Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: PA/09913/2017

THE IMMIGRATION ACTS

Heard at Manchester	**Decision & Reasons Promulgated**
On 20 March 2018	**On 14 May 2018**

Before

UPPER TRIBUNAL JUDGE HANSON

Between

ABRAHAM [G]
~~(anonymity direction not made)~~

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellant: Mr R Claire instructed by Moorhouse Solicitors
For the Respondent: Mr C Bates Senior Home Office Presenting Officer

DECISION AND REASONS

1. In a decision promulgated on 6 February 2018 the Upper Tribunal found the First-tier Tribunal had erred in law in failing to properly apply the 'unduly harsh' test when assessing the proportionality of the appellants removal from the United Kingdom.

2. Directions were given to enable the Upper Tribunal to rehear the appeal with a view to considering whether the appeal should be allowed or dismissed.

3. The findings relating to Mr [G]'s immigration history, his conviction, contact with [LL] and current family composition were found to be preserved findings.

Background

4. Mr [G] was born on the [ ] 1977 and is a citizen of Liberia. He arrived in the United Kingdom on 16 April 2002 and claimed asylum although his application was refused. Mr [G] was granted exceptional leave to remain as a result of circumstances in Liberia at that time and in December 2006 was granted indefinite leave to remain.

5. On 1 December 2014 Mr [G] was convicted on two counts of conspiracy to defraud and conceal/disguise/convert/transfer/remove criminal property for which he was sentenced to two years imprisonment. Mr [G] was issued with notice of intention to make a deportation order and on 16 June 2015 a decision was made to refuse his human rights claim which was certified pursuant to section 94B Nationality, Immigration and Asylum Act 2002. The certification was challenged by an application for judicial review and in August 2016 a referral received under the National Referral Mechanism for potential victims of human trafficking; although it was not found the appellant satisfied the definition of a victim of human trafficking. Further representations were made and refused and a further application for judicial review lodged, although permission to bring judicial review was refused. The earlier decision was then withdrawn following the judgment of the Supreme Court in *R (on the application of Kairie v Secretary of State for the Home Department [2017] UKSC 42* and a fresh decision made which is the subject of this appeal.

6. The sentencing remarks of Her Honour Judge Manley, dated 9 January 2015, at the Crown Court in Manchester are in the following terms:

> "JUDGE MANLEY: [OL] and Abraham [G], stand please. I have to sentence you in relation to counts 1, 2 and 5 on this indictment to which you pleaded guilty on the day of the trial, albeit I am told that those guilty pleas certainly in the case of Mr [G] and possibly in the case of Mr [L] were indicated shortly before then and also that there was no prospect of the trial being reached. For that reason I proposed to allow both of you more credit than the usual ten percent that would be afforded to you.
>
> This case involves the use of compromised cards, credit cards to obtain cash in a fairly complex way which did involve quite a bit of planning. It was over a period of 13 months. In relation to count 1 it became apparent that a card had been compromised. In all £33,000 in the region of that figure was taken, address and phone number was changed unknown to the card holder there was an attempt to obtain another card in the card holder's wife's name. Both of you defendants certainly were in possession of those cards shortly after this was done, although there is no proof that you actually, either of you took part in the compromising of the cards as such. However I find from everything I have read and heard that you, Mr [G], were involved to a considerable extent and you, Mr [L], to a lesser extent. This was a sophisticated and planned fraud

by you, Mr [G] over a significant period of time and Mr [L], you were seen involved on CCTV on occasions involved in fraudulent transactions.

In relation to count 2, a Nat West account was compromised in a similar way and the total loss to the respective banks and the relevant banks is just short of £60,000.

A search of your house, Mr [G], revealed hand written lists of Co-op stores which is where many of these frauds were perpetrated, searches online for more Co-op stores, scanned identification documents, evidence of different names being used by you and I have seen in the photographs clear evidence of lavish lifestyle and consumer goods within your house, no doubt funded by fraudulent activity.

Mr [L], when your house was searched some cash was found in your car and a small amount of luxury clothing. In interviews each of you effectively denied your involvement one way or another. In relation to count 5 that reflects the converting of criminal property and it has been submitted to me that sentence in relation to that should be concurrent and I agree and it will be.

I have set a timetable for a Proceeds of Crime hearing. I have considered carefully the guidelines for fraud which came into force on 1st October of last year.

