Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: PA/00765/2020

THE IMMIGRATION ACTS

Heard at Manchester	**Decision & Reason Promulgated**
on 15 April 2021	**19 May 2021**

Before

UPPER TRIBUNAL JUDGE HANSON

Between
WI
(Anonymity direction made)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellant: Mr Jorro instructed by Sunrise Solicitors
For the Respondent: Mr Bates Senior Home Office Presenting Officer

DECISION AND REASONS

1. The appellant appeals with permission a decision of First-tier Tribunal Judge Cruthers ('the Judge') promulgated on 28 January 2021 in which the Judge dismissed the appellant's appeal on protection and human rights grounds, relied upon as an exception to the order for the appellants deportation from the UK.
2. There is no challenge to the Judge's dismissal of the protection appeal for which the Judge gives sustainable reasons. There was within the protection appeal an issue concerning a section 72 certificate in relation to which the Judge found "as

not valid" the respondent's attempts to exclude the appellant from refugee status pursuant to section 72 of the 2002 Act.

3. The appellant, a citizen of Pakistan, is subject to an order for his deportation from the United Kingdom following his conviction for participating in a money laundering operation which the Sentencing Judge noted involved £1.7 million. The appellant did not appeal his conviction or sentence of 4 years imprisonment. The core of the appellant's case on human rights grounds, relied upon as an exception to the order for his deportation, was noted by the Judge at [9] in the following terms:

> "9. For the purposes of article 8 of the European Convention on Human Rights ("ECHR"), ECHR the appellant relies on his private life built up since he first came to the UK in September 2001. More significantly, the appellant relies on his ongoing family life with NG and their two children in common – AR and E (dates of birth 1 September 2008 and 15 November 2009). The appellant has three children in total (his evidence on 5 January) - the eldest child, M, was born on 10 October 2003 and usually still lives with her mother - the appellant's now ex-wife, Ms AA. Usually, the appellant would spend time with M *every second weekend* but currently M's mother is in Pakistan and the appellant is not on good terms with the relative who M is staying with (his evidence on 5 January)."

4. The Judge, in addition to the documentary evidence, had the benefit of seeing and hearing oral evidence being given by both the appellant and NG before deciding on the weight that could properly be given to the evidence.

5. The Judge divides the decision into subheadings which include the 'Mental health evidence, evidence as to possible impact on the well-being of the appellants or immediate family members if he is deported/removed to Pakistan' [102 – 117], 'The best interests of the appellant's children' [118 – 120], 'Whether either of the exceptions in section 117 C will be met on the facts of this case' [121 – 126], and 'Whether on the facts the appellant met the "over and above test" in section 117C(6)' [127 – 131], before drawing together the threads at [132 – 133] in the following terms:

> "132. I regret concluding that the appellant's article 8 case cannot succeed - because that implies the breakup of his close family unit with NG and their two children (as well as the removal of M's opportunity to build - face to face - on her bonds with the appellant). However, that seems to me to be the only conclusion that I can properly reach through the application of the relevant principles to the evidence in this case. And it has been pointed out that deportation will frequently lead to harsh consequences - including the breakup of family units (see, for example, **Lee [2011] EWCA Civ 348, 29 March 2011**)
>
> **Overall conclusion**
>
> 133. As Mr Phillips submitted on 5 January, this is a case where the public interest in deportation of non-British criminal outweighs the best interests of the three British children concerned, and outweighs the preference of the appellant and NG."

6. The appellant sought permission to appeal which was granted by another judge of the First-tier Tribunal on the 24 February 2021 the operative part of the grant being in the following terms:

> "2. The grounds of appeal make a number of points, but it is unnecessary to go through them all in detail as they amount to the submission that the extant circumstances in the evidence before the judge were exceptional circumstances that should have succeeded in the appeal.
>
> 3. The grounds of appeal appear to be arguable across the judge at paragraph 129 has disagreed with the submission law by Mr Jorro, and in his Skeleton Argument at paragraphs 26 – 30 that Paragraph 117C was satisfied. Permission to appeal is granted all grounds argued."

