Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: PA/00841/2019

THE IMMIGRATION ACTS

Heard at Field House	**Decision & Reasons Promulgated**
On 31 May 2022	**On 30 June 2022**

Before

UPPER TRIBUNAL JUDGE BLUM

Between

RAYMOND MEHDI
(ANONYMITY DIRECTION NOT MADE)

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the appellant: Ms S Aziz, Counsel, instructed by UK Migration Lawyers Ltd
For the respondent: Mr S Kotas, Senior Home Office Presenting Officer

DECISION AND REASONS

1. Pursuant to s.12(2)(b)(ii) of the Tribunals, Courts and Enforcement Act 2007 the Upper Tribunal remakes the decision of Judge of the First-tier Tribunal I A Ross, promulgated on 16 March 2020, in which he dismissed the appellant's appeal against the respondent's decision dated 14 January 2019 refusing his human rights and protection claims. The respondent's decision was made following the making of a deportation order against the appellant on 9 January 2019.

2. In an 'error of law' decision made by Upper Tribunal Judge Bruce, promulgated on 19 October 2020, the First-tier Tribunal judge's decision was found to contain a legal error in his assessment under s.117C(4)(b) of the Nationality, Immigration and Asylum Act 2002 ("the 2002 Act") (and paragraph 399A(b) of the Immigration Rules) as to whether the appellant was socially and culturally integrated in the United Kingdom. Upper Tribunal Judge Bruce also found that the 'unduly harsh' assessment required by s.117C(5) of the 2002 Act (and paragraph 399(a) of the Immigration Rules) was contaminated by legal error.

3. Upper Tribunal Judge Bruce did not however find that the First-tier Tribunal's assessment that there were no very significant obstacles to the appellant's integration in Lebanon, (his country of nationality) was infected by any legal error. The First-tier Tribunal rejected the appellant's claim that he could not speak Arabic and that he knew little of Lebanon or its culture, particularly since he visited the country in 1997, 1999 and 2007. The First-tier Tribunal also noted that the appellant had 'internet contacts' in Lebanon. Applying the principles established in SSHD v Kamara [2016] EWCA Civ 813 (particularly at [14]) the First-tier Tribunal's conclusion that the requirement of s.117C(4)(c) was not made out was rationally open to it. It follows that, although the First-tier Tribunal erred in assessing s.117C(4)(b), Exception 1 could not be made out. A lawful assessment of s.117C(4)(b) is however relevant to the 'very compelling circumstances' assessment in s.117C(6). For this reason the parties were agreed that the judge's reasoning underpinning his finding in respect of s.117C(6) could not stand.

4. At [27] Upper Tribunal Judge Bruce stated:

> "I therefore set the decision of the First-tier Tribunal, insofar as it relates to the 'undue harshness' test, aside. I preserve the unchallenged finding that the Appellant enjoys a genuine and subsisting parental relationship with his children."

5. At [28] Upper Tribunal Judge Bruce indicated that a 'very compelling circumstances' assessment could rely on findings in respect of s.117C(4) as well as any positive findings that may be made concerning the appellant's relationships with his family in the UK, the fact that he has not been convicted of any offence since 2014, and his long lawful residence. The appellant was given leave to rely on those matters "… and any other features of his case which he submits to be relevant."

6. Several directions were subsequently issued relating to the admittance of fresh evidence and the mode of the hearing, and to await the outcome of proceedings in the Family Courts.

Background and retained findings of fact in the First-tier Tribunal decision

7. The appellant is a national of Lebanon, born on 1 August 1982. He arrived in the UK in October 1990 when he was 8 years old as a dependent of his mother having been granted indefinite leave to enter. He continued to hold valid leave until the signing of the Deportation Order in January 2019 which had the effect of invalidating his leave to remain. He therefore had valid leave for 29 of his 39 years. It is accepted that the appellant has been lawfully resident in the UK for most of his life, as required bys.117C(4)(a) of the 2002 Act.

8. The appellant is a foreign criminal as defined by section 32(1) of the United Kingdom Borders Act 2007. Between 9 October 1998 and 16 June 2014 he accrued 17 convictions for 30 offences, and received sentences which included, in June 2014, a sentence of 20 months imprisonment for breaching a non-molestation order (the context of this offence arising from domestic violence against his former partner who is also the mother of his children). Other notable convictions include 2 counts of robbery and 2 counts of attempted robbery (in respect of which he was sentenced to 6 months and 2 years detention on a Young Offenders Institution in December 2000 and January 2001), 3 offences relating to the possession of cannabis, failing to surrender to custody, breach of a conditional discharge, making fraudulent false representations, battery and harassment, breach of a suspended sentence (in respect of an harassment conviction in 2009 for which he was ultimately imprisoned for 14 weeks), breach of a restraining order, failure to comply with a community order and shoplifting and criminal damage offences.

9. In light of the appellant's offending the respondent served the appellant with a decision to make a deportation order on 26 September 2014. On 17 October 2014 the appellant had a protection and human rights claim. On 9 January 2019 the respondent made a deportation order against the appellant, and on 14 January 2019 the respondent refused the appellant's protection and human rights claims. The appellant appealed against the refusal of his protection and human rights claims but his appeal was dismissed, as detailed above, by Judge I A Ross on 22 April 2020. The First-tier Tribunal judge rejected the appellant's claim to hold a well-founded fear of persecution/serious harm in Lebanon. There has been no challenge to this finding.