Mr [G], in your case I consider that this is a category 3A case, the culpability was high, the vast majority of the money I find whet to you rather than Mr [L], a modest amount went to him and there is no evidence of a lavish lifestyle such as there is for you, Mr [G]. I do not find significant aggravating features beyond this though.

Mr [L], I find in your case within the guidelines that this is a category 3B, medium culpability with a lower starting point and a lower sentencing range. You are not a prime mover and I do not find any significant aggravating features beyond that. You have a previous conviction and you are technically in breach of a conditional discharge but I do not propose that any action is taken about that.

As I have said already I give you both credit for your guilty pleas higher than that of 10 percent. Mr [G], you are clearly an educated man who has lived and worked legitimately in the past, you have no significant previous convictions recorded against you and Mr [L], that is the case really for you as well and I have seen and observed this morning that no doubt you both have found and are finding this experience distressing and shameful.

Mr [G], in all the circumstances I find this case involving your part in it is so serious in all the circumstances that only a sentence of immediate custody can be justified. The correct starting point in my view taking into account all matters and the amount of money that the starting point refers to within that category is one of 30 months imprisonment. I reduce that for your guilty plea to one of two years imprisonment but it must be immediate. In relation to count 2, two years imprisonment concurrent. In relation to count 5, two years imprisonment concurrent. I total of two years imprisonment."

7. The Judge accepts later on in the sentencing exercise that in relation to count 5 12 months was the correct starting point and reduced that sentence to 10 months

concurrent; although this had no impact upon the overall length of sentence of two years imprisonment.

8. The appellant has provided for the purposes of the resumed hearing an up-to-date bundle containing updated witness statements for the appellant, [FB], [AB], and letters from [LL] and [CL] (who is the mother of [LL]), and a letter to Mr [G] from HMRC regarding a Confiscation Order.

9. Although this evidence was filed in breach of specific directions of the Upper Tribunal relating to when such evidence should have been filed and served Mr Bates was happy for the new bundle and two additional statements to be admitted.

10. Mr Claire also advised the Upper Tribunal that the written evidence of [CL] was no longer being relied upon as she was not willing to support the appellant in his appeal. Those witness statements were therefore withdrawn.

11. In his statement, the appellant refers to his immigration history and the fact that he is married with a child but also is the father of a child from a previous relationship, [LL]. Mr [G] married [FB] in October 2012 having previously cohabited since 2009. They have one child, a boy, born on [ ] 2014 and live together as a family unit. The child is a British citizen.

12. The child [LL], born on [ ] 2004, is also a British citizen. At [6] of his witness statement the appellant states that [LL]'s mother has been diagnosed with cancer.

13. Since coming to the United Kingdom Mr [G] has worked and studied and attended courses in the UK including Accountancy and Finance at the Manchester Metropolitan University.

14. In relation to his offending for which he was convicted above, and other offences committed since arriving in the United Kingdom, Mr [G] states he is sorry and accepts full responsibility for committing those offences. He claims that he will never commit any further offences in the UK.

15. Mr [G] refers to a number of courses undertaken whilst in prison to address his offending and to acquire skills to assist in enabling him to secure work in the future.

16. Mr [G] claims he is not a danger to the public as claimed by the respondent. Mr [G] states he has strong family ties in the UK which will support him in his dealings in the future. Mr [G] refers to the fact he has been married for several years, that his wife is British, and that both his children are also British.

17. Mr [G] submits that if deported his children will miss growing up with their father and his wife will miss the support he is currently giving her as her husband, meaning she will be left to bring up their son as a single parent.

18. Mr [G] submits his wife and children have never been to Liberia and do not speak the language and that if deported to Liberia he will not be able to come back to the United Kingdom; meaning the family life he has will break up.

19. Mr [G] states he enjoys several activities with his children including taking them to the park, GP appointments, school, birthday parties and other children's activities. Mr [G] claims the children will miss those activities if he is deported which will have a serious negative impact upon them.

20. Mr [G] claims that if deported to Liberia he will have no family home to return to or close relatives and will be destitute as he could not cope financially. Liberia has no benefit system like the UK to enable support to be provided through benefits which he claims will mean he will be living in the street and exposed to immense danger. Mr [G] claims he has lost all ties to Liberia as he has been living in the UK for over 15 years and that all his close family and friends are settled in the UK.

