Upper Tribunal
(Immigration and Asylum Chamber) **Appeal Number: HU/03058/2019**

THE IMMIGRATION ACTS

Heard at Birmingham CJC	**Decision & Reasons Promulgated**
On the 26 July 2022	**On the 22 August 2022**

Before

UPPER TRIBUNAL JUDGE HANSON

Between

JKS
(Anonymity direction made)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellant: Ms Ashraf of Counsel.
For the Respondent: Mr McVeety, a Senior Home Office Presenting Officer

DECISION AND REASONS

1. The appellant is a citizen of India born on the 3 July 1977 who arrived in the UK lawfully in 2004 with valid entry clearance as a spouse. On 10 June 2006 he was granted indefinite leave to remain.

2. On 7 December 2016 the appellant was convicted at the Wolverhampton Crown Court of conspiracy in the acquisition, retention use or control of criminal property subject to section 1(1) of the Criminal Law Act 1977, and on 1 February 2018 sentenced to 5 years and 8 months imprisonment.

3. On 8 November 2018 the appellant was served with notice of intention to make a deportation order and that order made on 7 February 2019 pursuant to section 32(5) UK Borders Act 2007. The human rights claim by the appellant was also refused on that date.

4. The appellant's appeal was dismissed by a judge of the First-tier Tribunal but that decision set aside by the Upper Tribunal in a determination promulgated on the 23 March 2022.

5. The sentencing remarks of the judge sitting at the Wolverhampton Combined Court Centre, in the Crown Court, on 1 February 2018 refer to the fact that criminal organisations generate cash, that such cash was the bedrock of many criminal transactions: drug deals; the transfer and handling stolen goods; conversion of criminal property into cash from jewellery or other valuables; smuggling. It is also noted the prosecution in the case had no idea where the enormous amounts of cash that the appellant and his co-accused were involved with originated as cash is anonymous and is harder to trace.

6. The Sentencing Judge noted that money laundering operations have hierarchy normally on an international scale and that the evidence indicated the existence of a person whose telephone put him or her in the Netherlands and someone with a telephone number allocated to the India network.

7. The Sentencing Judge noted that the cash that was arriving in Wolverhampton, where the appellant lives, arrived from "far and wide" with a very significant proportion of the banknotes being Scottish and Irish banknotes. There is reference in the sentencing remarks to the two accused based in Wolverhampton acted in a money-laundering operation as Collectors, an important and essential role, as they collect cash from the criminals, look after the cash, count it, check it to ensure there is no counterfeit currency in it, and then follow instructions to arrange its onward movement. The Sentencing Judge noted that in this case the onward movement was to Northampton.

8. The sentencing remarks continued:

> On 13 May 2014 you were all caught by the police. There were two handovers that day of substantial amounts of criminal cash. Mr S, who came from Northamptonshire to meet [JKS]. [JKS] was driving his VW Passat and you were in your BMW 5 series car. The meeting was observed and photographed. It was in the early afternoon, not far from [JKS] home. It is obviously you know each other and obvious that you were on friendly terms.
>
> [JKS], you handed over a carrier bag which was found later to contain £60,000 in cash. You went to your separate ways. Mr S, you were arrested, still in Wolverhampton, by the police. You claimed that the money was yours and was

the takings from your pizza shop. But the evidence is that this meeting and the amount of money involved had been arranged by text via overseas contact.

[JKS], you were not stopped at that stage. Later that day you and Mr SI met up in Wolverhampton. You are friends but this meeting was not because you were friends; it was because you had a job to do. You were to meet Mr B who was coming up from Northamptonshire.

This meeting again had been set up in advance by text communication involving third parties. Mr B had come to collect £40,000 in cash. The police arrested all three of you, that is [JKS] , Mr SI and the absent Mr B, and seized the cash. Mr B's wife was in her car just around the corner. In her car was the SatNav which showed that Mr B's journey was not the first he had made to that part of Wolverhampton in May.

…

The fact that you have used the token system allowed the police to calculate how much money had passed through the Wolverhampton arm of this money-laundering organisation directly as a result of transactions using the token system. All of the evidence that allowed them to make this calculation comes from Mr SI's house because after you were arrested, the cash notes with the writing on acting as tokens and diaries recording transactions together with an electronic cash counting machine and a further £140,000, in round terms, were all discovered.

[JKS] home in Wolverhampton contained no material of this nature.

…

In Wolverhampton, you, [JKS], were the collector at this part of the money laundering organisation. You are at the heart of this conspiracy. The £9.7 million involved in this conspiracy passed through your control. Because of this amount of money, the Guidelines' harm category is at the very top end of category 2.

…

You were assisted by Mr SI. Mr SI had other businesses and my assessment based on the evidence that I have heard is that Mr SI was a trusted assistant, but still involved in a substantial way. Closely connected with each other, and connected with the next rung overseas by that means.

[JKS] I place firmly as having a high culpability, leading role. I will come to my reasons in detail a little later.

…

[JKS], you are a man who has only one minor conviction in his past. You are a mature man. You pleaded guilty after your trial began and at a break during the evidence of the first witness. What is your motivation for being involved? You submitted a basis of plea, saying that you only became involved in this because of threats, that if you did not, your family in India would be harmed. You say this is because your father died in a great deal of debt and that whoever he owed the money to, decided to target you to get the money back.

You did not mention this in your original interview. This came in a prepared statement later and was followed up in the defence statement. The prosecution have never accepted that basis of plea. They point to the evidence that all the cash tokens, the diaries and an extra £140,000 on one day were in your house. They argue that you were plainly a collector, to use Mr Copley's explanation of the roles. His evidence is that a collector is someone who is trusted, and they have to be because the collector, on the evidence before me, is at the highest risk of getting caught by the law enforcement agencies.

No conspiracy can afford to have the collector as the weakest and most vulnerable link in the organisation. He plays a pivotal role. In my judgement the

> idea that this organisation should depend on you being forced into this job makes no sense. But more than that, the evidence shows that you were involved at a deep level for some time. When you met Mr S and you were photographed, it was obvious that you were on friendly terms. There is no hint in the materials that the police found at your home, on your phones, or from your demeanour when you were being watched, that you are a man in terror acting only because of that.
>
> And you did not mention this until late in the interview process. You have had every opportunity to give evidence about this. You decided not to. I do not accept what is argued on your behalf about threats being the reason why you were a collector in a money laundering organisation. I am sure you were a willing participant in these conspiracy and that you did it for financial gain.
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> …
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> Even as collector, you played a leading role in an offence which was sophisticated and involved significant planning. Planning which you were an integral part of. And this went on for a sustained period of time. As I have already said, I am certain that £9.7 million is a realistic figure and that you are inextricably connected with that throughput.

