Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Numbers: DA/00181/2014
DA/00174/2014

THE IMMIGRATION ACTS

Heard at Royal Courts of Justice	**Determination Promulgated**
On 29 June 2015	**On 3 July 2015**

Before

Upper Tribunal Judge Southern
Upper Tribunal Judge Coker
Deputy Upper Tribunal Judge Saffer

Between

DH

and

TM

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For DH	:	Mr B. Hawkin, of counsel
For TM	:	Mr J. Rene, of counsel
For the Respondent	:	Mr S. Walker, Senior Home Office Presenting Officer

DETERMINATION AND REASONS

1. The appellants, who are citizens of Jamaica born on 9 March 1973 and 11 November 1978 respectively, have been granted permission to appeal against the decision of the First-tier Tribunal (Judge Eldridge sitting with a non legal member of that Tribunal), which, by a determination promulgated on 14 October 2014, dismissed their appeals against deportation orders made as a consequence of their

conviction before the Snaresbrook Crown Court of serious offences concerned with possession of Class A drugs with intent to supply and with offences related to the criminal proceeds generated by that activity, including the handling of large amounts of cash.

2. We shall look more closely below at those offences. At this point it is sufficient to note that the first appellant was sentenced to 10 years imprisonment and the second appellant to 8 years imprisonment. Both had denied the offences but were convicted after a trial.

3. An anonymity order was made by the First-tier Tribunal and we make clear that it continues to have effect. Therefore we shall refer to the first appellant as Mr A, to the second appellant as Ms B and to the members of their complicated family arrangements in a manner that flows from that.

Immigration history and history of offending: Mr A:

4. Both appellants have poor immigration histories and both have accumulated a serious pattern of criminal offending in the United Kingdom.

5. Mr A first arrived in the United Kingdom in December 1995 seeking to be admitted as a visitor. He was denied entry and removed to Jamaica the following day. At some point he returned unlawfully to the United Kingdom and next came to notice when, on 16 March 1999, he was convicted of 4 counts of supplying Class A drugs, assault with intent to resist arrest and common assault for which he was sentenced to 19 months detention in a Young Offenders Institution.

6. That conviction was recorded under the false name that he then provided but his fingerprints were of course taken and this conviction later emerged when he was arrested in his correct identity for the most recent offence.

7. At some stage after serving that sentence he returned to Jamaica and, having successfully appealed against refusal of entry clearance following his marriage to a British citizen, Ms AB, he returned to the United Kingdom in January 2006 and was admitted with leave to remain until December 2007. In February 2008 he was granted indefinite leave to remain.

8. As we have said, on 7 October 2011 Mr A was convicted of the offences that led to the deportation order he now seeks to challenge on the grounds that it will bring about an impermissible infringement of rights protected by Article 8 of the ECHR. His indefinite leave has been invalidated upon being served with the deportation order.

Immigration history and history of offending: Ms B:

9. Ms B says that she moved to the United Kingdom in August 1988, then aged 9 years old, in order to join her mother and sister. That was an irregular and unlawful entry as she had no leave to enter. In 2002 she applied for leave to remain on the basis of long residence but before that application was determined she acquired convictions on two occasions for offences of theft and so, unsurprisingly, the application was refused.

10. Ms B travelled to Jamaica in August 2004 and was detained on return to Heathrow airport on 2 October 2004 because she was travelling on a fraudulently obtained British passport in another name. She was convicted of using a false instrument and entering the United Kingdom without leave and was sentenced to 3 months' imprisonment. It is clear that this was not the only visit made by Ms B to Jamaica. In her sentencing remarks, the judge who presided over the appellants' trial in October 2011 said:

> "… over the last few years it is apparent that she travelled to Jamaica at least twice a year."

and:

> "I note, however, that [Ms B] has, indeed, been to prison before and has on occasion regularly left her children with others, either to go on holiday with her sisters or a friend or for other reasons…"

11. After a renewed application for leave to remain was refused in November 2004, further representations in support of her Article 8 claim were submitted, those being refused in February 2005. However, Ms B's appeal was successful with the result that, in September 2007, she was granted discretionary leave to remain until September 2010.

12. Having acquired further convictions for theft, Ms B went on to commit the offences together with Mr A that led to her being sentenced, on 7 October 2011, to 8 years' imprisonment and to her being made subject to the deportation order she now seeks to challenge.

