a general and powerful public interest in giving effect to the deportation regime in all its facets. Here, the appellant went on to commit serious offences even after he was made the subject of a deportation order and so the appellant's deportation remains in the public interest. I accept that ZK will miss her father, as will ZZ, but there is no evidence before me that the absence of her father previously had had a detrimental impact on ZK. There is a preserved finding that it would not be unduly harsh for ZK to remain in the UK without the appellant. The same must apply to ZZ. There is also a preserved finding that it would not be unduly harsh for CB to remain in the UK without the appellant. It will, I accept be difficult for CB to be without the appellant but CB will continue to receive support from the appellant's parents.

48. The best interests of the children lie, as with most children, in being brought up in a stable environment with both parents. The appellant has regular contact with the children and although there will be geographical distance between them, that will not prevent at least some on-going contact, albeit indirect, by modern means of communication.

49. Standing back and looking at all the evidence before me in the round, I conclude that the public interest weighs heavier than the family life interests of the appellant. The decision to refuse the appellant's human rights claim and to refuse to revoke the deportation order, is in all the circumstances proportionate.

50. It follows that I dismiss the appeal.

NOTICE OF DECISION

51. The appellant's appeal against the respondent's decision to refuse his human rights claim on Article 8 grounds is dismissed.

Upper Tribunal Judge Mandalia

Judge of the Upper Tribunal
Immigration and Asylum Chamber

4 January 2024