10. On 17 May 2021 the appellant pleaded guilty to an offence of shoplifting committed on 22 September 2020. He was sentenced to a community requirement (curfew order) and had to pay costs of £135 and a victim surcharge of £95. The curfew requirement was subsequently varied on appeal to 12 weeks.

The hearing to remake the decision

11. The appellant relied on his original main bundle of documents prepared for the First-tier Tribunal hearing. This included, inter-alia, a witness statement dated 21 November 2019, some medical letters confirming that the appellant suffers from depression, documents relating to the appellant's education and employment in the UK, and several letters of support dating from 2019 from friends and members of the appellant's family in the UK. The bundle additionally contained letters of support from RaM and ReM, the appellant's two daughters.

12. The appellant provided two additional bundles of documents for his First-tier Tribunal appeal. One included bank statements that he claimed confirmed his financial support for his children, the second included a report from Nicola Austin, an Independent Social Worker ("ISW") dated 18 February 2020.

13. In addition to the bundles of evidence that were before the First-tier Tribunal, the appellant produced two supplementary bundles of evidence for the Upper Tribunal hearing to remake the decision. The first was received by the Upper Tribunal on 19 May 2021 and contained a further statement from the appellant dated 19 May 2021, a witness statement dated 19 May 2021 from Charlotte Victoria Dickens, who claimed to be the appellant's partner, and a copy of the birth certificate of Ms Dicken's son (whose biological father is not the appellant). The 2nd supplementary bundle was received by the Upper Tribunal on 17 May 2022 and contained letters from RaM and ReM, photographs of the appellant and his two daughters, and a copy of an application made by the appellant dated 6 March 2022 to make a Child Arrangement Order and to remove an extant Prohibitive Steps Order.

14. I recorded the oral evidence from the appellant, and the oral submissions made by Ms Aziz on behalf of the appellant (who adopted a skeleton argument prepared by a former representative) and by Mr S Kotas on behalf of the respondent. I have read and considered with care all the documents before me even if they are not specifically identified later in this decision. Both parties are aware of the evidence, both written and oral, that was before the Tribunal. This evidence is, in any event, a matter of record. I shall refer to this evidence only in so far as it is necessary for me to lawfully and justly determine the appellant's human rights appeal.

The legal framework

15. The appellant appeals under s.82 of the 2002 Act against the respondent's decision to refuse his human rights claim. He appeals on

the grounds that his removal from the UK would be unlawful under section 6 of the Human Rights Act 1998 (s.84(1)(c) of the 2002 Act).

16. The burden of proof rests on the appellant to prove that his removal would breach Article 8 and that he meets the requirements of the Exceptions in s.117C. Once the appellant has shown that a decision does interfere with Article 8 ECHR rights, it is for the respondent to demonstrate that the decision is proportionate. The standard of proof is the balance of probabilities. In determining the appeal I must have regard to the best interests of the appellant's children, pursuant to s.55 of the Borders, Citizenship and Immigration Act 2009.

17. Section 117A of the 2002 Act requires a Tribunal, when considering the public interest question, to have regard, in particular, to the factors listed in section 117B, and, in cases concerning the deportation of foreign criminals, to the considerations listed in section 117C.

18. Section 117B reads, so far as relevant:

> **117B Article 8: public interest considerations applicable in all cases**
>
> (1) The maintenance of effective immigration controls is in the public interest.
>
> (2) It is in the public interest, and in particular in the interests of the economic well-being of the United Kingdom, that persons who seek to enter or remain in the United Kingdom are able to speak English, because persons who can speak English—
>
> (a) are less of a burden on taxpayers, and
> (b) are better able to integrate into society.
>
> (3) It is in the public interest, and in particular in the interests of the economic well-being of the United Kingdom, that persons who seek to enter or remain in the United Kingdom are financially independent, because such persons—
>
> (a) are not a burden on taxpayers, and
> (b) are better able to integrate into society.
>
> (4) Little weight should be given to—
>
> (a) a private life, or
> (b) a relationship formed with a qualifying partner, that is established by a person at a time when the person is in the United Kingdom unlawfully.
>
> (5) Little weight should be given to a private life established by a person at a time when the person's immigration status is precarious.

(6) ...

19. Section 117C lists additional public interest 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.

20. Although s.117C(3) does not make any provision for medium offenders who fall outside Exceptions 1 and 2 the Court of Appeal in NA (Pakistan) v Secretary of State for the Home Department [2016] EWCA Civ 662 confirmed that Parliament intended medium offenders to have the same fall back protection as serious offenders. This approach has been endorsed in SC (Jamaica) v SSHD [2022] UKSC 15.

Findings and conclusions

Exception 2: 'Socially and culturally integrated'

21. In his oral submissions Mr Kotas, fairly and appropriately in my judgment, conceded that the appellant was socially and culturally integrated in the UK. I find that he is socially and culturally integrated. He has lived in this country since he was 8 years old and attended

school in this country. He has worked in this country and has obtained several certificates relating to the food hospitality industry (his oral evidence was that he was currently working in his father's takeaway restaurants). Although no family member attended the hearing to support the appellant there were a number of letters dating from 2019 from, amongst others, his parents, his older brother, his uncle, and his nieces and nephews attesting to their relationships with the appellant. I have additionally considered character reference from some of the appellant's friends. The appellant gave his oral evidence in the vernacular and linguistic idioms of someone who has lived in this country for a long time. Applying the guidance set out by Leggatt LJ in CI (Nigeria) v SSHD [2019] EWCA Civ 2027 I am satisfied that the appellant is socially and culturally integrated.