Family and Private life

13. As we have observed, the family arrangements of these two appellants are not straightforward and we must discuss those relationships in some detail because they are at the heart of the issues before us in this appeal. The need to preserve the children's anonymity makes that task no easier.

14. Mr A and Ms B have been in a relationship together at the same time as each formed relationships with others. The sentencing judge spoke of Mr A and Mr B living together when it suited them. That relationship between Mr A and Ms B has produced two children, C1 and C2 born in 1998 and 2003 respectively. Sadly, a third child was stillborn. Those two children were living with Ms B at the time of her arrest but since then have been living with their grandmother, Ms B's mother.

15. Although Mr A has no children from his marriage to Ms AB, he does have a child, C3 by another partner, Ms AC, born in 1996. Both the child and her mother are Jamaican nationals in receipt, presently, of discretionary leave to remain. C3 has recently given birth to her own child, who is therefore Mr A's grandson. C3 continues to live, as she always has, with her mother, Ms AC.

16. In October 2005, the second appellant, Ms B, was married to Mr PM, a British citizen. They have a child, C4, born in January 2006. Since the arrest and imprisonment of her mother, C4 has also been living with her grandmother, together with her half-siblings C1 and C2.

17. At the date of the hearing before the First-tier Tribunal C1 was 16 years old; C2 11 years old; C3 17 years and 9 months old and C4 8 years old.

The offences giving rise to the deportation order

18. The offences were described by the Judge Eldridge as follows:

> "The offences involved 376 grams of crack cocaine. Cash seized was £40,500 on the occasion when the drugs were found. In an earlier search less than a fortnight before £25,500 in cash was seized but no drugs then found (a dog was used on the second occasion). Investigation of bank accounts showed over £39,000 that [Ms B] could not account for and a further £27,000 in respect of [Mr A]. A Rolex watch was found concealed with the drugs in the "cavities" of a washing machine – its value was £18,000 in 2002 when last valued. The total sums involved were, therefore, £150,000. This does not take account of the value of the cocaine, which we consider would certainly have been in excess of £10,000 (and probably much more) at street value when cut and distributed. We understand why Judge Kamill (the sentencing judge) placed them "just below" the leaders in a drugs distribution concern."

The judge made clear what was the assessment of the seriousness of the offences"

> "In our view these are most serious offences. The sums of money and quantity show this to be so. The misery and damage their sustained drug dealing would have caused is difficult to over-estimate not just to the users themselves but to other victims of crimes perpetrated to feed the habits of those users. In our view, the seriousness of the offences was compounded by the fact that the goods concerned and cash obtained were concealed in a house where three of the children lived and, indeed, some of the cash was found in their bedroom. The public interest in deportation is all the higher for this reason – s 117C(2) applies in respect of both appellants."

19. Judge Eldridge went on to examine the legal framework applicable to the assessment to be carried out and to make clear the approach taken by the panel in doing so. In short, as these two appellants had each been sentenced to more than 4 years' imprisonment, they could not succeed under the family and private life provisions of the rules unless they established that there were very compelling circumstances over and above what was required to bring themselves within the statutory exceptions of s 117C (4) and (5) of the Nationality, Immigration and Asylum Act 2002 (as amended). He set out in his determination the reasons why, in respect of each of the appellants, the panel had not found that to have been established.

The grant of permission to appeal

20. It is, perhaps, unfortunate that although these appeals were heard and determined together, applications for permission to appeal were considered separately, by different judges of the First-tier Tribunal.

21. In granting Ms B permission to appeal, First-tier Tribunal Judge Cheales identified two concerns. First, at paragraph 23 of the determination Judge Eldridge said, in respect of both appellants:

> "… We were disinclined to give credit to any account from them that was not supported by cogent, credible evidence from other sources"

which Judge Cheales thought might arguably amount to a misdirection in law. Secondly, Judge Cheales thought that an error of law was arguably disclosed by a failure to consider the circumstances of the two appellants separately when assessing credibility. Having said that, Judge Cheales said that all grounds were arguable without expressing any view at all why that was so.

22. Mr A's application for permission to appeal was refused by the First-tier Tribunal but granted by a judge of the Upper Tribunal who said this:

> "While I have considerable reservations about the underlying merits of this appeal, given the very long sentence passed on the applicant in connection with dealing in drugs, his appeal was heard with that of [Ms B]. Permission to appeal to the Upper Tribunal has been granted in that matter. In the circumstances, I consider that it would be in the interests of justice to grant permission on all grounds."

