



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: PA/07960/2017

THE IMMIGRATION ACTS

Heard at Birmingham Employment Tribunal
on 26 June 2018

Decision promulgated
On 28 June 2018

Before

UPPER TRIBUNAL JUDGE HANSON

Between

MR DEVINE ATALAKO ABANDA
(anonymity direction not made)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr Dixon instructed on a Direct Access (advocacy only) basis.

For the Respondent: Mr Howells Senior Home Office Presenting Officer.

ERROR OF LAW FINDING AND REASONS

1. The appellant appeals with permission a decision of First-tier Tribunal Judge Phull, promulgated on 2 February 2018, in which the Judge found the appellant liable to deportation, dismissed the appellant's protection appeal, dismissed the Humanitarian Protection appeal, and dismissed the appeal on human rights grounds.

Preliminary issue

2. On the morning of the hearing Mr Dixon handed in written submissions and a document headed 'Amended Grounds of Appeal against a determination of FtT Judge Phull ('the FtT Judge')'.
3. Mr Dixon drafted the original grounds of challenge to the decision of the Judge in which he asserted the Judge had made evidential errors, that the balancing exercise under article 8 had not been properly undertaken, and the Judge had erred in considering the best interests of the child.
4. Permission to appeal was granted by another judge of the First-tier Tribunal on those grounds in the following terms:
 2. The grounds assert that, the Judge erred in her findings as to family support for the Appellant on return to Cameroon, which involved factual errors resulting in material errors; which in turn led to the balancing exercise under Article 8 not properly undertaken. It is further submitted that the Judge did not deal with the issue of the best interests of the child correctly.
 3. The assertions made in the grounds are evident on the face of the decision.
 4. They disclosed an arguable error of law.
 5. An arguable error of law shown.
5. The amended grounds seek to raise further issues asserting the Judge erred by failing to give any or adequate reasons for the finding that the appellant's wife is the child's primary carer and erred in relation to the degree of difficulty faced by the appellant in reintegrating into Cameroon.
6. The appellant has already been granted permission to appeal in relation to the best interests of child so is not arguably necessary to give leave to amend the grounds as this issue can be raised.
7. The alleged error by the Judge in terms of difficulties in reintegrating into Cameroon pleads support from the decision of the Supreme Court in *Kiarie and Byndloss [2017] UKSC 42*, claims the Judge did not make sufficient findings on that this issue, asserts the importance of this error is highlighted by the factual errors in relation to family support available to the appellant, and the position in relation to his mental health. It is asserted at [18] of the application to amend that the Judge appears to have found that the appellant will be at risk of persecution from Boko Haram at [51] with the Judge finding that he would be able to go to certain parts of Cameroon. It is submitted that if the Judge found the appellant would in effect be confined to the South West region it is argued there is a real obstacle to his integration into the country; as a country needs to be seen as a whole and not a divisible entity. The proposed grounds assert the appellant belongs to the Anglophone minority which is to be found in the two small western parts of the state and that these are elements that should have been factored into [73] of the Judges determination. It is asserted the Judge did not adequately address whether there were obstacles to integration into the country as a whole.
8. The Judge does not find there is only one part of the country to which the appellant is able to relocate. The core findings of the Judge, in relation to the three separate elements relied upon by the appellant in his claim to an entitlement to international protection, is that none of those claims are credible. The Judge does

not find that the appellant faces a real risk from Boko Haram indeed the finding at [51] is in the following terms:

51. I therefore find the appellant can relocate to his home area of Bamenda or to Buea where he studied, this is in the South West region of Cameroon, where he would not have a fear of persecution from Boko Haram for these reasons I find the lower standard that his claim of persecution from Boko Haram also fails.
9. The appellant seems to be arguing that the Judge erred by not considering whether there was a viable internal relocation option to any other part of Cameroon but that was not arguably required of the Judge. The question of internal flight only arises if a person is unable to return to their home area. It is then necessary for a decision maker to consider whether internal flight to another region is reasonable in all the circumstances. This is not a case of the Judge finding that it is not reasonable for the appellant to live in other than his home area but a finding he can return to his home area. The term 'relocate' refers to relocation from the UK. The Judge finds the appellant had not discharged the burden upon him to establish he faced any real risk entitling him to a grant of international protection in his home area, making it unnecessary for the Judge to consider any other part of Cameroon as a potential point of relocation. The appellant entered the United Kingdom as a student lawfully in 2010 having lived and grown up in Cameroon.
10. Permission to amend the grounds of appeal was refused. The author of the amended grounds, Mr Dixon, is the author of the original grounds and it is not clear why these issues, if they are of such importance, were not included in the original application for permission to appeal considered by a judge of the First-tier Tribunal. It is also not made out that it is necessary to amend the grounds to include the challenge to the assessment of the best interests of the children as permission has already been given to look at this aspect of the appeal. It is not made out in relation to the integration point that the appellant has any realistic prospects of success on the point as pleaded. It will therefore achieve nothing to enable the grounds to be amended which might have a negative effect of requiring the hearing to be adjourned to enable the Secretary of State's representative to consider this aspect further. Application to amend refused.