9. For the reasons set out in the Sentencing Remarks the judge took the starting point before credit of six years imprisonment from which the appellant was given 5% credit for his late guilty plea, resulting in a reduction of four months, making a final sentence of five years and eight months imprisonment.

The law

10. It is not disputed before me that the appellant is a foreign criminal.

11. As noted by the Supreme Court in their recent judgement in HA (Iraq) (Respondent) v Secretary of State for the Home Department (Appellant) RA (Iraq) (Respondent) v Secretary of State for the Home Department (Appellant) AA (Nigeria) (Respondent) v Secretary of State for the Home Department (Appellant), [2022] UKSC 22, foreign criminals who have been sentenced to terms of imprisonment of at least four years, who are described in the authorities as "serious offenders", can avoid deportation if they establish that there are "very compelling circumstances, over and above those described in Exceptions 1 and 2" - see section 117C(6) of the 2002 Act ("the very compelling circumstances test"). As the very compelling circumstances must be "over and above" the exceptions, whether deportation would produce unduly harsh effects for a qualifying partner/child is relevant here too.

12. Any decision-maker considering the human rights issue is required to have proper regard to section 117 of the Nationality, Immigration Asylum Act 2002. Those provisions, in the format set out by the Supreme Court in HA, RA and AA read:

> The 2002 Act
>
> 13. By section 117A(1), Part 5A of the 2002 Act applies where a court or tribunal is required to determine whether a decision made under the Immigration Acts (such as a decision to deport a foreign criminal) would breach a person's right to respect for private and family life under article 8 ECHR. In such a case "the public interest question" is defined as being whether an interference

with a person's right to respect for private and family life is justified under article 8(2) ECHR: see section 117A(3). When considering that question, a court or tribunal "must (in particular) have regard" in "all cases" to the considerations in section 117B, and in "cases concerning the deportation of foreign criminals" to the considerations in section 117C: section 117A(2).

14. Section 117B provides that the maintenance of effective immigration controls is in the public interest (117B(1)); that it is in the public interest and in particular in the interests of the economic well-being of the United Kingdom that persons seeking to enter or remain in the United Kingdom are "able to speak English" (117B(2)) and are "financially independent" (117B(3)); and that little weight should be given to a private life, or a relationship formed with a qualifying partner, that is established by a person at a time when the person is in the UK "unlawfully" (117B(4)) or to a private life established by a person when the person's immigration status is "precarious" (117B(5)). It has been held that a person is in the UK "unlawfully" if they are present there in breach of UK law - Akinyemi v Secretary of State for the Home Department [2017] EWCA Civ 236; [2017] 1 WLR 3118 at para 40. A person's immigration status is "precarious" if they do not have indefinite leave to remain - see Rhuppiah v Secretary of State for the Home Department [2018] UKSC 58; [2018] 1 WLR 5536.

15. Given its importance to the appeal, section 117C will be set out in full. It provides:

"117C Article 8: additional considerations in cases involving foreign criminals

(1) The deportation of foreign criminals is in the public interest.

(2) The more serious the offence committed by a foreign criminal, the greater is the public interest in deportation of the criminal.

(3) In the case of a foreign criminal ('C') who has not been sentenced to a period of imprisonment of four years or more, the public interest requires C's deportation unless Exception 1 or Exception 2 applies.

(4) Exception 1 applies where –

(a) C has been lawfully resident in the United Kingdom for most of C's life,

(b) C is socially and culturally integrated in the United Kingdom, and

(c) there would be very significant obstacles to C's integration into the country to which C is proposed to be deported.

(5) Exception 2 applies where C has a genuine and subsisting relationship with a qualifying partner, or a genuine and subsisting parental relationship with a qualifying child, and the effect of C's deportation on the partner or child would be unduly harsh.

(6) In the case of a foreign criminal who has been sentenced to a period of imprisonment of at least four years, the public interest requires deportation unless there are very compelling circumstances, over and above those described in Exceptions 1 and 2.

(7) The considerations in subsections (1) to (6) are to be taken into account where a court or tribunal is considering a decision to deport a foreign criminal only to the extent that the reason for the decision was the offence or offences for which the criminal has been convicted."

13. In relation to how to interpret and apply the test, the Supreme Court provided the following guidance:

41. Having rejected the Secretary of State's case on the unduly harsh test it is necessary to consider what is the appropriate way to interpret and apply the test. I consider that the best approach is to follow the guidance which was stated to be "authoritative" in KO (Nigeria), namely the MK self-direction:

> "… 'unduly harsh' does not equate with uncomfortable, inconvenient, undesirable or merely difficult. Rather, it poses a considerably more elevated threshold. 'Harsh' in this context, denotes something severe, or bleak. It is the antithesis of pleasant or comfortable. Furthermore, the addition of the adverb 'unduly' raises an already elevated standard still higher."

42. This direction has been cited and applied in many tribunal decisions. It recognises that the level of harshness which is "acceptable" or "justifiable" in the context of the public interest in the deportation of foreign criminals involves an "elevated" threshold or standard. It further recognises that "unduly" raises that elevated standard "still higher" - ie it involves a highly elevated threshold or standard. As Underhill LJ observed at para 52, it is nevertheless not as high as that set by the "very compelling circumstances" test in section 117C(6).

43. Whilst it may be said that the self-direction involves the use of synonyms rather than the statutory language, it is apparent that the statutory language has caused real difficulties for courts and tribunals, as borne out by the fact that this is the second case before this court relating to that language within four years. In these circumstances I consider that it is appropriate for the MK self-direction to be adopted and applied, in accordance with the approval given to it in KO (Nigeria) itself.

44. Having given that self-direction, and recognised that it involves an appropriately elevated standard, it is for the tribunal to make an informed assessment of the effect of deportation on the qualifying child or partner and to make an evaluative judgment as to whether that elevated standard has been met on the facts and circumstances of the case before it.

45. Such an approach does not involve a lowering of the threshold approved in KO (Nigeria) or reinstatement of any link with the seriousness of the offending, which are the other criticisms sought to be made of the Court of Appeal's decision by the Secretary of State.

14. In relation to the very compelling circumstances test, the Supreme Court stated:

46. Under section 117C(6) of the 2002 Act deportation may be avoided if it can be proved that there are "very compelling circumstances, over and above those described in Exceptions 1 and 2".