21. Mr [G] submits deporting him to Liberia will be unduly harsh on his wife, his two sons, his father-in-law, mother-in-law, and his wife's extended family. His wife was born and raised in Manchester as are his sons and have lived in the UK all their lives. Mr [G]'s wife is in full-time employment which means he is the one that takes their son to school and brings him home.

22. Mr [G] states that [LL]'s mother has currently finished one session of chemotherapy and was scheduled to go for further treatment and that her condition is affecting [LL] who is constantly worried that something may happen to his mother.

23. In cross-examination, Mr [G] was asked why there was no documentary evidence provided in relation to [LL]'s mother's medical condition. He claimed papers had been emailed to his solicitor in January 2018.

24. Mr [G] was asked what family [LL]'s mother has in the United Kingdom to which he stated her mother and father and brother. Mr [G] confirmed that she receives assistance from the family. When asked whether there were concerns as to whether [LL] was being well looked after by his mother Mr [G] stated that he could look after himself as his mother was ill and that she would pass out and needed help.

25. Mr [G] stated [LL] did finding things difficult due to his mother's condition but received no counselling to assist and managed to do his schoolwork. Mr [G] confirmed both children are reasonably healthy. Mr [G] confirmed the information in his wife's witness statement that all her family are in the United Kingdom and confirmed they supported her when he was in prison; although as soon as he came out he would help. Mr [G] submitted his wife needed help to look after their child as she works. He now does every single day. Mr [G] claimed his wife's father is too ill to provide the care required.

26. Mr [G] was asked, as his wife's father had provided a witness statement, why there was no evidence of any medical condition from a hospital. It appeared that no such evidence had been provided although a letter was handed up at the hearing that should have been previously disclosed. Mr Bates did not object to the same coming in which referred to Mr [G]s father-in-law having suffered a stroke previously.

27. The evidence from Mr [G]'s father-in-law states he suffered a stroke in September 2017 for which he was initially hospitalised although has now returned home but is unable to drive, having failed a cognitive driving screening test, as a result of which Mr [G]'s is said to have been key in helping him get to his medical appointments etc.

28. Mr [G] confirmed his father-in-law has six other family members in the United Kingdom making that seven children in total. Mr [G] claimed that the other family members hardly came to see his father-in-law in hospital and that his wife works and helps her father.

29. Mr [G]'s wife works Monday to Friday. Mr [G] confirmed in answer to questions put in re-examination that he is able to help his father-in-law on a daily basis.

30. There was no further cross examination by Mr Bates in relation to the other written evidence provided, enabling the tribunal to proceed to receive submissions from the advocates.

Submissions

31. On behalf the Secretary's State Mr Bates relied on the reasons for deportation letter and the preserved findings identified, and accepted that the sole issue was whether the appellant's removal from the United Kingdom would breach the 'unduly harsh' test.

32. Mr Bates accepted that the children are British and submitted there was no evidence the children would not be adequately cared for in the absence of the appellant.

33. The appellant, as recognised by the First-tier Tribunal at [33] of that earlier decision, is a well-educated individual with a degree and qualification in accountancy. Prior to his imprisonment Mr [G] worked as a self-employed assistant accountant earning between £25,000 and £30,000 per year and that although, undoubtedly, he would face difficulties re-establishing himself in Liberia he is a highly educated individual who would have reasonable prospects of being able to do so especially in view of his professional qualification and experience. It was pleaded by Mr Bates this indicates that Mr [G] is well placed with good employment prospects.

34. It was further submitted that Mr [G]'s wife works full-time and has done so despite the need to provide care for her own father. Mr [G]'s wife also says that

she hopes to obtain an accountancy qualification and refers in her evidence to his absence when he was in prison and the consequences of that imprisonment.

35. No independent social workers report has been produced regarding the impact of the appellants removal on the children and Mr Bates submitted it was pure speculation on the appellant's behalf of the impact upon [LL] should the concerns regarding his mother [CL] come to pass.

36. Mr Bates submitted the appellant's wife has significant ties in the United Kingdom and refers to the witness statements and family support she received when the appellant was in prison, which remains available.