7. In her Rule 24 reply dated 5 March 2021 the Secretary of State opposes the appeal on the basis the findings made are within the range of those reasonably available to the Judge.

The law

8. Section 117C Nationality Immigration and Asylum Act 2002 reads:

> **117CArticle 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.

9. The Court Appeal in AA (Nigeria) v Secretary of State [2020] EWCA Civ 1296 [at 9] write:

> "9. There has been a proliferation of case law on the application of the "unduly harsh" test in section 117C(5) of the 2002 Act, and the "very compelling circumstances" test in section 117C(6). That is the result of the many different factual circumstances in which they regularly have to be applied by first instance judges of the Immigration and Asylum Chamber. That does not mean, however, that there is a need to refer extensively to authority for the meaning or application of these two statutory tests. It should usually be unnecessary to refer to anything outside the four authorities identified below, namely *KO*

> *(Nigeria) v Secretary of State for the Home Department* [2018] 1 WLR 5273; *R (on the application of Byndloss) v Secretary of State for the Home Department* [2017] 1 WLR 2380; *NA (Pakistan) v Secretary of State for the Home Department* [2017] 1WLR 207; *HA (Iraq) v Secretary of State for the Home Department* [2020] EWCA Civ 117. It will usually be unhelpful to refer first instance judges to other examples of their application to the particular facts of other cases and seek to draw factual comparisons by way of similarities or differences. Decisions in this area will involve an examination of the many circumstances making up private or family life, which are infinitely variable, and will require a close focus on the particular individual private and family lives in question, judged cumulatively on their own terms. Nor will it be necessary for first instance judges to cite extensively from these or other authorities, provided that they identify that they are seeking to apply the relevant principles. I would associate myself with what Coulson LJ said at paragraph [37] of *UT (Sri Lanka) v Secretary of State for the Home Department* [2019] EWCA Civ 1095, that it is an impediment to the efficient working of the tribunal system in this area for judges to have numerous cases cited to them or to feel the need to set out extensive quotation from them, rather than focussing primarily on their application to the factual circumstances of the particular case before them. Judges who are experienced in these specialised courts should be assumed by any appellate court or tribunal to be well familiar with the principles, and to be applying them, without the need for extensive citation, unless it is clear from what they say that they have not done so."

Discussion

10. The grounds of appeal assert the Judge's conclusions as to the effect on the appellant's son of his deportation and consequent conclusion in relation to the article 8 claim are irrational in light of the medical evidence accepted by the Judge, and/or amount to a material error of law for failing to take account of that accepted evidence when finding against the appellant.
11. In his oral submissions Mr Jorro referred to the basis of the appellant's claim being the cumulative impact upon the family arising from deportation. It was argued that the 'extra unduly harsh' test was satisfied in that as a result of NGs depression she would not be able to look after the children if the appellant were deported, and that owing to AR's fragile mental health there was a real risk of deterioration such that he may never recover if his father were to be deported. It was argued that the combined effect of these factors may result in consequential damage to the appellant's daughter E making the case not only very compelling but also 'extra unduly harsh' and therefore the appellant's deportation disproportionate.
12. At [6 -9] of the Grounds of Appeal it is written:

> "6. However, at determination, paras 117 and 126 the FTT Judge states and concludes that the totality of the materials/evidence do not establish that any degree of anticipated harshness, including specifically for AR, would go "beyond what would necessarily be involved for any child faced with the deportation of a parent." (As per Lord Carnwath JSC in KO (Nigeria) v SSHD [2018] 1 WLR 5273 at [23]). Having so concluded, the FTT Judge, inevitably, went on to conclude at paras 127-132 that A could not meet the 'over and above' or 'extra unduly harsh' test in NIAA 2002, s117C(6), and thus that the clear and obvious interference in A's Article 8 (1) right to respect for his family life (FTT determination, para 33) would be proportionate to the Article 8 (2) public interest in preventing crime is based on the established fact of A having been sentenced to a period of four years' imprisonment.

7. It is submitted that the FTT Judge's conclusion is irrational in light of the medical evidence accepted by him and/or is in clear error of law for failing to take account of that accepted and material evidence when concluding against A's case and/or is in error of law for failing to provide adequate reasons for concluding A's case given the accepted evidence.