Background

11. The appellant is a citizen of Cameroon born on 26 January 1988 who is the subject of an order for his deportation from the United Kingdom pursuant to section 32(5) UK Borders Act 2007. The appellant challenged that decision claiming his deportation will breach the United Kingdom's obligations under the Refugee Convention, or any other protection provisions, and be a breach of his protected human rights.
12. The Judge notes the appellant's immigration history which shows he entered the UK to start a course of study at the University of Luton on 27 September 2010. He was granted further leave to remain as a postgraduate student from 6 March 2012 to 6 March 2014 although between 22 November 2013 and 22 February 2014 the

appellant was convicted of two offences. On 28 February 2014 the appellant was arrested and remanded in custody on charges of conspiracy to facilitate a breach of immigration law and on 27 July 2015 convicted at Winchester Crown Court of seeking to obtain leave by deception for which he was sentenced to 15 months imprisonment.

13. The sentencing remarks of HHJ Cutler, when sentencing the appellant on 27 July 2015, are in the following terms:

... I will come back to your individual situations in a moment. But before I do I will make some general comments about this case. I am satisfied from the evidence that I heard during the trial that at the centre of this conspiracy was you, Armand Pacome Djedje. You knew, that you had Miss Godefroy as someone who you could use to marry to other people wanting to be married. She had the requisite European credentials, and you are not the slightest bit worried that she had already been married before.

You, Mr Abanda, wanted to have those advantages of being married to someone with a European nationality, and so it was arranged that you, because you have come from a more wealthy background in Cameroons, I remember you showing through your counsel pictures of your house where your family lived, to show how well off they were back in your home country, and it was quite clear that you had the money and Mr Djedje had the potential bride.

So it was that you got together and the arrangement was made. It was a rather squalid story that lay behind these offences. Not only an attempt to evade the law, to earn money dishonestly, but to go through with what everyone has been calling a sham marriage. So it is that the offences comprise an attack on the sanctity and status of marriage, as well as being a dishonest attempt to evade lawful controls in immigration. There was no good reason for you to come here to Winchester. My conclusions are that you thought you could deceive this city by pulling the wool over the eyes of those in the Winchester Register Office; and when that failed by trying to pull the wool over the eyes and deceive the Winchester jury. That failed too. They did not accept your stories. It was clear that this was a financial transaction, that you, Mr Abanda, were paying money for a bride and paying that money to Mr Djedje and Mr Attie.

You will be aware that the maximum sentence for this offence is one of two years imprisonment, and that the courts are encouraged to sentenced to immediate terms of imprisonment because of the attack that such offences have upon both marriage and immigration laws. So I come to the conclusion in your cases that these must be the sentences.

For you, Mr Divine Abanda, you do sadly have some previous convictions and as your barrister said you have some experience of the inside of an English prison. Your evidence was clearly a complete pack of lies. You gave stories of true love, that you drew the money for your reception, that the marriage had to take place because Miss Godefroy was pregnant by you, and it was quite clear that the jury accepted Miss Godefroy and her reaction when the story was put to her in her cross examination.

As has been said, you were the man with the money. You were in many ways the client and the purchaser of this conspiracy, but that does not put you in any better position. It means that you are all part of it, and some may say that it would never have occurred had it not been you being willing to provide money for it to happen. I come to the conclusion in your case that the sentence of imprisonment has to be one 15 months.....

14. The Judge noted the appellant had been served with notice of liability to automatic deportation on 27 July 2015 and on 30 July 2015 was served with a notice of decision to make a deportation order with a section 120 notice.