22. The appellant meets the requirements of s.117C(4)(a) and (b). He does not however meet the requirements of s.117C(4)(c) as Judge of the First-tier Tribunal Ross found that the appellant would not face 'very significant obstacles' to his integration in Lebanon. It was not argued at the remaking hearing that there was any new evidence to undermine this preserved finding by the First-tier Tribunal. The appellant cannot therefore meet the requirements of Exception 1 in s.117C(4). The fact that the appellant does meet the first two requirements is however relevant to my later assessment as to whether there are 'very compelling circumstances' over and above Exceptions 1 and 2 that render his deportation a disproportionate interference with Article 8 ECHR. Also of relevance in the same assessment is the particular degree of difficulty that the appellant is likely to face in Lebanon, even if it does not amount to 'very significant obstacles'.

Exception 2: "unduly harsh"

23. In KO (Nigeria) [2018] UKSC 53 Lord Carnwath considered the meaning of "unduly harsh" for the purposes of s.117C(5). At [23] he stated:

> "On the other hand, the expression 'unduly harsh' seems clearly intended to introduce a higher hurdle than that of 'reasonableness' under section 117B (6), taking account of the public interest in the deportation of foreign criminals. Further the word 'unduly' implies an element of comparison. It assumes that there is a 'due' level of 'harshness', that is a level which may be acceptable or justifiable in the relevant context. 'Unduly' implies something going beyond that level. The relevant context is that set by section 117C (1), that is the public interest in the deportation of foreign criminals. One is looking for a degree of harshness going beyond what would necessarily be involved for any child faced with the deportation of a parent. What it does not require in my view (and subject to the discussion of the cases in the next section) is a balancing of relative levels of severity of the parent's offence, other than is inherent in the distinction drawn by the section itself by reference to length of sentence. Nor (contrary to the view of

> the Court of Appeal in *IT (Jamaica) v Secretary of State for the Home Department* [2016] EWCA Civ 932, [2017] 1 WLR 240, paras 55, 64) can it be equated with a requirement to show 'very compelling reasons'. That would be in effect to replicate the additional test applied by section 117C (6) with respect to sentences of four years or more."

24. In HA (Iraq) v SSHD [2020] EWCA Civ 1176 Underhill LJ explained at [44]

> "…"unduly" is directed to the *degree* of harshness required: some level of harshness is to be regarded as "acceptable or justifiable" in the context of the public interest in the deportation of foreign criminals, and what "unduly" does is to provide that Exception 2 will only apply where the harshness goes beyond that level. Lord Carnwath's focus is not primarily on how to define the "acceptable" level of harshness. It is true that he refers to a degree of harshness "going beyond what would necessarily be involved for any child faced with the deportation of a parent", but that cannot be read entirely literally: it is hard to see how one would define the level of harshness that would "necessarily" be suffered by "any" child (indeed one can imagine unusual cases where the deportation of a parent would not be "harsh" for the child at all, even where there was a genuine and subsisting relationship). The underlying concept is clearly of an enhanced degree of harshness sufficient to outweigh the public interest in the deportation of foreign criminals in the medium offender category."

and later at [51] –[53]:

> "…The underlying question for the Tribunals is whether the harshness which the deportation will cause for the partner and/or child is of a sufficiently elevated degree to outweigh that public interest in the deportation of foreign criminals.
>
> ….
>
> 53… It is inherent in the nature of an exercise of the kind required by Section 117C (5) that Parliament intended that Tribunals should in each case make an informed evaluative assessment of whether the effect of the deportation of the parent or partner on their child or partner would be 'unduly harsh' in the context of the strong public interest in the deportation of foreign criminals; and further exposition of that phrase will never be of be of more than limited value."

25. Underhill LJ went on at [56] and [57] to say that the test does indeed require a foreign criminal to establish a degree of harshness going beyond a threshold "acceptable" level. It will go beyond what would necessarily be involved for any child faced with the deportation of a parent but that does not mean that there is an identifiable baseline impact which is acceptable. The effect on a child will depend on an almost infinitely variable range of circumstances. Decision-makers must carry out a fact-sensitive assessment evaluating the impact of a foreign criminal's deportation on his children and then deciding

whether the effect is not merely “harsh” but “unduly harsh”. By way of example only, the degree of harshness of the impact “may be affected by the child's age; by whether the parent lives with them…; by the degree of the child's emotional dependence on the parent; by the financial consequences of his deportation; by the availability of emotional and financial support from a remaining parent and other family members; by the practicability of maintaining a relationship with the deported parent; and of course by all the individual characteristics of the child”.

Whether the appellant’s deportation would have an unduly harsh impact on his partner

26. The appellant relies on his relationship with Ms Dickens. The respondent has not considered this relationship. Mr Kotas however indicated that the respondent did give her consent to this “new matter” being considered by the Tribunal pursuant to s.85 of the 2002 Act.

