Upper Tribunal
(Immigration and Asylum Chamber) **Appeal Number: RP/00106/2019**

THE IMMIGRATION ACTS

Heard at Field House	**Decision & Reasons Promulgated**
On 28 October 2021	**On 17 November 2021**

Before

UPPER TRIBUNAL JUDGE BLUM

Between

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

H W
(ANONYMITY DIRECTION MADE)

Respondent

Representation:
For the appellant: Ms Z Ahmed, Senior Home Office Presenting Officer
For the respondent: Ms A Radford, counsel, instructed by Turpin & Miller LLP

DECISION AND REASONS

1. This is an appeal against the decision of a panel consisting of Judge of the First-tier Tribunal Welsh and Judge of the First-tier Tribunal Rai ('the panel') who, in a decision promulgated on 28 April 2021, allowed the Article 8 ECHR human rights appeal of HW ('the respondent') against the decision of the Secretary of State for the Home Department ("the appellant" or "SSHD") dated 18 October 2019 revoking his protection status and refusing his human rights and protection claims.

Background

2. The respondent is a national of Rwanda, born in 1983. He first entered the UK on 24 July 1997 as a 13-year-old. On 3 July 1999 the respondent and his family (consisting of his mother and three siblings) were granted asylum and Indefinite Leave to Remain (ILR). This was based on their fear as Tutsis of being removed to Rwanda following the 1994 genocide in which the respondent's father and elder brother were murdered and which forced the respondent and his family to flee their home area. The respondent formed a relationship with HR, a British citizen, and they have a child, AW, born in December 2015.

3. Whilst living in the United Kingdom ('UK') respondent has accumulated a total of 6 convictions in respect of 10 criminal offences spanning the period from 2003 to 2017. These are detailed in the panel's decision. Of greatest relevance are his conviction on 8 March 2007 in respect of two offences relating to the possession of cannabis with the intent to supply (for which he received concurrent sentences of 9 months imprisonment), his conviction on 30 April 2009 for possession of cocaine with intent to supply (for which he received a sentence of 4 years imprisonment), and his conviction on 4 August 2017 for the possession of cocaine with intent to supply (for which he received a sentence of 78 months imprisonment), which is the 'index offence' that triggered the appellant's decision to deport the respondent pursuant to section 32(5) of the UK Borders Act 2007.

4. On 18 October 2019, having received representations from the respondent, the appellant revoked the respondent's protection status and refused a human rights claim made by the respondent. The appellant issued a certificate under section 72 of the Nationality, Immigration and Asylum Act 2002 ('the 2002 Act') asserting that the respondent posed a danger to the community on account of his serious criminality. The appellant excluded the respondent from Humanitarian Protection.

5. The respondent appealed the appellant's decision pursuant to s.82 of the Nationality, Immigration and Asylum Act 2002 ("the 2002 Act").

The decision of the First-tier Tribunal

6. The panel considered a bundle of documents prepared by the appellant and three bundles of documents provided by the respondent which included, inter alia, statements from the respondent, his partner ('HR'), HR's mother ('SR'), and the respondent's sister ('YW'). The respondent's bundles additionally included a psychiatric report dated 11 February 2020 prepared by Dr R Cornish, a Country Expert Report relating to Rwanda dated 2 July 2020 prepared by Dr H Cameron, an OASys Report, and various letters and documents from the Probation Service and the Prison Service relating to the respondent. The panel heard oral evidence from the respondent, HR, SR, and YW and submissions from both representatives.

7. In its decision the panel found that the respondent had rebutted the presumption under s.72 of the 2002 Act. Whilst acknowledging the history and seriousness of

the respondent's offending ([22], [23] & [24]), the panel were satisfied by the evidence before them, including letters from the respondent's Offender Manager indicating that he was now considered by the professionals charged with undertaking such an assessment as being at low risk of re-offending and at low risk of causing serious harm in the event of re-offending ([25]), that the respondent was not a danger to the community. The appellant has not challenged this aspect of the decision.