8. Clearly it cannot be rationally concluded that the deterioration of a 12 year old boy's psychological health is necessarily a consequence of the deportation of his father. It is obviously not the case that every child's psychological health will deteriorate due to his or her father's deportation (or for that matter, where parents divorce acrimoniously and the child lives with the mother).

9. It is submitted that the FTT Judge has failed to take account, adequately or at all, of the true import of the accepted medical report evidence concerning A's sons mental health and the likely deterioration of his mental health when reaching a highly material conclusion contrary that them leads on to his determinative conclusion contrary to A's Article 8 claim and appeal."

13. It is not disputed that a combination of factors affecting more than one relevant family member can, as a matter of principle, together meet the necessary threshold of being 'extra unduly harsh'. The Judge does not suggest otherwise. To assess whether this is the case on the facts a holistic assessment of the relevant aspects of the evidence is required which it has not been shown the Judge failed to do when the decision is read as a whole.
14. It is clear the Judge considered the evidence with the required degree of anxious scrutiny in what is a detailed and carefully considered judgement. The thrust of the submissions made by Mr Bates is that, even if the outcome was not one accepted by the appellant or Mr Jorro or that even if other judges may not have arrived at the same conclusion as this judge, this does not mean that the decision is outside the range of those reasonably available to the Judge on the evidence, sufficient to warrant the Upper Tribunal interfering in the same.
15. The Judge accepts that it would not be in the best interests of AR if his father is removed to Pakistan and accepts the evidence of Dr Latif that AR's psychological health and academic performance is likely to deteriorate if the appellant is removed from the UK [114].
16. At [116 – 120] the Judge writes:

"116. For the avoidance of doubt, I see no reason to quarrel with Ms Meek's assessment that the deportation of the appellant [would] impact on his children emotionally, physically (sic) as well as on their development and learning within education (Ms Meek's paragraph 5.5 on page 147). I accept that the family as a whole is under significant emotional stress in relation to the prospects of the appellant being removed from the UK (paragraph 5.3). I accept that the appellant's deportation is likely to have a serious detrimental information impact on his three children (paragraph 5.5). What I do not accept, however, is that there is any real reason why M could not continue to see her two half siblings if the appellant was removed to Pakistan (cp Ms Meek's paragraphs 5.6 and 5.8). That is, if NG and M's mother wished to, as they could make arrangements for M to continue seeing/staying with her two half siblings, even if the appellant was then back in Pakistan.

117. I have very carefully considered all the materials before me (including those summarised in this section). But, referring to the terminology used in **KO and others** (at paragraph 23), I cannot see that the totality of those materials establishes - as regards the three children of the appellant - any degree of

anticipated harshness *"going beyond what would necessarily be involved for any child faced with the deportation of a parent".* (Similarly, the evidence does not show "undue harshness" in relation to NG but, realistically, Mr Jorro did not argue that it did).

The best interests of the appellant's children

118. Throughout my assessment of the appellant's article 8 case, I have borne in mind, a strong public interest in deportation (see, for example, **N (Kenya) [2004] EWCA Civ 1094).** Although the best interests of the children who will be affected by the putative deportation/removal are also an important factor, it is well established that the best interests of children can be overridden in this context by the public interest in deportation and immigration control (see, for example, **AJ (Zimbabwe) and VH (Vietnam) [2016] EWCA Civ 1012**).

119. The above said, the evidence as to the important role of the appellant in the lives of his three children clearly points (in my assessment) to it being in the children's best interests for the appellant to be allowed to continue living in the UK. In the case of M, that conclusion is perhaps marginal because the appellant's own evidence at the hearing was that even when M's mother is in the UK (which she is not at the moment), he only sees M every other weekend (when, I think, she spends the weekend based at the family home of the appellant and NG in Altrincham). (In his statement the appellant describes how he and NG have built a relationship with M only since the appellant came out of prison in October 2018).

120. In relation to AR and E (in particular), I do accept (as Judge Pickup) that their interests would be best served by them continuing to live (in the UK) in a family unit with the appellant and NG."