27. Ms Dickens produced a witness statement in which she claimed that she met the appellant whilst working at a restaurant in 2016, and that they have been in a relationship since the summer of 2019. She had a son born on 19 March 2019 and that “the father of the child has regular contact with him. I am unable to leave the UK as the father of my child has regular contact….” Ms Dickens confirmed that she was willing to provide financial support for the appellant and noted that he was an exceptional chef who would contribute to the community. She claimed that the appellant shared a good relationship with his daughters as well as her son.

28. Ms Dickens did not attend the hearing. The appellant claimed this was because she could not arrange childcare. There was no statement or letter from Ms Dickens confirming this explanation or providing details as to why she was unable to attend or to arrange childcare. I find that the absence of any such statement or letter, which would have been a simple matter to produce, undermines the appellant’s claim to be in a genuine and subsisting relationship with Ms Dickens. This finding is reinforced by inconsistent evidence given by the appellant regarding the age of Ms Dickens’s son. He claimed in oral evidence that her son was 2 ½ years old, whereas in fact her son is 3 years and 8 months old. Although the appellant subsequently corrected himself, if he was in a genuine relationship with Ms Dickens I would have expected him to know the age of her son. I am further reinforced in my finding that there is no genuine and subsisting relationship between Ms Dickens and the appellant by inconsistent evidence given by the appellant, in contrast to Ms Dicken’s statement, concerning the involvement of the father of Ms Dicken’s and son in his son’s life. It was the appellant’s evidence that the father of Ms Dickens son had no involvement in his son’s life. This was in stark contrast to the clear assertion to the

contrary in Ms Dickens statement. The only explanation proffered by the appellant was that Ms Dickens did not want the Tribunal to know about her private life. There was however no apparent reason why Ms Dickens would make a clear assertion in her statement that the biological father of her child had regular contact with him if this was not the case.

29. However, in the alternative, even if I am wrong and the appellant does have a genuine and subsisting relationship with Ms Dickens, I do not find that the appellant's deportation would have an unduly harsh impact on her. This was essentially accepted by Ms Aziz. The appellant and Ms Dickens do not live together (it was the appellant's evidence that he stays at her home for some days of the week), there is no evidence that he provides financial support for her, there is no evidence that she is in any way dependent, either physically or emotionally or psychologically or financially on the appellant. On no rational view could it be said that the impact on Ms Dickens, even if they are in a genuine relationship, could meet the unduly harsh threshold.

Whether the appellant's deportation would have an unduly harsh impact on his children

30. I am satisfied, for the reasons that follow, that it is in the best interests of both of the appellant's children that he remain in the UK. This is because I accept the appellant does have a genuine parental relationship with his daughters. The fact that it is in the best interests of the children for the appellant to remain in the UK is a primary consideration in evaluating the impact of the deportation on the two children both in terms of whether the impact on them would be unduly harsh, but also whether the deportation would, independently, be disproportionate under Article 8 ECHR (in the context of an assessment under s.117C(6)).

31. In evaluating whether the appellant's deportation would have an unduly harsh impact on his two daughters I have focused on the reality of the children's particular situation (MI (Pakistan) v SSHD [2021] EWCA Civ 1711), and I have not taken into account any matters of public interest in my assessment of undue harshness as Exception 2 (like Exception 1) is self-contained (KO (Nigeria), at [22]).

32. I have considered the letters written by the appellant's two daughters in 2019 (for the First-tier Tribunal hearing), the birthday cards they sent to the appellant, and the more recent letters written for the remaking hearing. It is apparent from these letters that the appellant has a genuine parental relationship with his daughters and that they are close to him, and he to them. The daughters speak about how upset they will be if the appellant is deported, that he gives them advice and teaches them right from wrong. In her recent letter the

appellant's oldest daughter claims that it would hurt her not to see him and spend time with him, and that the appellant "will be very supportive for [her] in [her] life." She refers to the existence of a Prohibited Steps Order (extant since 2011) that would prevent her from travelling alone to see him in Lebanon, and she does not consider that Lebanon is a safe environment for her or her sister. In her recent statement the appellant's youngest daughter explains that she does not want him to miss any more of her life and that she would feel really distressed if he were deported. She also makes reference to the advice that he gives to calm her down, and that he plays a big role in her life. I accept that the appellant has, since the expiry of the non-molestation order on 17 February 2022, had daily contact with his daughters. Evidence of daily WhatsApp communication between the daughters (who, at the date of the hearing, were holidaying in Turkey) and the appellant was provided to the Tribunal via the appellant's mobile phone.

33. I have also considered the letter of 2 March 2019 from Shirine Ladkani, the appellant's ex-partner, who stated that the appellant was a protective father, that he emotionally supported his daughters and that they would be disappointed if he were deported and they enjoyed spending time with him and talked to him on a daily basis. I have additionally considered the assertions contained in the letters from members of the appellant's family and his friends attesting to the strong relationship he has with his daughters. I further note the evidence of some financial support provided by the appellant to his daughters.

34. I have considered an Independent Social Worker ("ISW") report prepared by Nicola Austin which is dated 18 February 2020. The ISW carried out her assessment, which lasted for two hours, on 2 February 2020 at the appellant's family home. The ISW spoke to the appellant, his two daughters and his mother, and later spoke to his ex-partner via telephone. Appended to this report were "About My Life self-assessment forms" completed by the appellant's daughters. Also appended to the ISW report were letters from the appellant's mother and father describing what the appellant did with his daughters during the weekend. I have given weight to all this evidence, and I note in particular that it would be against the wishes of the appellant's daughters for him to be deported.