15. The Judge sets out findings of fact from [31] of the decision under challenge. The appellant sought to rely on three separate heads in support of his protection claim. The first being a fear of persecution in Cameroon because he is bisexual. The appellant claimed his wife was aware of his sexuality. The Judge notes, however, a number of concerns about the evidence in relation to this claim leading to a finding at [39]: *“However, I find when considering all the evidence as a whole together with the photographs submitted that the appellant has fabricated his claim of a fear of persecution on the grounds of his sexuality because he fails to provide cogent evidence to support an otherwise weak asylum claim on this issue”*.
16. The Judge also found the appellant’s claim, that although his wife went to Cameroon in April 2015 to enable them to be married there together she stayed in Buea and members of his family in Cameroon did not know of the wedding, implausible. The Judge notes on the evidence that the appellant’s wife was in the country for eight days and spent time with the appellant’s brother who stood in as his proxy. The Judge finds at [41] *“I find it implausible that other members of his family did not know about the wedding because his brother would have had to organise the event and would have required support. The appellant’s wife did not come to any harm from his parents or relatives. On the contrary her oral evidence was that she looked to the appellant’s brother as her own and has spoken to him before she travelled”*.
17. Having rejected the first aspect of the claim for international protection, as lacking credibility, the Judge then considers the second element relating to the appellants sur plas activities at [43] of the decision under challenge. The appellant claimed to be a member of SCACUF in the UK. Having reviewed the evidence the Judge noted the appellant had not claimed that he suffered persecution in the past because of his support of this group and found at [47] that the appellant had not supported his claim with any cogent evidence that the Cameroonian authorities have been informed that he has attended two marches for SCACUF in the UK because he has not referenced his claim with any objective evidence the authorities monitor activities abroad. The Judge finds the appellant’s claim to face a real risk is speculative. The Judge finds *“that other than making this assertion and filing two photographs holding a poster, the appellant has not submitted any additional evidence of his involvement with SCACUF that would put him at risk on return for his Sur Place activities”*. The Judge finds the appellant did not meet the required standard to show he will be at risk in Cameroon for his imputed/political opinions [48].
18. Thereafter the Judge considers the third head of the appellants claim, based upon an alleged fear of Boko Haram. The Judge notes this group has publicly threatened Cameroon with attacks and further kidnappings due to the country’s involvement in the regional fight to counter Boko Haram and that there was a heightened threat of kidnap to Western nationals in the north of Cameroon including the major cities along the border between the Far North region and Nigeria, but did not find, as noted above, at [51] the appellant faced a real risk in his home area to where he could return.
19. At [53] the Judge finds *“Having carefully considered the evidence, I have concluded that no reliance can be placed on the appellant’s claim that he has a well-founded fear of persecution either for reasons of his sexuality, the authorities in Cameroon, for his Sur Place activities, from non-state agents or Boko Haram for the reasons considered above”*.