23. The grounds of the two appellants are, as we shall see, wide ranging. Thus we find ourselves in the remarkable position that the appellants have been granted permission to appeal without either judge having actually engaged with much of the basis upon which permission was sought and, other than what we have said above about Judge Cheales' view of a small part of the grounds, without having expressed any view at all as to whether the grounds are arguable. Indeed, the only judicial view expressed about the arguability of Mr A's grounds is that they are not arguable at all.

24. As the appellants are separately represented we shall summarised the grounds relied upon by each in turn.

Grounds advanced by Mr A

25. The grounds upon which Mr A challenges the determination of his appeal by the First-tier Tribunal may be summarised as follows:

    a. The panel was wrong to infer from the fact that Mr A's wife, Ms AB, had not attended to give oral evidence that therefore their relationship was "precarious at best";

    b. The panel erred in law in placing little weight upon Mr A's "rehabilitative work in prison";

    c. It was an error of law to consider the separation between Mr A and his British citizen wife that arose because of imprisonment as a complete answer to whether separation arising from deportation would give rise to the very compelling circumstances demanded by s 117C(6) of the 2002 Act;

    d. It was also an error of law for the panel to conclude that being in the company of convicted drug dealers was "not an environment that benefits children", because past offending does not signal future offending and the panel failed adequately to have regard to the rehabilitative work completed by Mr A in prison;

e. The fifth ground, which to an extent covers the same ground, complains that the panel has not adequately explained what were the "significant factors" that led them to conclude that the best interests of the children did not require that their parents were not deported.

f. Finally, in developing his grounds in oral submissions, although Mr Hawkin confirmed that the above summary was an accurate distillation of his written grounds of appeal, he identified a sixth line of challenge he wished to pursue. His submission was to the effect that in deciding to take as a starting point a complete rejection of the appellants' credibility, so that the panel would not accept to be true anything asserted unless it were supported by corroborative evidence, the panel fettered their assessment of the claim before them and therefore failed to consider the circumstances as a whole, as they should have done.

Grounds advanced by Ms B

26. Eight threads of challenge can be drawn from the grounds:

a. The determination "is fundamentally flawed, in that they should have produced and considered each appellant's case in isolation of the other" so that the panel erred in not properly addressing matters "unique" to Ms B's case;

b. It was an error of law for the panel to require corroboration before accepting the truth of anything said by the appellants. This being the same issue raised in the sixth ground we identified having been raised by Mr Hawkin;

c. The panel was wrong to "discount" the weight of testimonials and certificates obtained in prison on the basis that they arose while the appellant was "in a secure environment with few outside temptations";

d. An error of law is disclosed also in the failure to have regard for Ms B's lack of knowledge of the drugs and money "stashed in the washing machine", something for which Mr A had accepted responsibility;

e. In finding that the best interest of the children was not to be with their parents, the panel erred in not factoring in what Ms B had done in prison to address her offending behaviour. In this regard, the panel should have considered the position of the parents separately and not together;

f. The panel erred in setting the bar too high. The requirement of very compelling circumstances is accepted to be a high one but the panel erred in seeing it to be an unrealistically high one which makes it impossible for any appellant to succeed.

g. It was also an error of law for the panel to leave out of account that Ms B's mother, the grandmother of C1, C2 and C4, who is now caring for those children has only precarious leave to remain that needs to be renewed every 6 months.

h. Finally, the grounds complain that the panel erred in not having regard to the medical evidence produced concerning Ms B's "long standing medical condition".

27. We shall address each of those grounds in turn.

Challenges to the determination pursued on behalf of Mr A.

28. The first challenge raised on behalf of Mr A is that the judge erred in drawing from the absence of Mr A's wife that their relationship was "precarious at best". That was because Ms AB had offered in a witness statement an explanation, that being work commitments:

> "I am unfortunately unable to attend the hearing set for the 30/09/14 due to work commitments. However I am available by telephone between the hours of 12.00-13.00 and 16:00 onwards.
>
> I would like to maintain that I do strenuously support my husband, and although I can not be present I would like the court to take into consideration my statement."

The judge made clear what the panel made of this at paragraph 25 of his determination:

> "We should make findings about both Appellants in respect of partners. They are not each other's partner. Each of them is married to someone else. Judge Kamill (the sentencing judge) noted however that the Appellants lived together "when it suited them". Although their spouses have provided statements in one format or another, neither attended the hearing to give evidence. We took this to be a practical demonstration of the state of the relationships – that is they were precarious at best.
>
> The Appellants, through their actions, have caused the separation from their spouses for four and five years. We saw nothing in the partner relationships that led us to conclude deportation would provide undue hardship let alone anything beyond that."