35. In her conclusions the ISW was of the opinion that the appellant's two daughters were "likely to be affected emotionally" if he were deported due to the bonds of attachment they had with their father, and this in turn was likely to have an effect on their identity, self-esteem and development and their chances later on in life. She noted that the two children had experienced upheaval and uncertainty in their early years and had to adjust to different and new ways of living.

36. The impact on the appellant's two daughters must however be considered in the full context of the contact he has had with them. As the appellant admitted in his oral evidence, he has been in and out of his daughters lives. He explained in oral evidence that his ex-partner had not allowed him to see his daughters for "a couple of months" in 2009, and that she stopped him from seeing his daughters again in 2010. Since the breakdown of his marriage in 2010 the appellant's daughters have lived with their mother, who has been their primary carer, while the appellant saw them at weekends and during holidays. No challenge was made by Ms Aziz to Mr Kotas' submission that there was no evidence that the appellant made any of the important decisions in his daughters' lives.

37. The London Borough of Hounslow documents, contained in the main appellant's bundle prepared for the First-tier Tribunal, indicate that there was an incident of domestic violence in June 2012 (not reported to the police) that resulted in no contact between the appellant and his daughters until December 2012, and that from Christmas 2012 until some time in 2013 the appellant again had no contact with his daughters due to ongoing issues of harassment in respect of the appellant's ex-partner.

38. The appellant had no physical contact with his daughters for the duration of his imprisonment and subsequent immigration detention (which he claimed in oral evidence was for a period of one year and two months) although he did have telephone contact with them over this time. He did not have any contact, directly or indirectly with his daughters, from January 2021 until the expiry of a non-molestation order granted in February 2021 (that included a prohibition on contact with the children) and which expired on 17 February 2022, a period of just over 1 year. I note that the ISW report was written before the imposition of the non-molestation order and that there has been no updating report.

39. The ISW report disclosed that, despite the appellant being physically absent from his daughters lives for periods of time, both children were doing well at school and that there were no concerns about the ability of their mother to ensure their safety and welfare. There was no reference to or indication within the ISW report that the appellant's daughters required any special support at school, or that any pastoral support would not available to them. According to the ISW their mother remained a constant figure and has been deemed to always put their safety and well-being first.

40. Nor was there any further independent evidence as to how the inability of the appellant's daughters to see him during the period of the most recent non-molestation order affected their behaviour or their emotional well-being. There was no further independent evidence that the lack of any contact from January 2021 until

February 2022 caused any behavioural difficulties, or issues about their sense of identity, or that there was any disruption to the children's education. In his oral evidence the appellant claimed that his youngest daughter was bullied at school because of his situation and that his ex-partner broke her daughter's mobile phone because she was trying to get in contact with the appellant, but there was no supportive evidence from the youngest daughter and no independent evidence that this occurred. Given that the appellant is the person with dishonesty convictions and given the concerns that I will later identify with elements of his evidence, I find I can attach little weight to this assertion.

41. Ms Aziz made the submission that the appellant's oldest daughter has high cholesterol, but, other than a reference to this in the ISW report, there is no other medical evidence concerning this daughter and nothing to indicate how this was relevant to the impact on the oldest daughter. There were no other health concerns in relation to either child.

42. Although there is evidence that the appellant has financially assisted his daughters, there was little probative evidence before me that if he were unable to continue to provide financial support this would affect his daughters to any significant degree. I take into account that the appellant has made an application for a Child Arrangements Order to formalise the access he currently enjoys with his daughters, where he sees them at weekends and during holidays. I accept that this cannot be replicated if he is deported to Lebanon, and that indirect contact is a poor substitute for a facer-to-face relationship. The deportation would not however result in the severance of all contact. It was not suggested by the appellant that he would be unable to retain contact by indirect means such as Internet video calls, social media communication, emails, text messages and phone calls.

43. Having cumulative regard to the written evidence from the appellant's daughters, to the written and oral evidence of the appellant, to the evidence of the appellant's ex-partner and to the ISW report (as well as the other letters from members of the appellant's family and his friends) I accept that the appellant's two daughters are "likely to be affected emotionally" if he is deported, and that his deportation is likely to have a detrimental effect on his daughters. The ISW does not however identify the degree of emotional harm to these particular children, or the degree of any detrimental effect occasioned by the appellant's deportation. I do not accept Ms Aziz's submission that the appellant's daughter have "an extremely high emotional dependence" on him. This is not borne out by the evidence I have analysed above. Applying the approach identified in HA (Iraq), and taking full account of the ages of the appellant's daughters, my assessment of the nature of their relationships with the appellant, the fact that the appellant does not

reside with his daughters, my assessment of the degree of emotional dependence the daughters have on the appellant, the evidence of financial support provided by the appellant to his daughters, the availability of emotional and financial support from the children's mother, and my finding that the appellant's deportation will not severe contact between him and his daughters, I am not persuaded that the impact of the appellant's deportation on his daughter would be 'unduly harsh'. I consequently find that Exception 2 is not made out.

"Very compelling circumstances"

44. If a foreign criminal cannot come with Exceptions 1 or 2 in s.117C of the 2002 Act, he can only succeed if he shows that there are "very compelling circumstances" over and above Exceptions 1 and 2 so as to outweigh the public interest in his deportation.