37. It was submitted there was no evidence of serious harm being caused to the children.

38. The appellant's wife is a well-educated individual.

39. Mr Bates submitted that the appellant was directly responsible for the offences, as recorded in the sentencing remarks, and there is a clear basis for his deportation, especially to deter offences by the appellant and other individuals.

40. Mr Bates noted the fact that since the date of offending there was no evidence of the appellant reoffending and the appellant's claim this reduced the justification for his deportation.

41. Mr Bates sought to rely upon the decision of the Supreme Court in *Hesham Ali* in which there is reference to section 32(4) of the UK Borders Act 2007 which states that the deportation of a foreign criminal is conducive to the public good. It was also submitted that the Supreme Court recognised the deportation of foreign offenders sends out a strong message to other offenders. In this case it was submitted the length of sentence gives rise to the liability to deportation and the public interest in Mr [G]'s removal.

42. In relation to the question of whether Mr [G]'s removal from the United Kingdom would be 'unduly harsh'; Mr Bates submitted there was no suggestion supported by evidence that his wife could not adapt if her husband is removed. Mr Bates accepted this would not be their choice but submitted this is a consequence of Mr [G]'s offending and would not lead to unduly harsh consequences.

43. It was submitted there was no evidence from an independent source such as a school to show unduly harsh consequences for the children

44. In relation to [LL], it is a preserved finding that his mother [CL]'s prognosis is not known. There is no witness statement from her making the only available information that in the written documents and from the appellant's own evidence. [CL] has family in the United Kingdom and there was no evidence that [LL] is not being adequately cared for now or would not be in the future. Mr Bates referred to a reference in the evidence to [CL] having a boyfriend. It was submitted Mr [G]'s

evidence regarding available support is pure speculation and that [CL], like Mr [G]'s wife, has had to manage her own life and provide care in the past including when Mr [G] was in prison. Mr Bates submitted there is nothing to show that the impact of Mr [G]'s removal upon [LL] would be unduly harsh.

45. Mr Bates accepted Mr [G]'s family will be split as a consequence of the deportation. Reference was made to sections 117 B and C of the 2002 Act.

46. It was submitted Mr [G] must have been aware of the consequences for him of undertaking serious criminal offending upon not only his position but also the lives of others in the United Kingdom.

47. Mr Bates submitted the impact upon the family of removal had been shown to be proportionate taking into account the nature of the criminal conviction.

48. Mr Bates accepted Mr [G] wanted to stay in the United Kingdom but submitted there is a high burden in light of his criminality and automatic deportation provisions. It was submitted Mr [G] had not provided enough evidence to show that the decision was disproportionate.

49. In relation to Mr [G]'s father-in-law, the evidence showed that he had recovered after having had a stroke and he receives ongoing physiotherapy and help from the NHS. It was submitted that his condition was not sufficient to raise the family and private life aspects of this appeal above the required threshold for Mr [G] to succeed.

50. On behalf Mr [G]; Mr Claire referred to the preserved findings in relation to relationships and the issue of help within the family.

51. Mr Claire argued the public interest was not as strong in this case as in other cases and referred to the Proceeds of Crime hearing which referred to the recovery of a sum less than that referred to in the sentencing remarks; although it was accepted that such proceedings would not necessarily mean the recovery of all the monies secured by Mr [G] through his acts of deception. It was submitted the Judge's sentencing remarks are an important element.

52. Mr Claire referred to Mr [G]'s length of residence in the United Kingdom and other relevant family matters and submitted it was just as relevant to consider whether the public interest required deportation in a situation where this was not a violent offence or an offence of a sexual nature.

53. It was submitted Mr [G] pleaded guilty, was sentenced, and has served the same.

54. Mr Claire submitted separating a mother and father from a child is unduly harsh, but accepted that more was required as otherwise a parent with a child could never be deported. Mr Claire submitted in this case that additional element relates to [LL] whose mother is unwell. It is a preserved finding that [CL] is unwell. Mr Claire refers to a letter from [LL] submitted in the evidence which is set out in full

below. Mr Claire submits it will be unduly harsh for the child to be separated from his father in light of his mother's condition.

55. Mr Claire submitted that [CL] requires daily support from her mother and partner and that the quality of this means that [LL] should be entitled to remain with his father in the United Kingdom. It was submitted that there will be adverse consequences for [LL] if his father is removed. It was submitted that the situation for [LL] could get worse on a daily basis as a result of his mother's condition.