8. The panel found that the appellant was entitled to cessate the respondent's refugee status and that he did not hold any well-founded fear of persecution in Rwanda on account of his Tutsi ethnicity. The respondent has not challenged this aspect of the panel's decision by way of any cross-appeal.

9. The panel then considered the respondent's human rights appeal relating to family and private life rights. At [59] the panel referred to s.117C(1) of the 2002 Act and noted the seriousness of the respondent's offending, despite the appellant's failure to provide the First-tier Tribunal with the comments of the Sentencing Judge. At [60] and [61] the panel gave little weight to the evidence of the respondent's rehabilitation, and it accorded significant weight "… to the need to deter others from committing such crimes and to the need to express society's view about the offence and those who commit such offences." The panel specifically stated that the public interest in the respondent's deportation was significant.

10. The panel found that the respondent and his witnesses were credible and reliable, noting that there had been no factual dispute between the respondent and the appellant, and noting the absence of any suggesting by the Presenting Officer, either in his cross-examination or in his submissions, that the respondent or his witnesses had been untruthful. It had been accepted by the appellant that the respondent had lawfully resided in the UK for the majority of his life.

11. At [66] to [75] the panel gave its reasons for finding that the respondent was socially and culturally integrated in the UK. Then at [76] to [94] the panel gave its reasons for finding that the respondent would encounter 'very significant obstacles' to his integration were he to be deported to Rwanda.

12. The panel then found that, although it was in the best interests of the respondent's child for the respondent to remain in the UK, and although the respondent had "a very strong relationship" with his child, it would not be unduly harsh for the child to remain in the UK without the respondent, albeit that it was a "finely balanced" decision [106]. Although the panel found that the respondent and HR had "a very strong relationship", and although it would be harsh for HR to remain in the UK without the respondent, the panel considered that it would not be unduly harsh [121].

13. The panel then considered, at [124] to [130], whether there existed any 'very compelling circumstances', as understood in s.117C(6). The panel concluded that the obstacles to the respondent's integration in Rwanda went "beyond being very

significant and are of themselves sufficient to amount to very compelling circumstances" [126]. The panel considered, in the alternative, that the combination of matters relating to the respondent's family and private life amounted to very compelling circumstances, although no single factor on its own would have reached this required level. Having then referred to the strength of the relationship between the respondent and his child and HR, and the impact of his deportation on those relationships [127], the panel gave weight to the respondent's relationship with his sister, which they described as "a factor that would not normally attract much, if any weight" [128]. The panel explained, at [129], how during their childhood the respondent was a father figure to his younger sister, in terms of both practical and emotional support, through their turbulent childhood, and how their strong bond continued to the present. At [130] the panel concluded that the significant public interest in the respondent's deportation was outweighed by the interference with the respondent's family and private life.

14. The panel allowed the appeal on human rights grounds only.

The challenge to the judge's decision

15. The grounds of appeal, amplified by Ms Ahmed in her oral submissions, challenge the panel's decision in respect of three findings: (i) that the respondent was socially and culturally integrated; (ii) that the respondent would encounter very significant obstacles to his integration in Rwanda; and (iii) that there existed very compelling circumstances, over and above those described in Exceptions 1 and 2 in s.117C (4) and (5) of the 2002 Act, such as to render his deportation a disproportionate interference with Article 8 ECHR. There has been no cross-appeal in respect of the panel's dismissal of the respondent's appeals against the decisions to revoke his refugee status and the refusal of his protection claim.

16. In respect of (i), the appellant contends that the respondent had not actually taken the opportunity his residence in the UK gave him to integrate, and noted that the panel found there was little evidence of social integration beyond the respondent's family other than schooling and some employment. The appellant was not clear what the panel meant when it stated, at [70], that the respondent's "… limited evidence of social engagement is unsurprising given his offending history and we consider that these factors are two sides of the same coin." The appellant contends that the panel erred in comments it made at [72] and [73] which she considered excused the respondent's conduct. The appellant relies on Bossade (ss. 117A-D interrelationship with Rules) [2015] UKUT 415 (IAC) to support her submission that the respondent's incarceration was 'capable of tipping the balance against integration had it been properly factored in.' The panel's decision suffered from a lack of reasoning.