45. A foreign criminal is entitled to rely on matters falling within the scope of the circumstances described in Exceptions 1 and 2. He would, however, need to be able to point to features of his case of a kind mentioned in Exceptions 1 and 2, or features falling outside the circumstances described in those Exceptions, which make his claim based on Article 8 ECHR especially strong. In NA (Pakistan) v SSHD [2016] EWCA Civ 662 the Court of Appeal gave the following guidance (at [32]):

> "… 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 kind described in Exceptions 1 and 2 have such great force for Article 8 purposes that they do constitute very compelling circumstances whether taken by themselves or in conjunction with other factors relevant to Article 8 but not falling with the factors described in Exceptions 1 and 2."

46. The threshold for establishing 'very compelling circumstances' is a high one. In Hesham Ali v SSHD [2016] UKSC 60 the Supreme Court stated that in a case where a foreign criminal cannot come within Exceptions 1 or 2 "great weight should generally be given to the public interest in the deportation of such offenders, but … it can be outweighed, applying a proportionality test, by very compelling circumstances: in other words, by a very strong claim indeed". The Supreme Court in Hesham Ali at [38] and the Court of Appeal in HA (Iraq) at [32] both stressed the need to respect the "high level of

importance" which the legislature attaches to the deportation of foreign criminals.

47. When considering whether there are very compelling circumstances, I must assess the weight that attaches to the public interest. In Akinyemi v SSHD (No. 2) [2019] EWCA Civ 2098 the Court of Appeal stated at [45] that the public interest is "minimally fixed" as it "can never be other than in favour of deportation". Later the Court of Appeal went on to say at [50]:

> "In my judgment there can be no doubt, consistent with the Strasbourg jurisprudence, that the Supreme Court has clearly identified that the strength of the public interest will be affected by factors in the individual case, i.e. it is a flexible or moveable interest not a fixed interest. Lord Reed provides the example at [26] of a person who was born in this country as a relevant factor. Applying this approach to the weight to be given to the public interest in deportation on the facts of this case could lead to a lower weight being attached to the public interest."

48. In HA (Iraq) the Court of Appeal stated at [92] that "a potential deportee can rely, as part of the overall proportionality assessment, on the fact that his offence was at or near the bottom of the scale of seriousness" but cautioned at [93] that:

> "It cannot be the case that an appellant can rely on the fact that his offence attracted a sentence of, say, "only" twelve months as sufficient by itself to constitute very compelling circumstances for the purpose of section 117C (6): that would wholly subvert the statutory scheme. But if there were other compelling circumstances in his case the fact that his offence was comparatively less serious could form an element in his overall case that the strong public interest in deportation was outweighed."

49. The Strasbourg cases of particular relevance are well known. They include Boultif v Switzerland (2001) 33 EHRR 50, Üner v Netherlands (2007) 45 EHRR. 14 and Maslov v Austria [2009] INLR 47. The factors identified in [57] and [58] of Üner have been approved subsequently in both European and domestic case law and are uncontentious. These include, the nature and seriousness of the offence(s) committed by the foreign criminal, the length of the foreign criminal's stay in the country from which he is to be expelled, the time elapsed since the offence(s) was/were committed and the foreign criminal's conduct during that period, and the solidity of social, cultural and family ties with the host country and with the country of destination.

50. I bear in mind however that in Akpinar, R (on the application of) v The Upper Tribunal (Immigration and Asylum Chamber) [2014] EWCA Civ 937 the Court of Appeal concluded that Maslov did not establish a new rule of law to the effect that, unless the state can show that

there are ”very serious reasons” for deporting a settled migrant who has lawfully spent all or the major part of his childhood and youth in the UK, that his Article 8 rights will prevail.

51. Taking into account the various and competing considerations set out above, the basic task for any tribunal or court, as identified by Lord Reed JSC in Hesham Ali at [50] is as follows:

> “In summary, therefore, the tribunal carries out its task on the basis of the facts as it finds them to be on the evidence before it, and the law as established by statute and case law. Ultimately, it has to decide whether deportation is proportionate in the particular case before it, balancing the strength of the public interest in the deportation of the offender against the impact on private and family life. In doing so, it should give weight to Parliament’s and the Secretary of State’s assessments of the strength of the general public interest... and also consider all factors relevant to the specific case in question.”

Assessment of factors in favour of and against deportation

52. Under s.117C(1) of the 2002 Act the appellant is a foreign criminal and his deportation is in the public interest. I have summarised the appellant ‘s criminal history at [8] and [10] above. Of particular relevance are the two index offences for breaching a Non-Molestation Order for which the appellant received two concurrent sentences of 20 months imprisonment. According to an OASys report that was completed on 17 December 2015 the appellant attended his ex-partner’s address on 23 October 2013 and threatened her with violence, and between 21 December 2013 and 3 January 2014 he sent numerous texts to her which amounted to indirect contact and which was in breach of a previously imposed Non-Molestation Order. According to the PCN printout produced by the respondent the second of these offences was committed whilst the appellant was on bail. The seriousness of these offences is reflected in the length of the sentences, which were imposed after guilty pleas.