17. The above conclusions are sustainable when assessing this important aspect of the case, but the Judge was required to do more and consider whether either of the exceptions in section 117C could be met on the facts of this case, and whether on the facts the appellant could meet the "over and above" test in section 117C(6). Between [121 – 131] of the decision the Judge sets out the core findings being challenged by the appellant in relation to these issues. I set them out in full:

"**Would either of the "Exceptions" in section 117C be met on the facts of this case?**

121. As regards the "Exceptions" set out in section 117C of the 2002 Act, Mr Jorro realistically made no suggestion that on the evidence in this appeal the appellant might fit into the Exception relating to Private Life ("Exception 1" - in section 117 C(4)) or the "partner limb" of the Exception relating to Family Life ("Exception 2" - in section 117 C (5)). Here, therefore, my focus is on the "child limb" of the Exception relating to Family Life (in section 117 C (5)) viz the test of the appellant having: *"a genuine and subsisting parental relationship with a qualifying child, and the effect of [his] deportation on the [] child would be unduly harsh".*

122. I accept that the appellant has strong, genuine and subsisting parental relationships with all three of his children (and a similarly strong relationship with NG) - the respondent does not argue the contrary.

123. The respondent accepts (as did Judge Pickup) that it would be unduly harsh to expect the Appellant's (British) children to relocate to Pakistan. It follows that here the primary question from me is whether or not it would be unduly harsh to expect the appellant's children to remain in the UK whilst he is deported/removed to Pakistan (as per paragraph 399(a) of the immigration rules).

124. As already noted, in the case of M, the appellant's own evidence on 5 January, was that even when M's mother is in the UK (which she is not at the moment), he only sees M every other weekend. In that light, I do not think that one would begin to conclude that the removal of the appellant to Pakistan would be "unduly harsh" for M (as opposed to the other two children) - not "unduly harsh" in the sense given to that phrase in the relevant decided cases.

125. In relation to housing, NG told Mr Phillips that the council house in Altrincham has been gained through an application by her (not the appellant). There is no good reason to think that the housing situation of NG, AR and E would change if the appellant is removed to Pakistan.

126. Unfortunately, weighing up all the information, already referred to in this Decision, even as regards AR. and E, I cannot see that, overall, the evidence here establishes a *"degree of harshness, going beyond what one would normally is necessarily involved for any child faced with deportation of a parent."* (as per paragraph 23 of **KO (Nigeria)**).

On the facts of this case does/would the appellant meets the "over and above test" in section 117 C (6)?

127. Section 117 C (6) reads: *"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"* (underlining added):

128. To the extent that they are still relevant (and still applicable as at January 2021), I have counted in favour of the appellant's case, all the "For factors" that Judge Pickup counted in the appellant's favour through his paragraph 94. To the extent now appropriate, I have also factored in the matter relied on for the appellant in paragraph 29 of the Grounds of Appeal document.

129. But in my assessment the totality of the evidence referred to in Mr Jorro's paragraphs 26 to 30 (and are summarised in my paragraphs above) does not begin to establish the test of *"extra unduly harsh"* - as Underhill LJ colloquially put it in **JG**. In other words, even if Mr Jorro was correct to argue that this appellant satisfies one of the Exceptions in section 117 C, I cannot see that *over and above* that he has a case which is/would be "especially strong" (in the sense referred to in paragraph 29 of **NA (Pakistan))** - essentially for reasons that I have already set out above. That is, weighing up all the information, already referred to in this Decision, I cannot see that the argument begins to satisfy the relevant "*over and above test*".

130. In other words, it seems to me that the respondent's case as to a lack of "*very compelling circumstances*" here is valid - as set out in paragraphs 77 to 114 of the RFRL.