56. Mr Claire submitted the Mr [G] had been with his partner since 2009 and that Mr [G] has a strong relationship with his partner. It was submitted the evidence from the partner is important especially that relating to help available within her own family which it was submitted was relevant to the assessment of whether deportation is unduly harsh.

57. Mr Claire did not accept Mr Bates submission that Mr [G]'s status is precarious due to his committing criminal offences as the fact a person has committed criminal offences is not enough to make a person's status precarious if it was not already such.

58. It was submitted Mr [G] presents no risk to the public, that he has not committed violent or sexual offence, and that although this is not a victimless offence a victim would be more greatly affected if this was an offence of violence or of a sexual nature. Mr Claire submitted the decision to deport is unduly harsh.

Discussion

59. In *MM (Uganda) and [2016] EWCA Civ 450* it was held that the phrase 'unduly harsh' plainly meant the same in section 117C(5) of the 2002 Act as it did in paragraph 399 of the Immigration Rules. It was an ordinary English expression coloured by its context. The context invited emphasis on two factors: first, the public interest in the removal of foreign criminals and, secondly, the need for a proportionate assessment of any interference with Article 8 rights. The public interest factor was expressly vouched by Parliament in section 117C(1). Section 117C(2) provided that the more serious the offence committed, the greater the public interest in deportation. That steered the tribunals and the court towards a proportionate assessment of the criminal's deportation in any given case. Accordingly, the more pressing the public interest in his removal, the harder it would be to show that the effect on his child or partner would be unduly harsh. Any other approach would dislocate the 'unduly harsh' provisions from their context such that the question of undue hardship would be decided wholly without regard to the force of the public interest in deportation. In such a case 'unduly' would be mistaken for 'excessive', which imported a different idea. What was due or undue depended on all the circumstances, not merely the impact on the child or partner in the given case. The expression 'unduly harsh' in section 117C(5) and paragraph 399(a) and (b) required consideration of all the circumstances, including the criminal's immigration and criminal history. MAB was wrongly decided (paras 22 – 26).

60. The submissions made by Mr Claire relating to the nature of the appellant's offending and current lack of reoffending are factors that are taken into account in any proceedings of this nature but must be considered in light of existing jurisprudence in relation to which no submissions were made. In *Gurung v SSHD [2012] EWCA Civ 62* the Court of Appeal, when overturning a Presidential Upper Tier panel, said that the absence of a risk of reoffending, though plainly important, is not the "ultimate aim" of the deportation regime. We are troubled, too, by the proposition in paragraph 40(iii) (cited above) that the nature and seriousness of the offence do not by themselves justify interference with family and private life without prospective regard to the public interest. Although Mr Bourne does not seek to characterise this as an error of law, he is right, in our view, to suggest that it misplaces the emphasis. The Borders Act by s.32 decides that the nature and seriousness of the offence, as measured by the sentence, do by themselves justify deportation unless an exception recognised by the Act itself applies.

61. In *Suckoo [2016] EWCA Civ 39* it was held that the Judge wrongly embarked on an analysis of the Claimant's offending which was not open to him. In general, the facts of the conviction and sentence would be sufficient. Matters of mitigation would be taken into account at the sentencing hearing.

62. In *GO (Nigeria) v SSHD 2007 EWCA Civ 1163* the Court of Appeal said that the Immigration Judge was wrong in a conducive deport appeal to base her decision on a distinction between offences of violence, sex etc "which strike at the heart of the community" and "antisocial offences causing inconvenience and financial loss". The Court said that offences of dishonesty and loss of property range in seriousness and the length of sentence is an indicator. Here, the sentence of three and a half years (on a conducive deport pre-automatic deportation) should have indicated to the judge that the offences were at the upper end of the range.

63. In *NE-A (Nigeria) v SSHD [2017] EWCA Civ 239* it was held that there was no inconsistency between the analysis in *Rhuppiah* and what was said in *Hesham Ali*. The focus in *Hesham Ali* was on the rules and it had not been necessary to consider the provisions of s117. Part 5A of the 2002 Act was primary legislation directed to tribunals and governing their decision making. Sections 117A to D were intended to provide for a structured approach to the application of Article 8 which produced in all cases a final result compatible with Article 8. Section 117B(6) was more than a statement of policy to which regard was to be had as a relevant consideration. Parliament's assessment that "the public interest requires deportation unless there are very compelling circumstances, over and above those described in Exceptions 1 and 2" was one to which the tribunal was bound by law to give effect. There was no room for any additional element in the proportionality balance under Article 8. Observations in *Akinyemi* were not to the contrary.