53. A reference to the Sentencing Judge’s comments, contained in a National Probation Service document prepared for the appellant sentencing on 16 June 2014, stated:

> “It is hard to think of more persistent unacceptable behaviour and breaches of Court Orders... It seems to me that Sentencing Guidelines do not specifically take account of the level of persistence-number of breaches and contempt you have shown towards Court Orders.... Because you pleaded guilty at the first opportunity I reduce the prison sentence.”

54. The OASys report stated that these offences occurred in the context of the appellant repeatedly harassing his ex-partner over several years and that the appellant had repeatedly disregarded restraining orders. The following is an extract from the OASys report, at 2.8:

> "In my view Mr Mehdi appears to obsess about the victim and what she is doing in her life. He tells me that their relationship began to break down when he alleged that his ex-partner had an affair with his brother in 2009. This I understand resulted in the battery offence for which he was convicted in 2009. He tells me that he was very upset by this and in my view continues to obsess about this "affair". I understand from Mr Mehdi that he did several things to inform family members of this "affair" both in this country and in Lebanon through various means including Facebook therefore trying to discredit her name….
>
> With regards to the current convictions Mr Mehdi denies that he went to her Road and continues to deny this at the point of release however I note that he pleaded guilty to both accounts. He admits that he sent messages to her mother and I believe that this was due to his ex-partner changing her number to stop his harassment however he then turned to harassing the mother. There would appear to be a pattern of Mr Mehdi using family members to facilitate the harassment. In my view Mr Mehdi uses harassment as he no longer feels in control of the relationship and this is his only tool to achieve contact with the victim and their children. Whilst he tells me that the relationship is over … Mr Mehdi continues to focus on the victim and what she is up to. He appears unable to control his thoughts and subsequent emotions regarding the victim and relationship leading to ongoing harassing behaviour. Hence I predict that he will continue to harass the victim on release."

55. I note that the appellant pleaded guilty in respect of these offences. In his oral evidence before me he stated that he "pleaded guilty, which was not true, but did so because solicitor told me to." This suggests that the appellant has still not accepted his past criminal behaviour.

56. There was other oral evidence in which the appellant attempted to minimise his criminality and shift the blame for his convictions to others. When it was suggested to him in cross examination that he was saying that he had been maliciously prosecuted and unfairly convicted, the appellant answered "yes". In respect of his most recent dishonesty conviction for shoplifting in 2020, he claims that although he pleaded guilty to "theft by finding" he later attempted to change this but was unable to do so. He maintains that he was not a thief, and stated that he had been classed as a criminal but he was not a criminal. This is contrary to the conviction for shoplifting and his 18 convictions in respect of 31 criminal offences. I note that his most recent offence was committed whilst the appellant was going through his legal challenge to the refusal of his human rights claim.

57. Mention is made in the OASys report of the appellant's poor emotional management and his inability at problem solving. It was also noted that the appellant lacked insight into the impact that his behaviour would have on his children. Reference was made to the appellant being referred to the Building Better Relationships programme while

subject to licence, but there was no independent evidence before me that the appellant did undertake this program.

58. According to the OASys report the appellant was assessed as being at high risk of reoffending on the OGRS3 scale, although at medium risk of reoffending on the OGP and OVP scales, and that if he did reoffend there was a medium risk of serious harm to children and a known adult, although the risk of harm to the public was low. Although the Non-Molestation Order that lapsed in February 2022 included a prohibition on the appellant contacting his children, there is no other evidence from social services that the appellant poses any current risk to his children, and I take into account the unchallenged evidence that the appellant now has direct contact with his children. I take into account that the OASys report was prepared in December 2015 and is therefore 6 ½ years old. I do not find that there is a medium risk that the appellant could cause very serious harm to his children. I consider any risk of harm to be low.

59. I additionally take into account the fact that the appellant did not commit any offence in the five year period after his release from custody, and that, between his convictions on 16 June 2014 and his most recent conviction on 17 May 2021, a period of almost 7 years elapsed. I take this into account in the appellant's favour. He did however commit a further criminal offence in September 2020. Having considered the above evidence 'in the round' I find that the appellant continues to be at medium risk of reoffending. It is difficult to gauge the risk of serious harm that may be caused if the appellant did reoffend. Despite his dishonesty offence in 2020 I accept that the appellant continues to pose a low risk of serious harm to the public should he reoffend. It is more difficult to determine the risk of serious harm to known adults should the appellant reoffend, particularly his ex-partner. Whilst I acknowledge that his ex-partner wrote a letter in support of his appeal before the First-tier Tribunal, she considered it necessary to obtain another Non-Molestation Order against himin February 2021. In his oral evidence the appellant explained that his ex-partner stopped him from seeing his children in January 2021 because he sent messages to one of his daughters concerning his ex-partner's current partner which the appellant admitted contained "inappropriate things." Given the history of the appellant's breach of court orders in respect of his ex-partner, and in light of the concerns expressed in the OASys report in respect of the appellant's relationship with his ex-partner, and in light of the appellant's oral evidence in which he continued to deny his criminality in respect of his ex-partner, I find that there continues to be a medium risk of serious harm to known adults (and in particular the appellant's ex-partner) should he reoffend.