17. In respect of (ii), the grounds contend that the panels' findings that certain freedoms would not be available to the respondent in Rwanda were insufficiently relevant given that he would not face a real risk of persecution, and that, contrary to the panel's assessment that the respondent would have no experience of the

cultural and societal structure in Rwanda, he would have some memory given that he left as a child. The grounds contend that the panel accorded "too much weight" to the respondent's diagnosis of mild PTSD, and that there was scant consideration of treatment available in Rwanda. Nor was there anything in the medical report to show whether the exacerbation of the respondent's PTSD would ease after return. Ms Ahmed made no further oral submissions in respect of ground (ii).

18. In respect of (iii), the grounds contend that the decision lacks "cogent reasoning" and that the panel failed to apply relevant caselaw, and failed to give adequate reasons for finding that there were features of the respondent's case that made his Article 8 claim especially strong such that 'very compelling circumstances' had been made out. Ms Ahmed submitted that the panel merely relied on its earlier finding in respect of s.117C(4)(c) and failed to give any reasons why the factors it had identified earlier met the very compelling circumstances test. Nor had the panel taken into account the public interest in its assessment.

Discussion

19. In determining whether the panel's decision involved the making of an error on a point of law I remind myself of the judgment of Carnwath LJ (as he then was) in Mukarkar v SSHD [2006] EWCA Civ 1045, where his Lordship stated, "The mere fact that one tribunal has reached what may seem an unusually generous view of the facts of a particular case does not mean that it has made an error of law …" It is not appropriate to interfere with the conclusions of a First-tier Tribunal decision, which heard oral evidence from the respondent and his or her witnesses, unless the First-tier Tribunal has erred in law by, for example, failing to give weight to relevant considerations, taking into account irrelevant factors, misdirecting itself in law, failing to give adequate reasons, or reaching a conclusion not within the range of rational conclusions open to it.

20. In this case the panel had the opportunity to observe not just the respondent giving evidence, but his family as well, and it had the assistance of two expert reports, one relating to the situation in Rwanda, the other relating to the respondent's mental health. The panel noted, at [63], that there was no factual dispute between the parties, and that the issue to be determined was the weight to be attached to various factors. The panel properly directed itself according to the appropriate legal tests and the burden and standard of proof.

21. In respect of (i), the panel referred at [66] to one of the leading decisions on social and cultural integration, CI (Nigeria) v SSHD [2019] EWCA Civ 2027, and it must be taken to have had the principles considered in that authority in mind. At paragraph 58 of CI Lord Justice Leggatt noted that a person's social identity "… is constituted at a deep level by familiarity with and participation in the shared customs, traditions, practices, beliefs, values, linguistic idioms and other local knowledge which situate a person in a society or social group and generate a sense of belonging." And at paragraph 79 his Lordship stated, "The phrase "socially and culturally integrated in the UK" is a composite one, used to denote

the totality of human relationships and aspects of social identity which are protected by the right to respect for private life. While criminal offending may be a result or cause of a lack or breakdown of ties to family, friends and the wider community, whether it has led or contributed to a state of affairs where the offender is not socially and culturally integrated in the UK is a question of fact, which is not answered by reflecting on the description of criminal conduct as "anti-social"".

22. At [67] the panel noted that the respondent entered the UK as a 13-year-old and had lived in this country for a continuous period of 24 years. The panel expressly acknowledged that the length of residence was not of itself sufficient to demonstrate social and cultural integration. At [68] the panel found that the respondent arrived in the UK at an age at which he would have started to develop a private life, and that the formative experiences of his private life had been established whilst he was in the UK. The panel's view that the respondent's formative experiences were established when he lived in the UK is a finding rationally open to it. The panel reinforced this finding at [68] by reference to the respondent's experiences in Rwanda. The panel were fully entitled to find that the focus of the respondent's life in Rwanda was focused entirely on his own survival and that of his family in the context of their flight from persecution and that the life he led immediately preceding his arrival in the UK "… could not be characterised as a life of cultural and social engagement in Rwanda." I did not understand Ms Ahmed to object to such an approach.