29. In our judgement those findings were plainly and unquestionably open to the panel. The witness statement of Ms AB was dated 29 August 2014, which was about a month before the hearing she said she was unable to attend because of work commitments. No attempt was made to explain what was the nature of the work commitments that prevented her from attending to take up the one opportunity available to give oral evidence in support of her husband's attempt to resist what might prove to be permanent removal from the United Kingdom. Her absence from the hearing was particularly notable because the Tribunal heard oral evidence from no fewer than nine witnesses, including the appellants themselves. It is clear that the panel had regard to everything set out in Ms AB's witness statement because they said they had done just that. It was for the panel to weigh this part of the evidence in the context of the evidence as a whole and to make of it what they did.

30. Those findings are a complete answer to the third ground identified above, that being the complaint that it was an error of law for the panel to consider that because the appellants had themselves brought about the separation from their spouses arising from their imprisonment, therefore there would not be very compelling circumstances over and above what was required to meet the requirements of Exception 2 of s117C(5). Plainly, once it is accepted, as it must be, that the finding

of fact in respect of the precarious state of the relationship between Mr A and his spouse is unassailable, this ground is entirely without merit also.

31. The second ground identified above is that the panel erred in law in failing to attach appropriate weight to the "rehabilitative work" carried out in prison by Mr A. At paragraph 24 of the determination the judge observed of courses undertaken in prison by both appellants and what they said in evidence they had learned from them:

> "… inevitably these achievements have been made in a secure environment and with few outside temptations. We also note the OASys assessments provided and the conclusions of low risk. We do not consider these factors add much to what we have to find- very compelling circumstances. They are at best some relatively slight factors in the Appellant's favour compared with the serious offending over time in the past.

Mr Hawkin submitted that the judge was wrong to "discount" these factors. We do not accept that submission. The judge was setting out clearly what the panel had made of this evidence and the weight to be attached to it was a matter for the panel who having heard oral evidence from both appellants, were best placed to do so. The panel had taken account of the fact that these appellants were repeat offenders, both of whom had served previous prison sentences. At paragraph 37 of the determination the judge noted:

> "Additionally, [Mr A] has served a term of 18 months previously for drug dealing and was not deterred by it. [Ms B] has a history of dishonesty and as Judge Kamill has made clear she has also served imprisonment before…"

32. Given the circumstances considered as a whole, it was plainly and unambiguously open to the panel to conclude that little weight could be given to these matters and they made no error of law in so doing. It cannot be said that was an assessment that disclosed any irrationality or other unlawfulness.

33. The fourth ground pursued by Mr Hawkin on behalf of Mr A raises a challenge to the reasoning set out at paragraphs 36-37 and 40 of the determination concerning the best interests of the children. In short, it is submitted that the findings of the panel in this regard were wrongly predicated upon an impermissible prediction that the appellants would continue to deal in Class A drugs upon release from prison, despite the rehabilitative work completed in prison and the OASys assessment of a low risk of reoffending. The judge made the following observations:

> "… we cannot agree that it is wholly in the interests of the children to be with their parents." (para 35)
>
> "Their parents were drug dealers with drugs and large sums of money in their home. The conduct which led to their convictions could not be seen to be spontaneous or opportunistic. As set out by Judge Kamill, they were an integral part of an organisation and just below the leaders. £150,000 must have been acquired over a considerable period. Such is not an environment that benefits children – either their safety or their welfare." (para 36)
>
> "… whilst there are the obvious potential benefits of hands on day to day care, we also see significant factors that suggest it is not in the best interests of the children that their parents should remain in this country once they are released from prison." (para 40)

34. We do not accept the submission that here the judge is carrying out an assessment of what is in the best interests of the children on the basis and in the expectation that their parents would continue to deal in drugs after their release from imprisonment. At paragraph 36, the description of the parents as drug dealers is expressed in the past tense. The judge was doing no more than recording what is an historic and indisputable fact. It is not in dispute that the appellants dealt in Class A drugs from the home where those young children were living, keeping drugs and large sums of cash in the family home. Sums of cash were concealed in the bedroom used by the children. The finding of fact that such was not an environment that benefits children is unassailable.