60. I take into account the fact that the appellant does not meet either Exception 1 or Exception 2 in s.117C of the 2002 Act. In respect of

Exception 1, I remind myself that the First-tier Tribunal rejected the appellant's claim that he could not speak Arabic and that he knew little of Lebanon or its culture, and that he had 'internet contacts' in Lebanon. This last preserved finding, that the appellant does have contact in Lebanon, is reinforced by the reference in the OASys report to the appellant previously informing family members in Lebanon of his ex-partner's affair with his brother, and the fact that the appellant obtained a letter from his doctor in Lebanon. In respect of the appellant's proficiency in Arabic, I note that he stated "Arabic" when queried about his "preferred spoken language" when the OASys report was being prepared. Moreover, the appellant accepted in cross-examination that he spoke Arabic in Lebanon and that he had been bullied in school in the UK because he did not speak much English. Taken in conjunction with the conclusions of the First-tier Tribunal, I have no hesitation in finding that the appellant does speak Arabic. I do not consider it reasonably likely that he would have lost his proficiency in the language having spoken out for the first eight years of his life and in circumstances where the language was spoken in his family home after he arrived in this country.

61. I hold in the appellant's favour that he experienced traumatic events as a child in Lebanon, that he has lived in this country since he was eight years old, and that he has not been back to Lebanon since 2007. I accept that he will face challenges if deported to Lebanon. However, according to the OASys report he left school with qualifications in mathematics and technology and he has employment experience having worked in the family restaurant. The OASys report also mentioned that the appellant had done other jobs such as welding and carpentry. There is no reason why the appellant would be unable to draw upon the skills and seeking employment in Lebanon. Furthermore he has family members in this country including siblings and his parents, and there was little in the way of independent evidence that they would be unable or unwilling to financially support him, at least for an initial period, whilst he acclimatised to life in Lebanon.

62. I have taken into account the evidence before me relating to the appellant's mental health. I note a letter from his doctor in Lebanon which referred to the appellant having autism. There is however no other evidence that the appellant has been diagnosed with autism and he has not himself suggested that he has autism. I note that the appellant suffers from asthma, but there has been no suggestion in the medical evidence that his asthma was so serious that it would prevent his deportation to Lebanon. He claims to have dyslexia but there is no dyslexia diagnosis in the medical documentary evidence before me.

63. A letter from the Hurley clinic dated 10 July 2019 certified that he had been treated for depression since 2009. The appellant has had a

number of consultations with the Hurley Clinic for low mood and anxiety following the failure of his marriage in 2015, when he was started on Citalopram, which he took on and off since then, and that he complained of poor sleep, low mood, intrusive thoughts and thoughts of self-harm (letter from Hurley Clinic dated 20 November 2019), and that he was referred to Talking Therapies and to the Mental Health Team. I have also considered the letters from the appellant's former doctor in Lebanon and the appellant's father that he was traumatised by his experiences of the war in Lebanon. There is no however more recent up-to-date medical evidence, and there is no detailed medical report relating to the appellant from, for example, a Consultant Psychiatrist. The medical evidence does not comment on the impact on the appellant's mental health if he were deported to Lebanon, and it does not, on any rational view, suggest that his mental health problems prevent him from working or managing his own safety and welfare. No evidence was adduced that any medication or other treatment for the appellant's depression would not be available and accessible in Lebanon.

64. The appellant claimed that his father had broken his elbow and that the appellant's assistance was necessary in the takeaway restaurant. There was however no independent evidence either that the appellant's father had broken his elbow, or that the appellant's presence was necessary for the functioning of the takeaway restaurant. Such evidence could have been easy to produce.

65. I have other concerns in relation to the appellant's evidence. He initially explained, in evidence in chief, that his mother was not presence because his previous barrister said that his mother did not need to come as she had prepared a statement. He asserted that his mother wanted to come. Later the appellant claimed that, despite his attempts to persuade his mother to come to court, she did not want to attend the hearing, that she was not feeling well, and that she had said "what we will need will you need me for?" These two explanations are inconsistent. I am not satisfied that the appellant has adequately explained the absence of his mother at the remaking hearing. I note by way of observation that the appellant's mother did not attend his First-tier Tribunal hearing.

66. In determining whether there are 'very compelling circumstances' over and above Exception 1 and Exception 2 such that the appellant's deportation would constitute a disproportionate interference with Article 8 ECHR, I have considered cumulatively and holistically my assessment above, including the fact that the appellant has lawfully lived in this country for a very long time and from a young age, that he is culturally and socially integrated in this country, that he would encounter some difficulties in reintegrating into life in Lebanon, and that his deportation is not in the best interests of his children who would suffer emotionally if he were deported. Weighing against this I

have considered the appellant's relatively extensive criminal history, including the serious offences for breaching the Non-Molestation Order for which she was sentenced in 2014, and the public interest in Whilst I take into account the fact that no offences were committed for a period of five years following his release from custody in 2015, he has nevertheless continued to engage in criminality. I consider that he poses a medium threat of reoffending and that there is a medium risk of serious harm to his ex-partner. I additionally take into account the public interest in the need to deter foreign criminals from committing serious crimes by leading them to understand that, whatever the other circumstances, one consequence may be deportation, and the importance of public confidence in the determination of these issues. Having balanced these competing factors, and in light of my assessment carried out above, I find that there are no 'very compelling circumstances' over and above Exception 1 and Exception 2 such as to render the appellant's deportation a disproportionate interference with Article 8 ECHR. I consequently dismiss his human rights appeal.

Notice of Decision

The appellant's human rights appeal is dismissed

D.Blum 17 June 2022

Signed Date
Upper Tribunal Judge Blum