47. The difference in approach called for under section 117C(6) as opposed to 117C(5) was conveniently summarised by Underhill LJ at para 29 of his judgment as follows:

> "(A) In the cases covered by the two Exceptions in subsections (4)-(5), which apply only to medium offenders, the public interest question is answered in favour of the foreign criminal, without the need for a full proportionality assessment. Parliament has pre-determined that in the circumstances there specified the public interest in the deportation of medium offenders does not outweigh the article 8 interests of the foreign criminal or his family: they are, given, so to speak, a short cut. The consideration of whether those Exceptions apply is a self-contained exercise governed by their particular terms.
>
> (B) In cases where the two Exceptions do not apply - that is, in the case of a serious offender or in the case of a medium offender who cannot satisfy their requirements - a full proportionality assessment is required,

> weighing the interference with the article 8 rights of the potential deportee and his family against the public interest in his deportation. In conducting that assessment the decisionmaker is required by section 117C(6) (and paragraph 398 of the Rules) to proceed on the basis that 'the public interest requires deportation unless there are very compelling circumstances over and above those described in Exceptions 1 and 2'."

48. In Rhuppiah v Secretary of State for the Home Department [2016] 1 WLR 4203 at para 50 Sales LJ emphasised that the public interest "requires" deportation unless very compelling circumstances are established and stated that the test "provides a safety valve, with an appropriately high threshold of application, for those exceptional cases involving foreign criminals in which the private and family life considerations are so strong that it would be disproportionate and in violation of article 8 to remove them."

49. As explained by Lord Reed in his judgment in Hesham Ali v Secretary of State for the Home Department [2016] UKSC 60; [2016] 1 WLR 4799 at para 38:

> "… great weight should generally be given to the public interest in the deportation of [qualifying] offenders, but … it can be outweighed, applying a proportionality test, by very compelling circumstances: in other words, by a very strong claim indeed, as Laws LJ put it in the SS (Nigeria) case [2014] 1 WLR 998. The countervailing considerations must be very compelling in order to outweigh the general public interest in the deportation of such offenders, as assessed by Parliament and the Secretary of State."

50. How Exceptions 1 and 2 relate to the very compelling circumstances test was addressed by Jackson LJ in NA (Pakistan). In relation to serious offenders he stated as follows:

> "30. In the case of a serious offender who could point to circumstances in his own case which could be said to correspond to the circumstances described in Exceptions 1 and 2, but where he could only just succeed in such an argument, it would not be possible to describe his situation as involving very compelling circumstances, over and above those described in Exceptions 1 and 2. One might describe that as a bare case of the kind described in Exceptions 1 or 2. On the other hand, if he could point to factors identified in the descriptions of Exceptions 1 and 2 of an especially compelling kind in support of an article 8 claim, going well beyond what would be necessary to make out a bare case of the kind described in Exceptions 1 and 2, they could in principle constitute 'very compelling circumstances, over and above those described in Exceptions 1 and 2', whether taken by themselves or in conjunction with other factors relevant to application of article 8."

In relation to medium offenders he stated:

> "32. Similarly, in the case of a medium offender, if all he could advance in support of his article 8 claim was a 'near miss' case in which he fell short of bringing himself within either Exception 1 or Exception 2, it would not be possible to say that he had shown that there were 'very compelling circumstances, over and above those described in Exceptions 1 and 2'. He would need to have a far stronger case than that by reference to the interests protected by article 8 to bring himself within that fall back protection. But again, in principle there may be cases in which such an offender can say that features of his case of a kind described in Exceptions 1 and 2 have such great force for article 8 purposes that they do constitute such very compelling circumstances, whether taken by themselves or in conjunction with other factors relevant to article 8 but not falling within the factors described in Exceptions 1 and 2. The decision-maker, be it the Secretary of State or a tribunal, must look at all the matters relied upon collectively, in order to determine whether they

are sufficiently compelling to outweigh the high public interest in deportation."

He also emphasised the high threshold which must be satisfied:

"33. Although there is no 'exceptionality' requirement, it inexorably follows from the statutory scheme that the cases in which circumstances are sufficiently compelling to outweigh the high public interest in deportation will be rare. The commonplace incidents of family life, such as ageing parents in poor health or the natural love between parents and children, will not be sufficient."

51. When considering whether there are very compelling circumstances over and above Exceptions 1 and 2, all the relevant circumstances of the case will be considered and weighed against the very strong public interest in deportation. As explained by Lord Reed in Hesham Ali at paras 24 to 35, relevant factors will include those identified by the European Court of Human Rights ("ECtHR") as being relevant to the article 8 proportionality assessment. In Unuane v United Kingdom (2021) 72 EHRR 24 the ECtHR, having referred to its earlier decisions in Boultif v Switzerland (2001) 33 EHRR 50 and Üner v The Netherlands (2006) 45 EHRR 14, summarised the relevant factors at paras 72-73 as comprising the following:

"• the nature and seriousness of the offence committed by the applicant;

• the length of the applicant's stay in the country from which he or she is to be expelled;

• the time elapsed since the offence was committed and the applicant's conduct during that period;

• the nationalities of the various persons concerned;

• the applicant's family situation, such as the length of the marriage, and other factors expressing the effectiveness of a couple's family life;

• whether the spouse knew about the offence at the time when he or she entered into a family relationship;

• whether there are children of the marriage, and if so, their age; and

• the seriousness of the difficulties which the spouse is likely to encounter in the country to which the applicant is to be expelled …

• the best interests and well-being of the children, in particular the seriousness of the difficulties which any children of the applicant are likely to encounter in the country to which the applicant is to be expelled; and

• the solidity of social, cultural and family ties with the host country and with the country of destination."

52. The weight to be given to the relevant factors falls within the margin of appreciation of the national authorities. As Lord Reed explained in Hesham Ali at para 35: "35. While the European court has provided guidance as to factors which should be taken into account, it has acknowledged that the weight to be attached to the competing considerations, in striking a fair balance, falls within the margin of appreciation of the national authorities, subject to supervision at the European level. The Convention on Human Rights can thus accommodate, within limits, the judgments made by national legislatures and governments in this area."

The evidence

15. The appellant has filed a number of witness statements as have other family members. I have also seen correspondence from the Head

Teacher of RS school dated 20 July 2022 and other documents, all of which has been taken into account together with the oral evidence and submissions made by the advocates. Even if there is no specific reference to the same within the decision below that does not mean it has not been considered with the required degree of anxious scrutiny.

16. Mr McVeety limited his cross-examination to that of the appellant's wife checking whether their daughter, ES, had received counselling or any other intervention, in reply to which it was confirmed that she had at school but that she had not receiving any psychiatric care. This issue is addressed further below.