131. Of course, in this area there are dangers in going too far in any comparison of "like cases". Even so, it may be worth pointing to some features of JG's case that made it very significantly stronger than the case of this appellant:

- Not only was JG his son's primary carer but they lived under a different roof to the son's mother (albeit that she lived nearby) (paragraph 18 of **JG**);
- the psychological evidence in JG was cogent and established a history of the son, having threatened to self-harm and the likelihood of serious emotional harm to the son if the appellant was deported (paragraph 20 – cp the evidence in relation to AR summarised above); and

- through his paragraph 32 Underhill LJ said: "*… the evidence before the judge in this case was at least potentially capable of showing that there was in the present case a real risk of harm to JG's mental health that reached the necessary threshold. It did not rely on the "mere" impact of separation, but on the specific psychological damage evidenced by the materials… (In a context, it must be recalled, where it appeared that the Respondent was JG's primary carer)… It may be that if we were making our own judgement, I might not have regarded [the medical evidence as] compelling as the Judge did. But that is not the role of this Court…*".

18. The Judge makes specific reference to a number of other documents as part of the assessment process which the Judge was not required to set out verbatim as they were available to all the parties. One of these is a reference to an earlier decision by then First-tier Tribunal Judge Pickup promulgated on 8 June 2018, in which Judge Pickup was considering an earlier appeal against the refusal of a protection of human rights claim dated 31 October 2017, also relied upon by the appellant as an exception to the Secretary of State's ability to deport him from the United Kingdom. Judge pickup was also satisfied that the best interests of the two British citizen children, assessed in isolation of the immigration history of their father and the conduct of both parents in entering into criminal activity, is for them to remain in the UK and have, if possible, the involvement of both parents in their upbringing as a single-family unit [82].
19. Judge Pickup found on the evidence that the appellant cannot meet any of the unduly harsh tests under paragraph 399 and found that even if the appellant could meet either of those requirements, he would still have to demonstrate very compelling circumstances over and above the already high unduly harsh threshold test as a result of the four-year sentence of imprisonment.
20. When assessing the question of very compelling circumstances Judge Pickup wrote:

> "94. Amongst all of the evidence taken as a whole and considered in its entirety before reaching my conclusions, I take into account the following non-exhaustive list of relevant factors and considerations in favour of the appellant.
>
> (i) I take into account everything is said about the circumstances of the children, their ages, their lives and integration in the UK:
>
> (ii) I accept that the appellant has a genuine and subsisting relationship with the children and his partner, despite his enforced separation by his prison sentence;
>
> (iii) I give full weight to the best interests of the children as a primary consideration;
>
> (iv) I do not underestimate the effect on the children of being deprived from their parent, including every aspect urged upon me in the documentation, expert evidence and submissions. It will be hard on the children to be permanently separated from the appellant. However, that is the reality of the effect of deportation, it separates families;
>
> (v) There are no particular medical issues in relation to any of the children, though I note the emotional strain on the appellant's wife. I do not undervalue this effect, but she is jointly responsible for the situation, she finds herself in. Again, the effect of separation from the appellant is little more than to be expected from deportation;

(vi) I have noted the probation report assessment, the judges positive comments and character evidence submitted on his behalf and that the appellant committed a one-off offence when his head was turned by the promise of money to be made, and that otherwise he was hard-working and largely good character;

(vii) That there is little evidence of large financial gain by the appellant and no proceeds of crime proceedings have been taken against him. His role was as a collector not controller. He has not lived any lavish lifestyle;

(viii) It is said that he was persuaded to involve himself, recruiting his wife, under pressure from persons from abroad;

(ix) Despite the huge sums involved, the sentence was relatively lenient;

(x) He has worked hard before and whilst in prison and has been assessed as a low risk of reoffending. He says that he is determined never to offend again, is remorseful, and wants to make it up to his children.

(xi) I take into account the efforts towards rehabilitation and expression of remorse, notwithstanding the comments made about the extent of minimising and unwillingness to accept responsibility.

(xii) Following case authority of Daso [2015] EWCA Civ 596 and Velasquez [2015] EWCA Civ 845, I note the public interest is wider than the mere protection of the public from harm from future offending, and includes weight to be given to the public revulsion at the appellant's conduct and the need to deter others. The lack of other offending any adherence to the law is no more than to be expected and cannot be said to reduce public interest in deportation."