23. The panel did find, at [70], that there was very little evidence of any social engagement beyond the respondent's extended family, noting that it was limited to his time at school and his brief and infrequent employment until 2011 when he began working as a fitness instructor at a gym and where he continued to work until his arrest for the index offence. The panel however clearly had regard to the respondent's periods of imprisonment when assessing whether he was socially and culturally integrated, as detailed at [71] and especially at [74], and, having already referred to CI (Nigeria), it cannot be said that the panel failed to take into account the impact of the respondent's offending on his social and cultural integration.

24. The appellant is unclear as to what the panel meant at [70] where it stated that the "limited evidence of social engagement is unsurprising given [the respondent's] offending history and we consider that these factors are two sides of the same coin." It is however relatively clear that the panel were acknowledging that the respondent's criminality meant that there was less evidence of his social engagement. The panel recognised that, "Not all the evidence points in one direction" (at [75]) but it demonstrably weighed the competing evidence and concluded that the respondent's had ultimately produced enough evidence to show that he was socially and culturally integrated. This was a conclusion rationally open to it. Contrary to the contention in the grounds that the panel were somehow 'excusing' the respondent's conduct at [73], it is apparent from the use of the word "perhaps" in that paragraph that the panel were not attaching weight to the circumstances that may have led to the respondent's criminality and

that this was merely an observation. This is further supported by reference to the beginning of [74] where the panel note that, "However, whatever the root cause of his offending behaviour, his criminal offending is a factor to which we give significant weight in assessing the extent of his social and cultural integration in the UK because it represents a rejection of society, given the harm that such offending inflicts upon others in the community."

25. I am only permitted to interfere with the panel's decision regarding the respondent's cultural and social integration in the UK if, in concluding that this respondent was socially and culturally integrated, it made a mistake on a point of law. Whilst another judge may have reached a different conclusion on the facts, the panel's conclusion was within the range of rational conclusions open to it and was supported by adequate reasoning and legal directions.

26. I considered there to be little merit in ground (ii). The panel's reasoning for its conclusion in respect of s.117C(4)(c) is very clear. The panel accurately directed itself according to the authority of SSHD v Kamara [2016] EWCA Civ 183, and properly noted that, generally, childhood experiences could still be of value to the process of reintegration (at [78]). The panel explained however at [79] why the trauma experienced by the respondent and the devastation he witnessed as a child in Rwanda, unchallenged by the appellant, were "not the building blocks for reintegration." The panel thereafter relied on the unchallenged evidence of Dr Cameron relating to the "stark difference in the functioning of society" between the UK and Rwanda (at [80]). At [81] the panel were rationally entitled to note that the freedoms enjoyed by the respondent in the UK would not be available to him in Rwanda and, in particular, that the respondent would be "faced with an approach to ethnicity of which he will have no understanding", all in the context of a country in which he had no friends or family to help him. The panel noted the importance the country expert attached to securing employment in terms of an opportunity for the respondent to form relationships and it gave clear and cogent reasons for concluding that the respondent would struggle to find employment (see [83] to [84], with reference to the expert report, the unchallenged evidence relating to the respondent's lack of understanding of Rwandan society, and the difficulties the respondent would initially encounter in communicating).

27. The panel then gave unchallenged reasons why the respondent's family in the UK would be unable to provide him with any financial assistance ([85] to [86]). The panel additionally considered the unchallenged diagnosis that the respondent suffered from PTSD and that his symptoms would exacerbate if removed to Rwanda thereby further impeding his ability to form personal relationships. The grounds contend that the panel accorded "too much weight" to the diagnosis of PTSD the symptoms of which were relatively mild, but, in the absence of any irrationally in approach, the question of the apportionment of weight is a matter for the tribunal hearing all the evidence. The panel demonstrated at [89] to [94] that it engaged with the contents of the medico-legal report, and that it also took into account the information set out in the country expert report relating to the availability of mental health care in Rwanda. The panel's assessment of the

respondent's ability to integrate into Rwandan society took cumulative account of a range of different factors and its conclusion that there were very significant obstacles to the respondent's integration was reached on a holistic assessment of the evidence. The decision discloses no material error on a point of law in its approach to s.117C(4)(c).