64. Section 117C(5) provides that Exception 2 applies where a person 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 that person's

deportation on the partner or child would be unduly harsh. This is the accepted test in this appeal.

65. It is not disputed that the appellant has family and private life and is in a genuine relationship with his wife in the United Kingdom and in a genuine and subsisting parental relationship with his son with whom he lives and has a strong relationship with [LL] with whom he does not live but with whom he has contact.

66. It is not disputed that the effect of deportation would be the appellant's wife remaining in the United Kingdom with their son. It is accepted that removing Mr [G] from the United Kingdom would result in upset and distress to this family unit and also a need for substantial reassessment of their day-to-day arrangements. Mr [G]'s wife works and is the main breadwinner for the family. It is not made out that Mr [G]'s wife would not be able to continue working as a single parent as indeed a considerable number of single mothers do in the United Kingdom. It is not made out that there will be no help or assistance from other family members in the United Kingdom for this family.

67. In relation to Mr [G]'s wife's father, his father-in-law, it is accepted this individual suffered a stroke but the evidence clearly shows that he is in the stages of recovery albeit not fully recovered as he is not yet able to resume driving. It is not disputed that Mr [G] provide some assistance to his father-in-law as he is able to, in light of his current situation. It is not made out, however, that if Mr [G] was removed from the United Kingdom there would not be other available support for his father-in-law either from other family members or within the NHS. It is accepted that the burden of providing part of such care may fall upon Mr [G]'s wife but it is not established that the impact of the same, even cumulatively with other responsibilities, is such to make the impact unduly harsh. Mr [G] was imprisoned and this is clearly an extended and resilient family who were able to cope in his absence previously.

68. In relation to Mr [G]'s own connections and contacts within the United Kingdom; these appear to focus upon this existing family as referred to in the evidence and submissions above and private life outside the family.

69. Looking at the best interests of the children, it is not made out there will be any change to the practical arrangements for maintaining the care of both Mr [G]'s son and [LL]. Both will remain in their current households. It is accepted there may be distress with Mr [G]'s removed but, as Mr Bates submitted, there is no evidence available in relation to the impact of Mr [G]'s removal upon the children sufficient to establish that the same will be unduly harsh. It is accepted the best interests of the children will be to remain with both parents, if possible, but that is not the determinative factor.

70. It is accepted that contact will have to change from direct contact to indirect contact which will have an impact upon Mr [G]'s son, who Mr [G] currently takes to school and lives with, and [LL] who enjoys contact with his father.

71. With the exception of the position of [LL]'s mother, this case mirrors many other deportation cases where family units are broken up and arrangements have to be changed as a result of a decision to deport.

72. It is accepted that [LL]'s mother, [CL], is ill. It is accepted that [CL] had good reasons for not supporting Mr [G] in his appeal and withdrawing the evidence previously given.

73. There is reference in the submissions from Mr Claire to a letter written by [LL] which is in the following terms:

> "Dear Judge
>
> My name is [LL] and I am writing this letter because of my dad Abraham [G]
>
> my dad has changed and is a good person and comes to see me every week and helps me with my homework.
>
> And he has also realised his mistakes and I believe that you will get him stay with me because my mom is not well at the minute. My mom has just finished her chemotherapy treatment and she has bad news that she has got to go through it again. She has lost her hair and is in a lot of pain. I am praying for my mum to get better, and if something should happen to my mum and my dad is not here then I have got no one and I think that would be bad on me when it is not my fault, please give my dad a second chance.
>
> Yours sincerely
>
> Etc"

74. There are some aspects of the letter that one questions whether [LL] fully understands or is qualified to assess whether Mr [G] has changed and is a good person, but it is accepted this letter is written by [LL] expressing what he genuinely feels namely that he would like his dad to stay in the United Kingdom and that he is concerned about his mum's position.