21. The relevant aspects of the original grounds of appeal considered by Judge Cruthers are set out at [32 (a) – (f)] which are pleaded in the following terms:

"32. The Appellant must demonstrate factors in his favour, which surpass the public interest that requires his deportation. The factors in favour of the Appellant are as follows:

a. the risk of reoffending is of at the lowest level given the one-off serious conviction received by the Appellant. The probation report, and subsequent letters of support, or confirm the Appellant's remorse for his actions and his decision to take responsibility for his offending. By focusing upon his family to repair that which he broke. The Appellant feels that he let down his children by getting involved in criminal privity and recognises just as much and now dedicates all his efforts towards being a good father who can guide his children in what is right and wrong. He has been honest with them in terms of where he went wrong and therefore shows that he has taken utmost responsibility for his wrongdoing;

b. the appellant is socially and culturally integrated in the UK, the exception being the most recent conviction. Previous convictions were minor and not to the extent that would suggest any real pattern of serious offending. He has strong family connections in the UK, with his partner and children being a British-born, and he has lived the majority of his time in the UK with his family.

c. the Appellant was also lawfully resident in the UK until such time as he became appeal rights, exhausted and since that has advanced further submissions, which he has done without delay.

d. The Appellant's son is suffering from serious anxiety, psychological damage and depression -like symptoms and has been referred for further psychological investigation and treatment. A report of the full extent will be available in due course, but a social worker report has confirmed the extent of the damage to the Appellant's son. In addition, letters from the school confirmed the effect it has had on the Appellant and therefore there is evidence of the fact that the deportation of the Appellant will cause significant damage to his son, which would be unduly harsh and over and above that should be expected. Whilst some discomfort and separation is expected due to the deportation order, it is argued that consideration of all the factors in favour of the Appellant means that the issues are linked and the harm caused stretches beyond the son, but it is suggested that the Appellant's sons deportation will cause a complete breakdown of the family unit (**SSHD vs Jamaica case No C5/2016/0587.**

e. The Appellant's partner continues to suffer from depression and her mental state is such that she would be unable to cope with the children in the Appellant's absence. Evidence is that she barely managed to survive during the period in which he was in prison, and to go through that again would mean a certain life of poverty. She has a long documented history of depression and as a victim of domestic violence from a previous relationship, she seriously affected by the eventuality of the Appellant being deported and the children left in her sole care. She has relied upon him, exceptionally, particularly after the passing of her father shortly after he was released from prison and the role he has taken on since he was released, caring for their children, means that the disruptive effect of his deportation at this time would cause significantly more damage. These conditions are not ideal for young children and a dynamic in the household is very delicate. Any disruption will be so severe as to cause a severe mental health impact on the part of AR and NG as severe and significant disruption to the lives of E and M.

f. All of the above demonstrate unduly harsh and very compelling circumstances over and above the exceptions in section 117(c) NIA 2002."

22. The submission relating to the cumulative effect upon the family unit as a whole was therefore a matter before the Judge in this appeal but is a factor of which the Judge was fully aware. At [103] the Judge writes:

> "103. I have taken into account all the evidence as to the likely/possible mental health effects of the appellant's removal/deportation of members of his family. In particular, that includes:
>
> - From page 77: the report of Dr Latif relating to the appellant's son;
> - from page 101: the report of Dr Ahmed relating to NG;
> - from page 120: medical reports relating to NG;
> - from page 128: school letters (etc) relating to the appellant's son;
> - from page 136: medical reports relating to the appellant's son; and
> - from page 139: Social Workers Report (dated 27 May 2019) by Ms Meek."

23. In relation to NG the Judge writes at [105 – 107]:

> "105. As far as the material relating to NG is concerned, her medical records confirm levels of anxiety and depression (mental health difficulties which are understandable, given the couple's troubled and uncertain history since they were arrested in April 2015).