28. In respect of ground (iii), in determining whether there existed 'very compelling circumstances' over and above the exceptions in s.117C(4) and (5), the panel was demonstrably aware of the high nature of the test and it set out at [124] a relevant extract from NA (Pakistan) v SSHD [2016] EWCA Civ 662. Contrary to the grounds and Ms Ahmed's oral submissions, the panel were entitled, applying SSHD v JZ (Zambia) [2016] EWCA Civ 116 (at paragraphs 28 to 30) and NA (Pakistan) (at paragraphs 20 & 21) to rely on the matters in Exception 1 in s.117C(4) as constituting very compelling circumstances if those matters were especially strong. At [126] the panel summarised why it concluded that the factors relating to the difficulties the respondent would encounter in reintegrating in Rwanda met this high test which included his young age when he left Rwanda, his lack of experience of a social, cultural and political environment like Rwanda, the particular sensitivities about ethnicity following the genocide in respect of which the respondent would have no understanding of how to navigate, and his PTSD. Whilst another panel may have reached a different conclusion, it cannot be said that this panel's approach was irrational or unsupported by adequate reasoning.

29. But in any event, the panel considered, in the alternative, that even if it was wrong, the evidence before it was such as to entitle it to find, on a holistic assessment, the existence of very compelling circumstances. In reaching its conclusion under s.117C(6) the panel demonstrably took into account a number of relevant factors including the earlier finding that the respondent was a caring and committed father who had "a very strong relationship" with his child, and the fracturing of that relationship that would occur if the respondent were deported. It also took into account its finding that he had a strong relationship with his partner. The panel were additionally entitled to take into account the unusually strong relationship between the respondent and his sister, the nature of which was not challenged by the respondent.

30. It is sufficiently clear from its assessment of the existence of 'very compelling circumstances' at [124] to [130], considered in the context of the decision as a whole, that the panel did lawfully consider the public interest factors in its assessment. At [125] the panel stated, "Throughout our assessment, we keep in mind this high test [a reference to NA (Pakistan)] together with our finding that the public interest in the [respondent's] deportation is significant." The panel were demonstrably aware of the seriousness of the respondent's offending, having made detailed reference to it at [22], [23], [24] and [71], noting the danger to the community posed by the respondent's drug offending, and therefore the strength of the public interest in his deportation. Then at [59], with reference to s.117C(1) and (2), the panel again found that the respondent's offending was serious, noting the length of sentence (6½ years for the index offence) and the

nature of the offending and the harm it can cause to both individuals and society at large. And at [61] the panel specifically and clearly accorded significant weight to the public interest in the need to deter others from committing the type of offences committed by the respondent, and the need to express society's view about the offences and those who commit such offences. The panel concluded that the public interest in the respondent's deportation was "significant." Then, at [130] the panel again refer to and, in my judgment, took into account "the significant public interest in the [respondent's] deportation" to which it had previously referred and considered when undertaking its balancing exercise under s.117C(6).

31. The panel could be said to have been generous in its assessment of the respondent's circumstances, but I can only interfere with the panel's decision if it has made a mistake in its legal approach. The panel properly directed itself in law in respect of the respondent's human rights claim, it gave adequate reasons for its conclusions and, having regard to the decision read as a whole, it balanced the public interest factors against the factors supportive of the respondent's human rights claim. Its conclusions were rationally open to it for the reasons given based on the evidence before it. I find that the decision does not disclose any mistake of law requiring it to be set aside.

Notice of Decision

The making of the First-tier Tribunal's decision did not involve the making of an error on a point of law.

The Secretary of State for the Home Department's appeal is dismissed.

Direction Regarding Anonymity – Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008

Unless and until a Tribunal or court directs otherwise, the respondent in this appeal is granted anonymity. No report of these proceedings shall directly or indirectly identify him or any member of his family. This direction applies both to the respondent and to the appellant. Failure to comply with this direction could lead to contempt of court proceedings.

Signed *D.Blum* Date: 8 November 2021

Upper Tribunal Judge Blum