75. The fact [CL] has undergone chemotherapy, which appears initially not to have been successful, and that she requires a further course of chemotherapy is a relevant factor but not one that indicates that the prognosis for [CL] is only bleak. Many cancer sufferers may require one or more courses of chemotherapy or a change of treatment if initial courses of chemotherapy do not prove to be successful. The hope from everybody in this appeal is that the medical services will be able to successfully treat [CL]. If the situation changes for the worst and [CL] does not survive, and Mr [G] has grounds for doing so, he will be able to apply for the revocation of the deportation order.

76. There was no evidence to show that, notwithstanding the understandable concerns and worries of [LL], the standard of care being afforded to him is insufficient to meet his needs. There is no detailed medical evidence regarding [CL]'s condition or ability and the evidence clearly shows there is a very strong network of support around [CL]; no doubt meeting not only her requirements but

also those of [LL]. Although Mr [G] referred to [CL] passing out it is also the case that [CL] has a boyfriend and other support.

77. It is known that cancer sufferers have extensive support from the NHS and other cancer support groups such as Macmillan and it is not known whether approaches have been made to such organisations who work not only with cancer sufferers but also family members and who, in this situation, will be able to provide extensive support for [LL]. The reality, upon the basis of the evidence made available, is that [CL]'s future is no more than speculation at this time. Survival rates published by Cancer UK show the considerable progress that has been made in relation to the survival rates for individual cancers.

78. Whilst [LL] expresses what is accepted as a genuine wish for his father to remain in the United Kingdom it is not made out at this stage of [CL]'s treatment that however reassuring Mr [G]'s presence may be, the impact of his removal on the overall situation is such to elevate the consequences of the same to a sufficient level to establish that for this reason the removal of Mr [G] would have an unduly harsh effect upon [LL]. It is accepted that the effect will be harsh. There was no evidence that support could not be provided to [LL] in such circumstances to enable him to understand what has occurred and why.

79. I do not find it made out that there is any reason why Mr [G] should be destitute on return to Liberia. As noted, he is a bright individual with qualifications. It is accepted that it may be difficult for him to re-establish himself in Liberia after such a period of absence but it was not made out that any problems he may face could not be overcome or that he could not re-establish himself back in his home state which is not now facing the same conditions previously faced by Mr [G] when he left Liberia to travel to the United Kingdom.

80. As noted, in the case law above the question of whether harshness is "undue" requires an assessment of all aspects of this case including the public interest in the deportation of foreign criminals. Mr [G] has been convicted of being the mastermind in a sophisticated financial fraud involving a considerable sum of money, approximately £60,000, been defrauded from credit card companies by the use of an identity belonging to a 3rd party for which Mr [G] had no permission. The reality of such acts is that losses suffered by card providers has a direct impact on profit which results in increased charges for those not engaged in fraud who wish to use such facilities. Estimates of the cost of financial fraud to the United Kingdom can be as high as £193 billion per annum. Whilst it is accepted this includes corporate fraud this shows the extent of the impact of such criminality and highlights the very strong deterrent element in deporting those from the United Kingdom who engage in such activities.

81. In relation to the disagreement between the advocates concerning Mr [G]'s status and whether it is 'precarious ', the reference by Mr Bates was to the fact that Mr [G] by committing criminal offences has made his right to remain in the United Kingdom precarious as the Secretary of State is required by statute to make an

order for his deportation from the United Kingdom as a result of the prison sentence he received.

82. In relation to the strength to be given to the public interest, in *Hesham Ali (Iraq) v SSHD [2016] UKSC 60* Lord Reed noted that "cases falling within the scope of section 32 of the 2007 Act in which the public interest in deportation is outweighed, other than those specified in the new rules themselves, are likely to be a very small minority (particularly in non-settled cases). They need not necessarily involve any circumstance which is exceptional in the sense of being extraordinary (as counsel for the Secretary of State accepted, consistently with Huang [2007] 2 AC 167, para 20), but they can be said to involve "exceptional circumstances" in the sense that they involve a departure from the general rule".

83. Mr [G] fails to make out that this is a case in which it can be found that the facts warrant departure from the general rule that his deportation from the United Kingdom, notwithstanding the harsh impact upon some family members of the same, is warranted. The impact of deportation has not been shown to be unduly harsh.

Decision

84. **I remake the decision as follows. This appeal is dismissed.**

Anonymity.

85. 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.

Upper Tribunal Judge Hanson

Dated the 9 May 2018