20. Having found the appellant's claim lacked credibility the Judge went on to consider medical aspects between a [54 -60] of the decision under challenge, finding at [60]:
60. I find that medical evidence in the respondent's bundle certainly confirms the appellant has had several assessments and has reported a history of depression and mental health treatment. He has also reported sleeplessness. However, his treatment is relatively conservative and consists simply of the prescription of antidepressants. This is supported by social worker in her report, 'Mr Abanda's mental health is currently being managed with prescribed medication...' (Page 62, AB). She refers to the Home Office country of origin report on mental health services in Cameroon states that, "... Mental health treatment can be treated in Cameroon... Branded drugs are available, but are very expensive..." (Page 61, AB). I find having considered the evidence does not reach the high threshold is required in the case of 'N'. The appellant can access medication in Cameroon for his mental health. He says he has no family support in Cameroon; however, he has failed to submit any evidence that his mother has moved to the USA or that his father has died. Notwithstanding this, his evidence is that he has other relatives in Cameroon and can look to them for support. I find his wife can remit funds for him to purchase the medication that he needs.
21. Thereafter the Judge turned to consider article 8. It is this section of the decision that the appellant takes issue with and to which the grant of permission to appeal refers. No arguable legal error material to the decision is made out in relation to the rejection of the protection claim or findings relating to the appellants medical presentation.
22. The Judge notes it is accepted the appellant is married to a British citizen and has a child and that his relationship with his wife is genuine and subsisting and that the couple live together. The evidence given was that the appellant's wife has to encourage him to look after the baby, which he does. It was found there is a subsisting parental relationship with his son. The Judge considers paragraphs 399(a) and (b) of the Rules and the specific issue of the proper meaning of "unduly harsh" in paragraph 399(a) and section 117C(5), setting out Exception 2 which applies when a proposed deportee has a genuine and subsisting parental relationship with a qualifying child and the effect of his deportation on the child will be "unduly harsh". The child was born on 15 December 2016 and was 12 months old date of the hearing before the First-tier Tribunal. It was not disputed the child is a qualifying child meaning the appellant needed to show it would be unduly harsh for the child to live in Cameroon or it would be unduly harsh for the child to live in United Kingdom without the appellant.
23. The Judge does err in law at [68] where she claims to refer to the 'recent case' of *MAB (para 399; "unduly harsh") USA [2015] UKUT 00435*. The hearing took place on 21 December 2017. On 20 April 2016 the Court of Appeal handed down its judgment in the case of *MM (Uganda) v Secretary of State for the Home Department (Rev 1) [2016] EWCA Civ 617* in which it was found at [26] that *MAB* was wrongly decided by the Upper Tribunal and that the expression "unduly harsh" in section 117C(5) and Rule 399 (a) and (b) requires regard to be had to all the circumstances including the criminal's immigration and criminal history. I do not find that the reference to the wrong case is, however, a material error for a reading of the determination shows that the Judge did undertake an examination of all the

- circumstances in this appeal. The Judge also refers to consideration of two further authorities of the Upper Tribunal in [68].
24. The Judge finds the appellant did not provide any evidence for why it would be unduly harsh for his British child to live in Cameroon. The Judge finds the appellant's son is 12 months old and his mother is the primary carer notwithstanding the appellant being involved in the childcare which allows the mother to work. The appellant's wife had made it clear she does not wish to move to Cameroon. The Judge finds it would be 'inordinately' or excessively harsh and thus unduly harsh for the child to move to Cameroon with the appellant to leave his mother in the UK, pursuant to paragraph 399(a) [69].
 25. The Judge did not find that the child being left in the UK without the appellant means the consequences of deportation would be unduly harsh on the child, for although childcare arrangements will have to be reorganised the child's mother has her family ties and support in the UK and will be able to rely on childcare and or utilise their assistance in taking over childcare [70].
 26. The Judge finds having taken account of the child's best interests that these are to be with his mother as he is only 12 months old. The Judge again finds the mother to be the primary carer and that she will be able to maintain regular contact with the appellant through indirect means of communication; but that she may also be able to visit the appellant in Cameroon, a country she has visited before and that she is in work and has a good income and can utilise holidays to do so. The Judge finds it neither inordinate or excessively harsh for the child to remain in the UK when the appellant leaves and that although the consequences of deportation will be uncomfortable, inconvenient and undesirable for the wife and child, this does not reach the required threshold [71].
 27. The Judge refers to the circumstances in which the appellant and his wife met and finds that the relationship was formed when the appellant did not have lawful leave and his status was precarious and therefore fails to satisfy paragraph 399 (b)(i) [72].
 28. The Judge does not find there will be very significant obstacles to the appellant's integration into Cameroon as he has lived there for the majority of his life and was educated there to university level. The appellant knows the language and culture and has family there that can support him as they have done in the past. The Judge finds the appellant cannot satisfy paragraph 399A [73].
 29. The Judge considers the issue of proportionality on the basis that only "very compelling circumstances over and above those falling within paragraph 399 or paragraph 399 A" can outweigh the public interest. The Judge considers the five-stage test set out in *Razgar [2004] UKHL 27* and the test of "very compelling circumstances" in paragraph 398 of the Immigration Rules together with Part 5A of the Nationality, Immigration and Asylum Act 2002.
 30. The Judge finds that family life exists in the United Kingdom between the appellant's son and his wife. The Judge accepts the appellant has been in the United Kingdom since September 2010 and has built some private life in this country. The Judge notes the appellants evidence he has an uncle and aunt in the United Kingdom but had not submitted any evidence from them regarding their relationship. The Judge finds that whilst the appellant was a student he had

permission to work but his leave was always limited and precarious. The Judge finds the appellant's deportation will interfere with his family and private life sufficient to engage article 8 ECHR [77].