> 106. I accept that Dr Sehar Ahmed is a qualified Clinical Psychologist with more than adequate qualifications and experience to prepare a report of 2 March 2020. (Pages 101 to 119). Dr Ahmed confirms that since 2015 NG has been prescribed different medications by her GP to address mental health symptoms (Dr Ahmed's paragraph 7.6). Dr Ahmed saw NG for approximately two hours on 2 March 2020. (Paragraph 3.1). Dr Ahmed makes it clear more than once that what she says in her report is largely based on the self reporting of NG (Paragraph 7.2 for example).
>
> 107. From the report of Dr Ahmed I accept that when she saw NG, symptoms were demonstrated that satisfy the criteria for *Chronic Adjustment Disorder with Mixed Anxiety and Depressed Mood* (paragraph 9.6). But there appears to have been at least a degree of improvement in NG's mental health since Dr Ahmed saw her - as already noted, on 5 January the evidence was that NG is involved in running her own car dealership, and presumably, therefore, is no longer isolating herself and avoiding leaving the house (as referred to in Dr Ahmed's paragraph 9.4). Sadly, NG's father died some three weeks after the appellant left prison (paragraph 6.3 and 9.4). I accept that NG's father seems to have provided a high degree of emotional and financial support whilst the appellant was in prison (ibid). But in summary, there is not much in the report of Dr Ahmed - taken with the medical records relating to NG - which is of much materiality for the purpose of this deportation related appeal."

24. The Judge analysed the evidence regarding to AR with the required degree of care and is not made out the Judge was unaware of the issues in the appeal, the evidence relied upon in support of the claim, or the relevant issues to be determined.
25. It is clear from a reading of the decision that the Judge does take into account the impact upon all members of this family if the appellant is deported from the United Kingdom. The fact the Judge found the appellant is unable to succeed does not mean the Judge failed to do what he was required to do.
26. I accept it is also no longer correct to say as in SSHD v PG (Jamaica) [2019] EWCA Civ 1213 that the 'commonplace' distress caused by separation from a parent or partner is insufficient to meet the test, as the focus should be on the emotional impact on the particular child: HA(Iraq) (supra) [Underhill LJ 44-56, Peter Jackson LJ 157-159]. Whilst the Judge does refer in the decision to the effects of deportation not going beyond what would necessarily be involved for any child faced with the deportation of a parent the Judge also undertakes an assessment of the impact on the children individually. The question in this appeal has always been whether the appellant met the "over and above tests." In section 117 C (6). As the Judge considered all the evidence with the required degree of care, has made a number of findings in line with that evidence supported by adequate reasons, and has come to a conclusion open to the Judge, the fact the appellant disagrees with same is not the key issue. To succeed it is incumbent upon the appellant to establish perversity, irrationality, or unlawfulness in the decision.
27. The appellant claims that the Judge misunderstood (i) the primary submission as to the effect of the combination of NG being unable to cope looking after children by herself, without the appellant, (ii) the medical evidence regarding AR's fragile mental health, (iii) the appellant's case, (iv) or the evidence relied upon.
28. NG was noted by the Judge to be running her own car dealership and to have improved beyond the person described in the medical evidence. Whilst it may be

inconvenient for NG to have to resume responsibility for the care for the children if the appellant is deported, either personally or with the use of others to assist (paid or otherwise), the finding the evidence of the impact upon NG did not establish that she will not be able to adequately parent the children and that this and the impact upon AR will not have a sufficiently detrimental effect upon AR or E such that the test is met, has not been shown to be one not reasonably open to the Judge on the evidence. The Judge's finding, having weighed those points in favour of the appellant with the issues relied upon by the Secretary of State in opposing the argument, that it had not been shown the requisite test was satisfied has not been shown to be a finding outside the range of those reasonably available to this very experience First-tier Tribunal Judge on the evidence.

29. On that basis, and in line with recent guidance from the Court of Appeal that an error of law should not be found unless one can clearly be identified, I find the appellant has failed to establish arguable legal error material to the decision to dismiss the appeal when the decision is read as a whole, sufficient to warrant the Upper Tribunal interfering any further in this matter.

Decision

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

Anonymity.

31. The First-tier Tribunal made an order pursuant to rule 45(4)(i) of the Asylum and Immigration Tribunal (Procedure) Rules 2005.

I make such order pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008.

Signed…….
Upper Tribunal Judge Hanson

Dated 6 May 2021