17. In his witness statement dated 4 June 2021 the appellant confirmed he was born in India on 3 July 1977. He arrived in the UK in 2003 as most of his family live in this country including all three of his sisters.

18. The appellant met his wife at a wedding in the UK in 2003, a match was arranged, and they married in Birmingham on 8 November 2003. The appellant stated he and his wife then returned to India and the rest of his family and he celebrated their wedding in the Indian tradition in 2004.

19. The appellant returned to the UK with his wife in July or August 2004. They remain together and have two children, ES (born on the 5 March 2005, aged 17), and RS (born on the 11 June 2012, aged 10).

20. The appellant stated he started working as soon as he arrived back in the UK in 2004 at a local supermarket and then in his father-in-law's chip shop where his wife also worked. When his father-in-law sold his business the appellant bought a pizza shop which he ran for two years although he also earned further income as a taxi driver for 6 to 7 years and has had different jobs working as a courier and in a tyre business.

21. In relation to the circumstances surrounding his offence the appellant writes:

> 10. In regards to my conviction, it is something that I deeply regret. I was struggling a lot financially after I sold my pizza shop. I was the main breadwinner for my family. It was my choice to be the only one to work and provide for the family because I wanted my wife to look after our children. I acted out of greed and was going through a difficult time in my life but I understand that this is no excuse for my actions.
>
> 11. My father unfortunately passed away in 2011 therefore, I went to India for his funeral. As my father had lost his business in India, the loan sharks approached me and demanded money. I did not have money to give them so they told me to take a large sum of money to the UK which led to my conviction.
>
> 12. I regret my actions every single day because my children continue to suffer the most due to it. I have always shared a very close relationship with my children. My usual day-to-day activities with them prior to my time in prison consisted of dropping and picking them up from school and I would often take time out for my children. I would attend parents meetings in school and be there for them whenever they needed me. I enjoy cooking so I would make food for them. I would often take photos of my children as a way to treasure the good times.
>
> 13. Despite being in prison, I tried to remain as close as I could to my children. It was impossible to maintain the same relationship but I stayed in

very close contact with them. I spoke on the phone to my children twice a day - once before school started and once after school.

14. My imprisonment has had a big impact on my children. My son, RS became extremely quiet. He was a very bubbly and naughty child and so I worried a lot looking at how much he changed. My son was only 4 ½ years old at the start of my imprisonment. Furthermore, his schoolteacher also said that there had been a drastic change in behaviour.

15. It upsets me a lot that my actions led my son to change his behaviour. I always used to tell my son that I would come back to him very soon. I told him that I was at work - he did not know about my conviction and we kept this from him due to his young age. When my family would visit me in prison, I would tell my son that I worked in the prison and that I had to stay here, but would be coming home very soon. Slowly, he started to realise that I was held in prison though.

16. On the other hand, my daughter, ES was aware of my imprisonment. My daughter became very mentally upset. She tried to harm herself. My family and relatives did not tell me the complete truth or the details about herself harm as they did not want me to worry. They hid this from me for a long time.

17. I found out that my daughter was harming herself through my son. During a prison visit, he revealed to me that an ambulance came to get ES. Even then, my wife was trying to hide this from me. She told me that the ambulance came because ES was dehydrated and not feeling well. However, I saw my daughters cuts so I knew she was harming herself. At the time, I could not even bring myself to talk about the matter as it was too upsetting for me to think about.

18. My family and I tried to be there as best as we could during this difficult period of time. We often give ES cards and letters as a form of reassurance. I was very worried about her that I always tried to reassure her that things would get better and that I will be home sooner than she thought.

19. My daughter had always been a very good student and done well academically. However, her behaviour and school reports deteriorated and she did not match up to her previous record. She was usually a very talkative girl but I saw this change. She started receiving counselling from school and to visit a psychiatrist regularly. As is clear, my imprisonment has had a detrimental impact on my children and I accept that this is due to my wrongdoings.

22. The appellant claims that he also suffered depression in prison as a result of which he was treated by the mental health team who prescribed Mirtazipine between 2018 and 2020. The appellant claims that since his release he cannot sleep and is constantly thinking about his family and the deportation issue, claiming to be devastated when he received the deportation letter as he was not expecting to be deported which is causing him stress.

23. The appellant returned to the family in November 2020 following his release on licence. The appellant states ES is doing a lot better at school although he is aware she worries about the deportation. His son has also been much happier and more relaxed and the appellant states they are returning to their former selves. In May 2021 the appellant started a part-time job as a courier driver for Hermes. His wife does not work as she stays at home with the children. The appellant claims she also suffers anxiety and depression for which she receives medication.

24. The appellant refers to extended family, his three sisters, living in Wolverhampton who he sees as much as possible and that his mother is also living with them too.

25. In relation to the impact of his deportation upon the children the appellant maintains the children could not go to India as their future is in the UK, but it was accepted this is a family splitting case on the basis it would be unduly harsh to expect the appellant's children to relocate to India. The issue in this appeal is whether it be unduly harsh for the UK based family to remain in the UK if the appellant is deported.

26. The appellant claims his wife struggled due to his imprisonment and that she is not able to cope alone, that the family remain on benefits, although he is working again and that without his income the family situation would be worse.

27. At [40] of his witness statement the appellant writes:

> 40. The reason why I cannot be deported to India is because my whole life is in the UK now. My family, mother and extended relatives (sisters, cousins, nieces, nephews) all reside in the UK. I have always remained in employment in the UK and I have never worked in India as I left when I was very young and had been living with my parents. My children are British and they are not familiar with the Indian culture. It would not be practical or good for them to move to India.

28. The appellant refers to his mother who is stated to be over 65, suffering with anxiety and panic attacks, who would spend 5 to 6 months in the UK every year and then return to India, although had been living in the UK permanently since 28 November 2020.

29. The appellant's wife in her witness statement dated 4 June 2021 repeats the circumstances in which she and the appellant met, confirms the details of their life in the UK, expresses shock when the appellant was arrested in 2018, claims that she became completely lost as she shared everything with him, that they struggled a lot without him, states that whilst the appellant was in prison she struggled with depression for which she was prescribed medication, describes the impact upon ES of her father's absence - especially when she discovered there was a possibility of deportation - and the fact the child ended up harming herself twice at school and had to be taken to hospital when she realised how long it would take for the appellant to come home.

30. There is reference to ES beginning counselling and therapy inside and outside the school. At that time ES was 15 years of age and is described as being angry and confused. In relation to the situation since the appellant's release, their son is much happier at school. The appellant started working part-time in May 2021 and drops the children off at school and is back in time to pick them up, and that financially his part-time jobs improved their situation which is also assisted by her medication.