35. At paragraph 40 the panel seeks to draw together the evidence and to strike a balance between competing factors in play. On the one hand, the panel has examined the evidence that speaks in the appellants' favour, as has already been discussed in the determination. This included the rehabilitative work carried out in prison; the low risk of reoffending predicted by the OASys report; the professional assessment of difficulties being encountered by the children's' grandmother as she struggled to deal with the challenge of caring for them while their parents were in prison and the close relationships described between the appellants and the children and the effect upon the children of separation from their parents. On the other hand, the panel had regard to the fact that these were parents who were not simply involved in a significant drugs supply operation conducted from the family home, but that the father was someone who had a previous conviction for dealing in Class A drugs and had served an earlier term of imprisonment, suggesting strongly that the rehabilitative effect of that was limited. The children's mother had also served a previous sentence of imprisonment and so this subsequent conviction provided support for concerns that the rehabilitative effect of that had also been limited.

36. For these reasons we are entirely satisfied that this ground is not made out. As was observed by Mr Walker in making submissions on behalf of the respondent, the determination must be read as a whole and not sliced up into separate pieces for the purpose of examining individual findings of fact and the challenges being made to them. We agree.

37. In any event, even if, which we do not accept to be the case, the panel erred in allowing the assessment of the best interests of the children to be informed by an impermissible assumption as to future unlawful conduct, we have no doubt at all, given the other findings set out in the determination, that the outcome would have been the same, even if the panel accepted that it would have been in the best interest of the children to maintain relationships with their parents in the United Kingdom after they are released from prison.

38. Put another way, it is unambiguously clear from the determination, read as a whole, that the panel took the view that this was a case where the seriousness of the offences and the need to deter others present in the United Kingdom but subject to immigration control from committing similar offences was such that those public interest considerations must prevail. This was a case where the case for deportation was simply overwhelming and the panel was plainly entitled to take the view, expressed at paragraph 45, that the need for deterrence was "central" to their decision:

> "[Mr A's] offending is most serious. He may have made progress in prison and be assessed as being of low risk but at no stage were we addressed on the important factor of the deterrence of others. It is central, in our view, to the question of deportation that not only is the offender unable to commit more offences but that the message is given to other foreign nationals tempted to commit serious offences that the normal consequences will be that they will face deportation."

39. The fifth ground of challenge pursued by Mr Hawkin on behalf of Mr A can be seen to tread the same ground we have just examined. He submits that the panel failed to explain just what were "the significant factors" that led them to conclude that the best interest of the children did not require that their patents were not deported. The comments we have made above apply equally in respect of that submission.

40. In his oral submissions, Mr Hawkin submitted that the evidence before the First-tier Tribunal provided strong support for concluding that there were present the very compelling circumstances over and above what was required to meet the requirements of Exception 2 of s.117C(5) so that the appellant should have succeeded under that provision so that the public interest did not require deportation. Implicit in his submission was that the panel either failed to have regard to these matters or failed to afford them adequate weight. Those matters he summarised as follows, arguing that they demonstrated the detriment to the children that had arisen because of the absence from their lives of both parents, such detriment needing to be addressed by reuniting them when their parents were released from prison:

    a. The children's grandmother had explained in her witness statement something of the problems she was experiencing in managing the behaviour of the children;

    b. Before the panel was a letter from the school attended by C4 dated 4 July 2014 expressing concern that the children

        > "…are finding the current circumstances related to their parents' incarceration difficult to manage. This is becoming apparent particularly with [C4's] behaviour both at home and at school…"

    c. There was also a letter from Young Hackney, an organisation providing support to young people, dated 1 July 2014 that spoke of the children's "anxiety centred on parents serving a custodial sentence and possible deportation", speaking of the consequences of that anxiety and counselling and support to be provided;

    d. A letter from Homerton University Hospital dated 17 September 2014 provided details of health issues for which the children's grandmother was being treated for in the light of which she said she "felt overwhelmed with duties and responsibilities that due to her age and her health she cannot cope with, on a permanent basis." Further, there was insecurity arisng from her precarious immigration status, as she had to reapply for leave to remain every six months.