31. The Judge then moves to the fifth of the Razgar questions namely whether an interference is justified in the public interest, the intervening questions being dealt with swiftly at [78].
32. The Judge notes at [79] that the public interest in this case can only be outweighed by "very compelling circumstances" which were found to "require a very strong claim indeed to outweigh the public interest".
33. The Judge considered the best interests of the child as a primary consideration but found that they may be outweighed by sufficiently weighty matters of the public interest [81] before finding at [82] "*I do not find, in relation to the son, that the appellants deportation would have a significant and detrimental effect upon the child if the appellant were deported. His wife will be able to continue to care for the son and at his age it is in his best interests to be with his mother. The mother has a good job and can secure childcare or look to her family for support in the UK who can reasonably be expected to assist in the childcare that the appellant has thus far provided*". At [83] the Judge accepts the deportation will restrict direct contact but not deprive the appellant and his son of contact altogether. The Judge finds that modern Internet communication such as Skype and FaceTime will permit regular and frequent interaction – including face to face communications via the Internet, on a regular and frequent basis.
34. The Judge finds the private life was formed at a time the appellant's status in the United Kingdom was precarious therefore placing little weight upon his private life [84].
35. The Judge examines the public interest [85 – 87] and finds at [88] that the appellant's offending was serious. The Judge also notes section 117C(3) which states that in the case of a foreign criminal such as the appellant the public interest required his deportation unless Exception 1 or Exception 2 applies [89]. Exception 1 was not found to apply [90] and nor can Exception 2 as it was found the relationship between the appellant and his wife was formed when he had no lawful leave and the effect of deportation would not be "unduly harsh" on his son in that it would not be unduly harsh for the son to remain in the United Kingdom with his mother following the appellants deportation [91]. The Judge considers the section 117B factors but concludes at [93 – 96] the following:

93. The circumstances relied upon by the appellant in this appeal to demonstrate "very compelling circumstances" to do not rise "over and above" those described in para-399 (a), namely that it would be unduly harsh upon his son and his wife for him to be deported or para-399A namely that there would be "very significant obstacles to his integration" into Cameroon.

94. Given the seriousness of the appellant's offending, taking into account all the circumstances I have set out above, I am not satisfied that there are "very compelling circumstances over and above" those in para-399 (a) and para-399A such as to outweigh the significant and considerable weight which must be given to the public interest in this appeal.

95. Thus, I am satisfied that any interference with the appellants private and family life is proportionate on the basis that it is not established that there are “very compelling circumstances” to outweigh the public interest.
96. The appellant has failed to establish a breach of Art 8 of the ECHR and I dismiss the appeal on article 8 grounds.

Error of law

36. In his skeleton argument Mr Dixon refers to the reference by the Judge to the decision of *SS(Nigeria) [2013] EWCA Civ 550* claiming the factual matrix in that case was very different from the present case, in particular the fact that the appellant in that case received a three-year sentence and the fact the child in that case did not appear to have prevented that appellant from offending. It was submitted the decision in *SS(Nigeria)* contained an important reminder that careful examination had to be undertaken which of necessity required that an accurate assessment is made of all the factors and is based on a correct understanding of the evidence.
37. It is not made out the Judge did not understand the factors advanced in the appellant’s case to support his claim to be entitled to an exception to the provisions requiring his deportation from the United Kingdom. In *SS(Nigeria)* the Court of Appeal took the opportunity to provide guidance to decision-makers in relation to the weight to be given to the public interest in deportation appeals. There had been a number of cases prior to this decision where it appeared the existence of a child within a family became the determinative matter with appeals being allowed without proper weight being given to the public interest. It is also the case that there have been a number of amendments to the Immigration Rules and the introduction of section 117 of the 2002 Act since the decision in *SS(Nigeria)* was handed down, meaning the guidance referred to by the Court in that case now forms part of the general approach to be adopted by all decision-makers. In this appeal the Judge only refers to the guidance provided by the Court of Appeal and does not attempt to make any other reference to that case.
38. The fact in this appeal the appellant’s child has been born after the commission of the offence is noted but it is that offence that engages the statutory mandatory requirement that the appellant is deported unless he can establish an exception. The best interests of the child were considered by the Judge and issues such as time that is passed since the commission of the offence is a fact but not determinative.
39. The Judge does make a finding, as noted above, that the child’s mother is his primary carer. This is a finding made by the Judge having considered the evidence, both written and oral. The Judge accepts that the appellant has some role in the child’s life but does not find this makes him the primary carer. This is a conclusion reached by the Judge having had the opportunity to assess the evidence and it has not been shown to be outside the range of findings reasonably open to the Judge on that evidence. It was accepted at the hearing, in any event, that the appellant could not establish a claim that he was the primary carer of the child meaning at its highest the only finding that could be made was that care