31. In relation to deportation to India., the appellant's wife confirms they have visited India a few times on holidays with family but that she would not be able to move there with the children, which is not an issue in this appeal.

32. In relation to the appellant's absence his wife writes at [36]:

> 36. JKS is my world and I cannot cope without him. The children and I struggled so much without him in prison and I could not bear the idea of him not being in the UK with us. I, therefore, beg you to please let him stay with his family. Now that he has come home, our lives have changed and we are all so happy and we have a bright future together. We would like to request that the Home Office takes this into consideration: that our lives will be destroyed if my husband and the father of our children is deported. Our kids have just started to have a normal life. I too have just started to feel well in my health. The children's lives will be destroyed if JKS is deported. I cannot imagine how hard life will be without my husband and children's father.

33. A witness statement has also been provided by the appellant's mother dated 17 June 2021, confirming the impact of her son's time in prison, the impact on the children, the fact that everybody in the home is happier since the appellant's release, although the appellant's mother claimed that with the deportation order hanging over their heads they have and found it hard and she started taking medication for panic attacks and anxiety around January 2021 when she received her settlement in the UK, together with medication for diabetes and blood pressure.

34. In relation to the impact of deportation, the appellant's mother states her health will decline if her son was not here and it would increase her anxiety. She claims that without her son's presence "I feel that I could die". The appellant's mother claimed she could not go back to India because of her health issues because she claims they have nobody there anymore, but it is not suggested that she would need to do so. The appellant's mother confirmed ES has finished school and wanted to go to 6th form college and is much more positive, as is RS.

35. Witness statements from the appellant sisters have also been provided all dated 16 June 2021 confirming the effect of the appellant's time in prison, impact upon them if the appellant is deported and their own family compositions within the UK. The statements confirm the close relationship between the appellant and his sisters and the family as a whole.

36. Evidence from the school attended by ES in the form of a letter dated 11 June 2021 records concerns had been raised in December 2018 when ES was upset in class, was rude to a teacher, and is said to have stated "*I have so much bad stuff going out on in my head, I even want to self harm and kill myself*." It was established she was upset because of father was in prison and self harmed because she was upset at being angry with family and school staff and thought taking it out on herself will be better.

37. The letter states ES was referred to the Child and Adult Mental Health Services (CAMHS) who wrote a letter on 25 April 2019 signposting support services including drop in and confirming availability of school counselling. ES was referred to school counselling in April 2019 (beginning on 2 May 2019 and finishing on 26 September 2019) having had five sessions of term time only counselling which was ended as it was felt that ES was managing better.

38. The letter refers to a conversation between the Designated Safeguarding Lead at the school and a member of CAMHS on 27th of November 2019 who confirmed she had had six of eight sessions with ES at which various coping strategies had been devised and counselling through the school discussed. The letter concludes:

> 6. There are no current concerns regarding ES's well-being and school recently learnt that father had returned to the family home towards the end of last year. ES's performance had been affected during this time along with her attendance due to father's trial and visits to see her father as well as her emotional health of coping with the situation.

39. A letter dated 25 April 2019 addressed to the Safeguarding Officer of the school attended by ES attached a copy from CAMHS of the care plan devised with ES and her mother, acknowledged there was no immediate risk at that time regarding self-harm, that the last self-harm is reported to be in February 2019, and confirming encouragement to ES to access the school counselling service.

40. A number of other letters from the school have been provided reflecting the situation recorded in the correspondence above which have been considered. I have also seen a copy documents from Relate, the relationship counselling service.

41. More up-to-date evidence includes a character reference dated 21 March 2022, correspondence from the Black Country Healthcare referring to referrals to Healthy Minds by the appellant, dated 23 February 2022 and to the same organisation by his wife in a letter dated 7 March 2022. The letters confirm they will be contacted in due course to book an assessment appointment to enable an understanding about the current difficulties and to determine whether Wolverhampton Healthy Minds service will be more suitable to meet their needs.

42. There is also a letter written by the Head Teacher of the school attended by RS who is currently in year five. It states the appellant collects RS from school, and attends all events, that the child is a happy boy from stable family life and that the fear is that if the appellant is deported it could negatively impact upon his long-term health and development, and that the appellant plays a very important part in his son's life. Two letters stating this view dated 21 March 2022 and 18 July 2022 have been provided.

43. A letter from the National Probation Service dated 27 May 2021 confirmed the appellant has been subject of probation since November 2020, that there were no issues whilst the appellant was in prison, with complete compliance and no adjudications. The letter refers to the work undertaken with the appellant to identify areas of his life that need to be addressed to prevent further offending and to reintegrate into society, which will remain ongoing until the termination of his licence on 30 September 2023. In relation to the risk of harm in all sectors, including risk to the public, the letter records the same as low risk of reoffending both in a violent and non-violent capacity is also being below.

44. A further letter, not on headed paper, from Walsall Probation dated 22 March 2022 confirms that since release the appellant has reported as required and has engaged with the risk of reoffending and harm work as reflected in the earlier correspondence.

45. A more recent letter dated 19 July 2022, written by the appellant's current probation officer, reflects the appellant's engagement with probation, his employment as a delivery drivers, and since March 2022 further employment in a chip shop in the evening albeit that work is not regular. In relation to finances it is written:

> Currently, JKS is now working lawfully as a delivery driver for Hermes and as a chip shop employee. JKS also confirmed that his loan has now been paid off as a result of his involvement of the offence and currently has no outstanding debts. It is worth noting, however, that JKS has recently spoken about struggling financially and has taken on second employment to cover bills. He currently cannot apply for any benefits, including PIP, due to his Home Office case but has spoken about applying for this once the case is over and that this will help cover some of his finances. JKS's wife is currently on universal credit.
>
> JKS's financial management is linked to offending behaviour as his actions and inability to effectively problem solve at the time of the offence resulted in him accepting illegal means to pay off his debts. However, it should be taken into consideration the effort and determination JKS has displayed since his release in regard to obtaining and maintaining lawful employment, as well as plans for future lawful employment.

46. The probation officer confirms JKS is part of a close-knit community with his extended family he who sees on a regular basis as well as within the Sikh community. He attends the temple on Sunday and has become involved in community work and work with groups to teach children about the Sikh religion.

47. It is recorded in the correspondence "*during his initial OASys assessment interview, JKS stated that prior to his index offence, he had no contact with anyone who had a criminal background, and it was only following the debts from his late father that he was approached by pro-criminal individuals to clear his debts. JKS stated that the 'loan sharks' were unknown to him and he will not be having any future contact with them".* It appears the appellant repeated to the assessing officer the explanation for his offending which was rejected by the Sentencing Judge in the sentencing remarks as not being plausible based upon the history and frequency of the appellant's offending.