41. None of that takes the appellants any further at all. All of this evidence was considered by the panel and they took account of it in reaching their assessment. At paragraph 31 of the determination the judge noted that, in a CAMHS assessment "dated as recently as 26 September 2014" the children's grandmother was considered to be doing "an excellent job of supporting the children". Social Services are fully sighted upon the arrangements for the care of the children now in place and so alert to any difficulty that falls to be managed. The panel heard oral evidence from C4 and the judge said, at paragraph 29 of the determination, that the documented assertions of confidence issues did not accord with his oral evidence and how it was delivered, the judge observing that:

> "… He was confident and very articulate. He impressed us with his maturity…"

42. In sum, the panel has carried out a careful assessment of the evidence before them relating to each of the children and have given clear and legally sufficient reasons for reaching conclusions that were open to them on the evidence.

43. The final matter raised by Mr Hawkin related to what was said by the panel at paragraph 23 of the determination about the appellants' lack of credibility. As this precise challenge was pursued also by Mr Rene on behalf of Ms B we shall consider what is said on behalf of both appellant's in respect of this issue below, when we address Mr Rene's arguments.

Challenges to the determination pursued on behalf of Ms B

44. We have set out above a summary of the grounds upon which Mr Rene pursued his challenge to the determination on behalf of Ms B and he confirmed that each was maintained.

45. The first ground can be dealt with shortly. It is said that the determination is "fundamentally flawed" because the panel failed to consider each appellant's case "in isolation from the other" so that the panel failed to address issues unique to Ms B.

46. That, with respect, is a hopeless challenge for several reasons. First, there was no objection advanced to the proposal that the appeals be determined together pursuant to rule 20 of the AIT (Procedure) Rules 2005 and the judge made clear, at paragraph 8 of the determination, that despite that he was at pains:

> "… to make it plain, as should be seen, that we have given individual consideration to each appeal and Appellant."

That this is precisely what was done is demonstrated by references throughout the determination to one appellant or the other or to them both. At paragraph 47 the judge recorded that:

> "[Ms B] presents additional factors…"

And went on to consider them.

47. Mr Rene complained next that the panel had decided to treat the appellants as completely incredible and so to require corroboration before accepting the truth of

anything they said. This challenge was pursued also by Mr Hawkin in his submissions. This is what the judge wrote at paragraph 23:

> "The sentencing remarks of the judge also inform our view of the general credibility of each Appellant. We take seriously her conclusion that both are accomplished liars and that [Mr A] sought to distance himself from responsibility. Additionally, we note that [Ms B] has a history of dishonesty. Both were plainly disbelieved by the jury. We were disinclined to give credit to any account from them that was not supported by cogent, credible evidence from other sources."

We can identify no legal error in those remarks. The panel were plainly entitled to draw upon the sentencing remarks of the judge who had presided over two trials (the first failing to deliver a verdict). In any event, this was not a case that turned upon credibility findings. Mr Hawkin and Mr Rene were invited to point to any finding by the panel whereby that had rejected an assertion of fact made by either appellant but they were unable to do so.

48. The third ground, complaining that the panel was wrong to "discount" the weight to be given to testimonials and certificates obtained in prison, is the same as we have considered above when considering the grounds pursued by Mr A and we need say nothing more about that.

49. The next ground is founded on a submission from Mr Rene that can be described only as bold and remarkable. He argues that the panel erred in failing to reach their own finding of fact as to whether Ms B had any knowledge that drugs and cash had been hidden in the flat by Mr A. This is because, during oral evidence before the Tribunal, Ms B had said she was unaware of this and Mr A had accepted full responsibility.

50. Not only did the panel make no error in adopting the position as identified in the judge's sentencing remarks, it would have been a clear and obvious error of law had the panel sought to go behind the finding of the jury that both appellants were fully complicit in the offence and the sentencing remarks of the judge who made unambiguously clear that she sentenced on the basis of joint responsibility, the disparity in sentence being attributable only to the fact that Mr A had previously been convicted of a similar offence.

51. It might be observed, also, that the judge made clear in her sentencing remarks that she treated the appellants as being equally culpable:

> "I take the view that [Mr A] is a calculating man open to the best chance, but [Ms B] is his equal. It was suggested to the jury that she is a vulnerable woman and that [Mr A] took advantage of her. That was not my impression and, indeed, it is possible that the reverse is correct but I make, again, no judgment there."

52. The fifth ground is that the panel gave inadequate weight to what Ms B had done in prison to address her offending behaviour. Once again, this is the same challenge as raised on behalf of Mr A and, for the same reasons we have given above, it is simply not arguable.