was shared. This has not been shown to make an arguable material difference for if the appellant was removed the child's mother will be the primary carer and the Judge carefully considered the consequences for the child if the appellant was deported. The evidence did not show the impact on the child will be such as to adversely affect the child's best interests sufficient to make the decision to deport not proportionate. No arguable material error is made out.

40. Mr Dixon also referred to the fact the Judge finds indirect contact is possible but claims the Judge failed to take into account the age of the child, who was only 12 months old. Mr Dixon accepted, in response to a question from the Bench, that he was not claiming the Secretary of State could not deport a person whose child was 12 months of age but that he was questioning whether the Judge had factored into the equation the fact that contact with a child this age by indirect means may be of little value.
41. It is accepted that an older child, of perhaps five or six years of age, may be able to engage in conversation with a parent who is absent which may be more difficult for a younger child and that any bonds formed with a child within its first year of life may eventually fade if an individual has no contact with them at all. The child in this case, however, knows the appellant's voice and no doubt his physical appearance and if contact by means such as Skype or FaceTime is available the appellant will be able to both appear before and be heard by his son. Mr Dixon in his submissions refers to decisions of the Upper Tribunal where findings of indirect contact as a means of maintaining a relationship were criticised on the basis that families normally live together, but there is no binding authority from any court in the United Kingdom that the fact an individual has to rely on indirect contact is sufficient to make a decision disproportionate. Orders for indirect contact occur in domestic case law, such as proceedings under the Childrens Act, if the facts of an individual case warrant this being the only means of communication between a parent and child. The contact that can take place between the appellant and his son will be that appropriate to his son's age. It does not stop the appellant talking to his son, reading his son a story, singing to his son, or interacting as best he can. As his son grows, providing such contact continues, the boy can become more involved with such interaction. It was not made out in the circumstances of this case the change in the form of contact from direct to indirect is the determinative factor.
42. Documentary evidence concerning internet connection and use of skype, relied upon by Mr Dixon was not before the Judge and therefore arguably not material in assessing whether the Judge has erred in law. It is accepted that the technology of the Internet is complex and there may be occasional outages and other occasions where Skype or Face Time may not be available, but the Judge only identifies this is one possible means of indirect contact which can be in addition to photographs, letters, or cards, which the child's mother could read to him or telephone calls. No arguable material error is made out on this point.
43. Mr Dixon also referred to an alleged failure of the Judge to set out in the decision under challenge a self-direction that the child should not be punished for the sins of the parent. This is an accepted principle and it is not an error for the Judge not to set it out "chapter and verse" in the decision under challenge. The Judge in the

determination made no such finding either in express terms or which can be implied that she held the activities of the appellant against his son. The finding of the Judge is that the son will remain in the United Kingdom with his mother. The reason the appellant faces an order for his deportation from the United Kingdom is because he is a foreign criminal. Although the appellant seeks to use the position of his son to support his claim that he should not be removed from the United Kingdom, the Judge does not, arguably, make findings supportive of a material misdirection on this point.