48. A more recent document, admitted on the day of the hearing, which is dated 20 July 2022, is the report from Social Work Reports Ltd written by a Mr Frank Nyoni, described as a social circumstances report in respect of the appellant which details the relationship, links, ties and dependency that his children have upon him and the result that the appellant's relocation from the UK will have upon his children. Despite its late submission Mr McVeety was able to read the same and did not seek an adjournment.

49. The conclusion of the report is that it is in the best interests of both ES and RS for the appellant to remain in the United Kingdom to enable the family life that exists to continue. That conclusion is not

controversial and was not disputed before me; but that is only one factor, albeit of primary importance, that requires consideration by me.

50. Any reference in the report to it not being in the children's best interest to have to go and live in India is arguably irrelevant for, as noted above, it was accepted that the children will not go to India and shall remain in the United Kingdom.

51. The report reflects the concerns that have been expressed above in relation to the impact on children of the appellant's imprisonment and also the concerns expressed by the family members, the appellant and his wife, of the impact on the children if the appellant is deported. It was the opinion of the author that a decision to remove the appellant from the UK will clearly disrupt the children's family life and potentially lead to a deterioration in their mental health and emotional well-being.

Discussion

52. At the hearing the appellant did his best to stress the strength of his desire not to be deported from the United Kingdom, the bond within the family, and the concerns that he has particularly for the children if he is deported.

53. Dealing with the issues that arose, the first point was whether the medical evidence provided in this appeal showed that there will be a breach of article 3 if the appellant was deported from the United Kingdom by reference to the guidance provided by the Supreme Court in AM (Zimbabwe) v. Secretary of State for the Home Department [2020] UKSC 17.

54. The Supreme Court confirmed that the test to be applied is that in Paposhvili in which it was found a person claiming an entitlement to leave on this basis had to show a 'real risk on account of the absence of appropriate treatment in the receiving country or the lack of access to such treatment, of being exposed to a serious, rapid and irreversible decline in his or her state of health resulting in intense suffering or to a significant reduction in life expectancy' – see Paposhvili v. Belgium (Application No. 41738/10) (13 December 2016) [2017] Imm. A.R. 867.

55. The term 'Significant', in the context of the new criterion identified by the Court in Paposhvili means 'substantial'. Were a reduction in life expectancy to be less than substantial, it would not attain the minimum level of severity which art.3 required – see AM (Zimbabwe).

56. The appellant speaks of an impact on his mental health for which he was prescribed medication. It was not made out that even if his mental health deteriorates further, if he is going to be deported, that adequate support will not be available to him within the United Kingdom, at the point of removal, during removal, or in India. Similarly, it was not made out the appellant's wife would not be able to continue to access mental health services within the United Kingdom as could the appellant's mother.

57. In relation to the impact on the children, particularly ES, the question is always is what is in their best interests. It was confirmed at the outset that ES is not receiving any psychiatric intervention and, indeed, there were no up-to-date medical reports for each of the children. ES, once she understood the value of talking to somebody clearly benefited from the counselling services provided by the school. Whilst I accept that learning that their father is to be deported is likely to result in a deterioration in the children's emotional wellbeing, the adults involved in their lives are now aware of the 'signposts 'and it is not made out that support services would not be available to assist in helping the children prior to, during, and after any deportation of the appellant has occurred.

58. ES is now a young woman and considerably more mature than she was at 15 year old. It is important that the appellant, who professes love for his children, does all he can to support and reassure the family if his appeal fails. The children may enter the equivalent of a period of grieving as if their father had died but there is no evidence the considerable support services that are available through the NHS would not be sufficient to meet the needs of the children at this time, or that the consequences of the deportation will be sufficient to engage article 3 or make deportation unduly harsh. I accept the type of contact between the appellant and the children will be substantially different from that they currently enjoy, which will be indirect contact unless the family visit the appellant in India, which has been factored into the required assessment.

59. Although the appellant takes RS to his school it was not made out the arrangements could not be made in his absence, as they had to be made for both of the children when he was in prison.

60. I do not find it has been made out on any basis that the medical issues are capable of demonstrating the high threshold identified in AM (Zimbabwe) has been met in this case.

61. In relation to the weight to be given to the public interest, the Supreme Court in HA (Iraq) confirmed in a case such as this that it is an elevated threshold as the appellant received as a prison sentence of over 5 years.

62. The index offence was not the appellant's only conviction. Mr McVeety highlighting an anomaly in the correspondence from the probation service in which the appellant appears to suggest he had no previous convictions. The PNC printout provided for the purposes of these proceedings show three convictions described as two theft and kindred offences between 2012 – 2016 and two miscellaneous offences between 2012 and 2014. There is reference to the use of one alias.

63. The first conviction on 18 December 2012 was before Wolverhampton Magistrates Court for (1) using a vehicle whilst uninsured to which the appellant pleaded guilty, resulting a surcharge, disqualification from driving, costs and a fine, and (2) taking a motor vehicle without consent to which the appellant pleaded guilty and for which he was fined £73.

64. On 11 June 2014 before the Black Country Magistrates the appellant was convicted of failing to provide a specimen for analysis (driving or attempting to drive) on 17 March 2014 to which he pleaded not guilty, but was clearly convicted, as he was fined, ordered to pay costs, disqualified from driving for the obligatory one-year period reduced if he completed the necessary course, and ordered to pay a victim surcharge.

65. On 7 December 2016 at Wolverhampton Crown Court appellant was convicted of guilty plea of conspiring to enter/arrangement to facilitate acquisition of attentional control of criminal property for which on 1 February 2018 he was sentenced to 5 years 8 months imprisonment.

66. I accept there has been an impact upon this family unit as a result of the appellant's criminality and that the appellant's deportation from the United Kingdom will result in harsh consequences for them as he is clearly an integrated member of this family unit, both in relation to the lives of the children and his wife.

67. The nature of the offence is clearly set out in the sentencing remarks. It is a serious offence as reflected in the length of the term of imprisonment, but also the Sentencing Judge's comments relating to the source and nature of the volumes of cash produced by criminal enterprises and the harm that can have on society and individuals in general.

68. It is not disputed before me that the appellant came to the United Kingdom when he did or that his exposure to society in India since has been through visits with his family.

69. It is not disputed before me that since the index offence there is no evidence the appellant has reoffended although it must be remembered that he remains bound by terms of his licence until next year, a breach of which may give rise to a requirement to serve the balance of his prison sentence in custody. I accept the evidence shows that during the period of his licence the appellant has been compliant, has worked hard to demonstrate he is rehabilitated, has sought employment, remained active within his family, and developed plans for the future.