53. The next ground is best reproduced as it is written before we address it:

> "The panel throughout the determination make reference to the test of "very compelling circumstances". It is accepted that it is a high one, but at the same time it should not be interpreted in an unrealistically high way, which would then make it impossible for an appellant to ever succeed. It is submitted that this is what done by the panel when it comes to [Ms B]. There is also a failure by the panel to look at factors cumulatively as "circumstances"."

54. Before addressing this ground it is helpful to set out s117C of the 2002 Act:

> 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.

It can be seen from this that the approach taken by the panel cannot be faulted. It was a requirement of primary legislation, as a consequence of the imposition of a (substantially) longer period of imprisonment than 4 years, that it was not sufficient for the appellant to establish that she had a genuine and subsisting relationship with her children in respect of whom the effect of her deportation, in this case taken together with the deportation of their father or step father also, would be unduly harsh. It was necessary, in addition to that, for the appellant to point to very compelling circumstances, over and above that, and it was unquestionably open to the panel to conclude that she had failed to do so.

55. When examined, this ground appears to be more of a challenge to that primary legislation rather than the application of it to the facts of this case by the panel that determined the appeal and as such has no prospect whatever of succeeding. In any

event, this ground is wholly unarguable as the conclusion of the panel that, in this case, neither appellant had identified such very compelling circumstances over and above those described in Exceptions 1 and 2 of s117C was one that was unarguably open to them. Put another way, the appellants failed to meet the requirements of s117C not because the panel applied an unrealistically high test but because the evidence to establish the very compelling circumstances required over and above Exceptions 1 and 2 was simply absent.

56. The seventh ground complains that no regard, or no sufficient regard, was had by the panel to the precarious nature of the grandmother's leave to remain and the need to renew it every six months. As we have explained, that is simply not sustainable because the panel addressed that issue specifically at paragraph 28 of the determination and so, plainly, it has been factored into the assessment carried out, there being no reason at all to suppose, having taken the trouble to record that information in the determination, the panel then left it out of account. Further, as we have observed, there is social services involvement with the care of the children and there is no suggestion from that source that the need for the children's grandmother to renew regularly her leave to remain so that there is continuity of the care arrangements in place is something that has impacted adversely upon the children.

57. The last point taken by Mr Rene concerned the alleged failure of the panel to have regard to Ms B's "long standing medical condition." In this regard, he referred us specifically to two doctors' letters upon which reliance is placed upon. The first is from Dr Waters of City and Hackney NHS Trust dated 24 June 2005. This is a referral to a Consultant Psychiatrist at Homerton Hospital. But that letter was 10 years old at the date of the hearing before the First-tier Tribunal and so a decade old diagnosis of depression was not a cogent or compelling basis upon which to inform findings made by the panel. The second letter is a little more recent being a letter from a Consultant Psychiatrist to Ms B's G.P. dated June 2010, which is more than four years before the hearing. In any event, that letter confirms that:

> "[Ms B's] mental state has significantly improved and she is recovering from her latest bout of depression."

58. It is impossible to see how the panel can properly be criticised for not dealing specifically with this evidence in the determination. We have looked carefully to see what other material was available to the judge. Although there are some quite lengthy records of the medical care provided to Ms B while serving her prison sentence, Mr Rene did not refer to this evidence and there is nothing to suggest that it was relied upon before the First-tier Tribunal. Having examined that evidence ourselves, it is not difficult to see why no reliance was placed upon it as it does not support a submission founded upon Ms B's ill-heath.

59. For all of these reasons we are entirely satisfied that the panel made no errors of law and there is no basis at all upon which to interfere with the determination. We make also the following observation. As a result of having committed serious offences resulting in lengthy sentences of imprisonment the appellants fell to be treated as foreign criminals whose deportation is in the public interest. That public interest in their deportation was reinforced by a number of factors, each identified by the judge in his carefully written determination. Given the applicable statutory

framework and the facts as they were found to be, the panel was plainly correct to assess the public interest in deportation in this case to be very significant indeed. Even if it had been the case that the best interests of the children were in maintaining relationships with their parents in the United Kingdom it is very hard to see how, on the facts of this case those interest would not have to yield to the public interest in deporting the appellants. Indeed, it may not be overstating the position to observe that it is difficult to see how any other outcome was rationally open.

Summary of decision:

60. The First-tier Tribunal made no error of law and the determination shall stand.

61. The appeal to the Upper Tribunal is dismissed.

Signed

Upper Tribunal Judge Southern

Date: 30 June 2015