44. Mr Dixon also argued factual error in that the Judge finds the appellants parents are in Cameroon whereas the evidence shows that the appellants father died and that his mother was in the USA. The Judge refers in the decision to there being no evidence to support this fact but, even if such evidence existed, it has not been shown that any alleged error is material. The Judge finds the appellant can reintegrate and is capable of surviving within Cameroon based upon his own presentation and abilities. The Judge finds there is family who can support him as they have in the past. It is not a finding that the only support that will be available is from his father and mother as there are clearly other family members within his home area. The Judge refers to the appellant's wife travelling to Cameroon in April 2015 for the purposes of their marriage where she stayed with members of his family and regularly conversed with the appellant's brother. It is not made out there are no family members in Cameroon or that the presence of the same is the only factor which led the Judge to conclude that the appellant could return. It appears that the appellant had not established that other family members would not be able to provide assistance. It is worth noting the comment by the Sentencing Judge that the appellant is from a wealthy family within Cameroon. There was no evidence that any required level of financial support would not be available, before the Judge.
45. Mr Dixon also asserts the Judge erred in law when stating the appellant was an overstayer for, although his leave had expired, he had made and in time application meaning such leave was extended by virtue of section 3C. This was accepted by Mr Howells although submitted not to be a material point for the appellant has only ever had temporary leave to remain in the United Kingdom and his status has always been precarious. A reading of the decision shows that the determinative factor in relation to the weight given to the evidence by the Judge was the precarious nature of the appellant's immigration status. No arguable legal material error is made out.
46. It was not made out the Judge erred in failing to factor into the equation the appellants mental health which is clearly noted, as shown above. It was not made out that any medication or treatment the appellant required is not available or could not be funded on return to Cameroon. It was not made out on the facts that there was evidence of physical or mental health issues sufficient to make the decision not proportionate.
47. Mr Dixon, during the course of his submissions, made a passionate plea that it was not right that a child should lose his father and that if this was to happen all matters should be considered. It was submitted had the Judge undertaken a

- proper balancing exercise it was possible that a finding would be made that the matters relied upon by the appellant would outweigh the severity of the offence.
48. It is not disputed that in an ideal world, families will be kept together or that the best interests of a child are to be brought up in a stable environment with both parents able to provide the necessary love, care, and support a child requires. It is also not disputed that if such a parent chooses to embark on criminal activities, and therefore falls foul of the provisions of UK Borders Act, they may face a strong possibility depending on the facts of the particular case of not being able to live in such an environment and/or to provide the care for their child he or she believes they are capable of giving. The conflict between the removal of a parent and the public interest in deporting foreign criminals is at the heart of the proportionality assessment and developments in UK domestic law from *SS (Nigeria)* to the present day. It is not made out when one considers the factual context of both parties that this is a case in which the decision of the Judge, that the scales tip in favour of the respondent and that the public interest requires the appellants deportation, is not a finding reasonably open to the Judge on the evidence. An argument that the public interest may potentially be mitigated made by Mr Dixon does not identify arguable legal error material to the decision on the basis of the material presently available. One does not know what may happen at some indeterminate time hence, or what the future will hold for the child if the appellant is removed, other than the fact he will remain in a very loving and caring environment looked after by his mother. The mere presence of a child in the United Kingdom does not, per se, warrant a finding that deportation will not be proportionate or warrant a decision to revoke a deportation order, without more.
49. The Judge clearly had regard to the relationship between the appellant and his son and clearly took into account the best interests of the child. The Judge undertook a structured assessment pursuant to article 8 outside the Immigration Rules and clearly balanced the competing interests. Whilst vagaries of life may intervene at some point, as submitted by Mr Dixon, these were not matters that formed hard evidence before the Judge.
50. Mr Dixon acknowledged that whilst individually the points he sought to rely upon would not necessarily establish arguable material error he submitted that cumulatively they did, such that the decision should be set aside. I do not agree. The Judge clearly considered the evidence and has made findings supported by adequate reasons. It has not been made out the decision was not arrived at without undertaking the required assessment of both party's circumstances and by balancing the competing interests. Any errors identified and accepted have not been shown to make a material difference. The child's best interests, which was the key factor, were clearly taken into account in the decision. It is not made out there is anything about the child of which the Judge was not aware or which should have been given greater weight. The consequences of deportation, as the Court of Appeal have reminded us, is that families are separated. Even if the appellant had been treated as a joint primary carer it has not been shown the outcome would be any different.

51. I therefore find the appellant has failed to discharge the burden of proof upon him to the required standard to show he is anything other than a failed asylum seeker who has not established an entitlement to remain in the United Kingdom on the basis of an exception to the order for his deportation on human rights or any other ground.

Decision

52. There is no material error of law in the Immigration Judge’s decision. The determination shall stand.

Anonymity.

53. The First-tier Tribunal did not make an order pursuant to rule 45(4)(i) of the Asylum and Immigration Tribunal (Procedure) Rules 2005.

I make no such order pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008, there being no application for anonymity made before the Upper Tribunal at the hearing.

Signed.....
Upper Tribunal Judge Hanson

Dated the 27 June 2018