70. The appellant is a national of India.

71. The appellant is supported by his wife and his desire to remain in the United Kingdom and their evidence regarding the length of marriage and family circumstances is not disputed before me. It is clearly evidence of a genuine and effective family life both between the appellant and his wife and within the family unit with the children.

72. It is clear that the marriage was entered into, and family life created prior to the time the appellant committed the index offence.

73. There are two children of the marriage whose dates of birth are provided above.

74. There is no need to consider the seriousness of the difficulties which the spouse is likely to encounter in the country to which the applicant is to be expelled, as this is a family splitting case with the appellant's wife remaining in the United Kingdom.

75. The best interests of the children are accepted as being a preservation of the status quo with the appellant being permitted to remain in the United Kingdom. There is no need to consider the seriousness of the difficulties which any children of the applicant are likely to encounter in the country to which the applicant is to be expelled as the children will remain in the UK.

76. It is accepted the evidence demonstrates the appellant has strong social and family ties to the UK.

77. There is clear evidence of a functioning family both within the appellant's own household and with extended family members. There is evidence of the interaction between those extended family members and the appellant's wife and children within the evidence and assistance given to the family whilst the appellant was in prison.

78. Whilst the witness statements from those family members speak of their distress if the appellant is deported what they do not say is that they are unwilling or unable to continue to assist the appellant's wife and children as best they can if he is deported. There is insufficient evidence to establish that the strong family bonds that exist within the UK would not continue even in the absence of the appellant. This is particularly the case as the appellant's mother lives with the appellant and his wife and their children in the UK and it was not made out that the appellant's sisters would be unwilling to provide such care as is necessary to ensure the appellant's mother's needs were met.

79. It is not made out the appellant's mother would not be able to continue to receive the medication and assistance she needs in the UK.

80. It is not made out that it would be disproportionate to deport the appellant when looking at the impact upon family members outside the appellant's immediate family.

81. In relation to the financial impact upon the family of the appellant's deportation, the evidence is that the family are currently dependent on state benefits, the appellant's wife being entitled to make a claim in her own right, with such funds being supplemented by the appellant's part-time employment. It is not made out before me that if the appellant is deported the benefits received by the family will not continue or that the family will face financial hardship and destitution to any greater degree than any family unit is experiencing at this time. Although the appellant's earned income may not be available to them he will also not be present as a user of services such as food etc.

82. In relation to the ties to the country of destination, the appellant speaks Punjabi as identified by the Social Worker at section 6 of his report in which he confirmed the children sometimes hear their parents speaking Punjabi.

83. It is not made out the appellant will be enough of an outsider in terms of understanding the language or the culture in India such as to make it impossible for him to reintegrate himself into the culture there. The appellant maintained contact with his mother as well as visiting when she lived in India, and she has lived with them since she came to the UK. The appellant also maintains ties with his local Temple and follows

his faith. Even if, as claimed, all the immediate family have come to the UK, it was not made out that the appellant does not have the ability to seek assistance within the Temple in the UK who will have ties with the Temple in the appellants previous home area in India. An area to which it has not been made out it was unreasonable to expect him to relocate and re-establish himself or elsewhere he so chooses to settle which has a Sikh Temple. It was not made out that if the appellant approaches a Temple within his new area of settlement he will be denied assistance as required to enable him to 'find his feet', the Sikh belief in service to others is a crucial component of the religion.

84. It is not made out the appellant would not be able to obtain employment from which he can earn sufficient to meet his needs in India. The appellant has had a number of jobs within the catering industry, taxi driving, as a courier, as well as obtaining experience generally, and it was not made out that he would not be able to obtain employment. I do not accept the appellant has established that he will face very significant obstacles to his integration into India and I find he therefore cannot satisfy Exception 1 - Section 117C(4) NIAA 2002.

85. In terms of the impact upon the children, the independent social worker's report is predominantly based upon the impact of the children having to go to live in India when this is not an issue in the appeal. The report does not go into specifics of why the impact of the appellant's deportation upon the children is sufficient to make his deportation disproportionate.

86. The proportionality test requires consideration of the evidence. The difficulty for the appellant is that he has not provided sufficient evidence to support his claim that the impact upon the family of his deportation would be unduly harsh.

87. I accept the appellant has a genuine and subsisting relationship with his wife who is a qualifying partner and a genuine and subsisting parental relationship with his children, who are qualifying children, but I do not accept the appellant had established that the impact of his deportation upon the family will be unduly harsh on the basis of the evidence he seeks to reply upon. The appellant has therefore not shown he is able to satisfy Exception 2 – Section117C(5) NIAA 2002.

88. In any event, the need is for the appellant to show circumstances that are very compelling and over and above those set out in the exceptions.

89. When assessing very compelling circumstances it is proper and appropriate to consider the nature of the offending which involves serious money laundering, the strong public interest in deportation, and a need for the appellant to show that the higher threshold has been crossed as recognised by the Supreme Court. Section 117C(2) of the NIAA 2002 states that "the more serious the offence committed by a foreign criminal, the greater is the public interest in deportation of the criminal."

90. I accept the appellant has attempted to rehabilitate himself and the assessment of the Probation Officer of a low risk of offending but that

does not mean no risk of offending and clearly there is a link between the appellant's offending and precarious financial situation. Although the appellant's efforts to not offend warrant recognition and some weight being attached to the same, I do not find that on its own it is determinative.

91. Submission made on the appellant's behalf that he is a respectful citizen cannot be considered in isolation of his offending history. I have noted the fact he has not offended since, but that on it own or cumulative with other factors is sufficient.

92. I accept the submission made on the appellant's behalf that the appellant's deportation will have an impact on the family but do not find sufficient evidence has been provided to establish that will be unduly harsh or that the higher threshold of over and above, as required to met, has been satisfied.

93. I note the submission of Miss Ashraf that the appellant does not know what will happen in the future but that is the same for all of us. What is certain is that the support networks that are available in the UK, social and medical, will continue.

94. Whilst Miss Ashraf submits that it would be best for the family if the appellant remains in the UK and the family life continues, as it has following his release, and that the public interest does not require the appellant's deportation, I disagree.

95. I find the appellant has failed to do adduce sufficient evidence to show he is able to satisfy the legal requirements to justify a finding that on the facts of this case the Secretary of State's obligation, containing statute, to deport the appellant from United Kingdom is outweighed.

96. My undue harshness assessment has focused upon the individual needs of the children and others involved as individual as well as holistically.

97. In considering the question of very compelling circumstances over and above, I note guidance containing case law that "Very" imports a very high threshold. "Compelling" means circumstances which have a powerful, irresistible and convincing effect – Secretary of State for the Home Department v Garzon [2018] EWCA Civ 1225

98. I have also taken into account the inability of the appellant to meet both s117C Exceptions in conjunction with other factors collectively – see NA (Pakistan) [2016] EWCA Civ 662 at [32].

99. The seriousness of the offence which is relevant to whether there are very compelling circumstances.

100. The personal history of the appellant which does not highlight factors that may provide greater understanding of his offending, such as a tragic history of childhood abuse which was considered relevant factor in CI (Nigeria) [2019] EWCA Civ 2027 at [119], as the driving factor between the appellant's offending was as he admitted in his earlier witness statement, greed.

101. I have considered the particularly strong public interest in this appeal.

102. I accept the appellant does not have a poor immigration history.

103. Although I note the appellant has attempted rehabilitation, and there is evidence of progress being made in that direction, I note that it has

been found that rehabilitation cannot in itself constitute a very compelling circumstance and the cases in which it could make a significant contribution are likely to be rare. In relation to the issue of rehabilitation the Supreme Court in HA (Iraq) found:
this

Rehabilitation

53. Whilst it was common ground that rehabilitation is a relevant factor in the proportionality assessment there was some disagreement between the parties as to the reason for that and the weight that it is capable of bearing in the context of the very compelling circumstances test.

54. That it is a relevant factor is borne out by the Strasbourg jurisprudence. The time elapsed since the offence was committed and the applicant's conduct during that period is one of the factors listed in Unuane, drawing on the ECtHR's earlier decision in Boultif. This is also supported by domestic authority - see, for example, Hesham Ali (per Lord Reed at para 38); NA (Pakistan) at para 112 and, more generally, Danso v Secretary of State for the Home Department [2015] EWCA Civ 596.

55. In RA the Upper Tribunal stated as follows in relation to the significance of rehabilitation:

> "As a more general point, the fact that an individual has not committed further offences, since release from prison, is highly unlikely to have a material bearing, given that everyone is expected not to commit crime. Rehabilitation will therefore normally do no more than show that the individual has returned to the place where society expects him (and everyone else) to be. There is, in other words, no material weight which ordinarily falls to be given to rehabilitation in the proportionality balance … Nevertheless, as so often in the field of human rights, one cannot categorically say that rehabilitation will never be capable of playing a significant role … Any judicial departure from the norm would, however, need to be fully reasoned." (para 33)

56. In Binbuga v Secretary of State for the Home Department [2019] EWCA Civ 551; [2019] Imm AR 1026 at para 84 I cited and agreed with that passage. The Secretary of State submitted that this approach was correct and should be endorsed as, whilst it acknowledges that rehabilitation can be relevant, in terms of weight it will generally be of little or no material assistance to someone seeking to overcome the high hurdle of the very compelling circumstances test.

57. In the RA appeal, the Court of Appeal, while agreeing that rehabilitation will rarely be of great weight, did not agree with the statement that "rehabilitation will … normally do no more than show that the individual has returned to the place where society expects him … to be". They considered that it did not properly reflect the reason why rehabilitation is in principle relevant, namely that it goes to reduce (one element in) the weight of the public interest in deportation which forms one side of the proportionality balance.

58. Given that the weight to be given to any relevant factor in the proportionality assessment will be a matter for the fact finding tribunal, no definitive statement can be made as to what amount of weight should or should not be given to any particular factor. It will necessarily depend on the facts and circumstances of the case. I do not, however, consider that there is any great difference between what was stated in Binbuga and by the Court of Appeal in this case. In a case where the only evidence of rehabilitation is the fact that no further offences have been committed then, in general, that is likely to be of little or no material weight in the proportionality balance. If, on the other

hand, there is evidence of positive rehabilitation which reduces the risk of further offending then that may have some weight as it bears on one element of the public interest in deportation, namely the protection of the public from further offending. Subject to that clarification, I would agree with Underhill LJ's summary of the position at para 141 of his judgment:

> "What those authorities seem to me to establish is that the fact that a potential deportee has shown positive evidence of rehabilitation, and thus of a reduced risk of re-offending, cannot be excluded from the overall proportionality exercise. The authorities say so, and it must be right in principle in view of the holistic nature of that exercise. Where a tribunal is able to make an assessment that the foreign criminal is unlikely to re-offend, that is a factor which can carry some weight in the balance when considering very compelling circumstances. The weight which it will bear will vary from case to case, but it will rarely be of great weight bearing in mind that, as Moore-Bick LJ says in Danso, the public interest in the deportation of criminals is not based only on the need to protect the public from further offending by the foreign criminal in question but also on wider policy considerations of deterrence and public concern. I would add that tribunals will properly be cautious about their ability to make findings on the risk of re-offending, and will usually be unable to do so with any confidence based on no more than the undertaking of prison courses or mere assertions of reform by the offender or the absence of subsequent offending for what will typically be a relatively short period."

59. The only caveat I would make is that the wider policy consideration of public concern may be open to question on the grounds that it is not relevant to the legitimate aim of the prevention of crime and disorder. In Hesham Ali it was the view of Lord Wilson that this was a relevant consideration (see paras 69 to 70) but that was not a view endorsed by the majority. That is not, however, an issue that falls for consideration on this appeal.

104. I do not find that the appellant has demonstrated the type of rehabilitation that can be described as a "very particular type" such as that identified in SM (Zimbabwe) v Secretary of State for the Home Department [2021] EWCA Civ 1566 or that it is the determinative factor.

105. I have taken note of the work the appellant states he has done within the community and through the Temple, which is illustrated in the evidence, but note that contributing to the community adds nothing to the existing (limited) weight to be attached to rehabilitation – see Jallow v Secretary of State for the Home Department [2021] EWCA Civ 788).

106. I find the Secretary of State has established that the appellant's deportation is proportionate and this decision compatible with domestic provisions, European law and the ECHR. The appellant has not made out on the evidence there are factors identified in the descriptions of Exceptions 1 and 2 of an especially compelling kind in support of an article 8 claim, going well beyond what would be necessary to make out a bare case of the kind described in Exceptions 1 and 2, and on that basis I dismiss the appeal.

Decision

107. I dismiss the appeal.

Anonymity.

108. 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. No-one shall publish or reveal any information, including the name or address of the appellant, likely to lead members of the public to identify the appellant. Failure to comply with this order could amount to a contempt of court.

Signed……
Upper Tribunal Judge Hanson

Dated: 3 August 2022