IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2022-004392

First-tier Tribunal No:
HU/00457/2022

THE IMMIGRATION ACTS

Decision & Reasons Issued:
On 2 August 2024

Before

UPPER TRIBUNAL JUDGE MANDALIA

Between

Secretary of State for the Home Department

Appellant

and

Kingsley Manyo
(NO ANONYMITY DIRECTION MADE)

Respondent

REPRESENTATION

For the Appellant: Ms A Imamovic, instructed by Tann Law Solicitors
For the Respondent: Mr P Lawson, Senior Home Office Presenting Officer

Heard at Birmingham Civil Justice Centre on 12 March 2024

DECISION AND REASONS

INTRODUCTION

1. The appellant in the appeal before me is the Secretary of State for the Home Department ("SSHD") and the respondent to this appeal is Mr Kingsley Manyo. However, for ease of reference, in the course of this decision I continue to adopt the parties' status as it was before the FtT. I refer to Mr Manyo as the appellant, and the Secretary of State as the respondent.

2. The appellant is a national of Italy. He claims to have arrived in the UK on 1 February 2016. On 25 April 2017 he was granted an EEA Registration Certificate. On 11 October 2018 he was convicted at Warwick Crown Court, of Robbery, Possession of a knife/blade/sharp pointed article in a public place, and possession of a controlled drug, Class B-Cannabis. On 7 July 2020 he was sentenced to a total of 3 years 10 months imprisonment.

3. On 27 January 2022, a decision was made to make a deportation order in respect of the appellant by virtue of section 32(5) of the UK Borders Act 2007. A decision was also made to refuse the appellant's human rights claim. The appellant's appeal against that decision was allowed on human rights grounds by First-tier Tribunal ("FtT") Judge Cartin for reasons set out in a decision promulgated on 16 June 2022.

4. The respondent was granted permission to appeal by Upper Tribunal Judge Perkins on 8 November 2022.

5. The respondent's appeal was allowed by a Presidential panel and for reasons set out in our 'error of law' decision issued on 14 September 2023, we set aside the decision of FtT Judge Cartin. We considered the important question of the regime that applies where the decision of the respondent concerns an EEA national, but the decision made by the respondent is made under the Immigration Act 1971 and UK Borders Act 2007. We determined:

    a. An EEA national who had not acquired the right of permanent residence and who was in prison on 31 December was not exercising Treaty Rights in accordance with Article 7 of the Directive, and therefore was not lawfully resident in the United Kingdom by virtue of the EEA Regulations 2016 immediately before IP completion day.

    b. It follows that where the appellant cannot benefit from the saving of the EEA Regulations 2016 during the grace period and whilst applications are finally determined as set out in the Citizens' Rights Regulations 2020, a deportation decision must be taken and assessed by reference to the domestic legal framework by reference to the Immigration Act 1971, UK Borders Act 2007 and the Immigration Rules.

6. As far as the appellant is concerned, we noted that having entered the UK in February 2016, and having been imprisoned in July 2020, the appellant could not have continuously exercised Treaty Rights for the necessary 5 years to have acquired permanent residence. He was not therefore lawfully resident in the UK immediately prior to 23.00 on 31 December 2020.

7. Having set aside the decision of the FtT we said that the decision will be remade in the Upper Tribunal. The appeal has been listed for hearing before me.

THE SENTENCING REMARKS

8. Before I turn to the evidence before me, it is helpful for me to set out the sentencing remarks made by Her Honour Judge De Bertodano to put in context the appellant's convictions and the sentence imposed. The appellant was one of five individuals that were sentenced. Her Honour Judge De Bertodano said:

> "… You are all here because of what happened on the evening of 17 December of 2017, so two and a half years ago now, when the five of you were in Spencer Park in Coventry… In Spencer Park, you came across a married couple who were walking together. It was after dark and the five of you, wearing hoods and scarves, attacked them without warning from behind. The gentleman… was repeatedly hit and punched. He ended up on the ground where he was being kicked and punched and was searched and very unpleasant threats were made to him. His wife, meanwhile, was pulled away into a dark area away from the footpath. Her mouth was covered with a hand, which she said made it difficult for her to breathe, and she was searched and asked for her phone and her bank card, all the while, of course, able to see the attack being carried out on her husband. You only stopped when a passerby appeared and you five left the scene, taking credit cards, a phone, a tablet, as well as some jewellery.
>
> [the man] suffered significant injuries as a result of the attack, and they are clear from the photographs that I have seen. He had bruising and grazes and swelling to his face. The swelling to his forehead was so heavy that there were fears of a brain injury and he had a scan for that when he went to hospital. It is of the utmost good fortune that his brain was injured *(sic)*; fortunate for him and also fortunate for you, as if he had suffered a brain injury, the consequences would be very much more severe for you in terms of sentence.
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> But nevertheless, it was clearly a terrifying attack for both of them. They both made statements about the effect on them and his wife speaks of long-term psychological effects, no longer feeling safe in the area and putting up their house for sale as a result..
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> …
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> You are all now 20 or 21; a significant amount of time has passed since this offence and it is not your fault that it has taken this length of time to get to this stage… You are all young men of good character… You all have good, stable families, supportive parents, some of whom have come with you to court today and who I am sure are horrified by the position their children have put themselves in. You all in other ways have a lot going for you. You are hard-working young men.
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> …
>
> Mr Manyo, in your case there are slightly different considerations because you did indicate a guilty plea at the magistrates' court. That reduces the sentence to 56 months, a full third credit. I take into account as well the long wait you have had for this and the restrictions in prison under Covid and reduce it by a further 25 per cent to 42 months. I do, however, also have to deal with you for carrying the knife. I do take the view that there is a risk of serious disorder if you carry a knife when you are taking part in a robbery, whatever your intentions. Of course, if you had produced the knife,

> it would have been a much, much more serious matter. But that does put it into a category where the starting point is 18 months, with a range of between one and two and a half years. However, taking into account your age, your early guilty plea, the long wait that you have had, totality and all other matters, I am going to impose a consecutive sentence of only four months' imprisonment for that offence. That is a total, therefore, of 46 months' imprisonment. No separate penalty for the cannabis."

THE EVIDENCE

9. At the outset of the hearing before me, Ms Imamovic confirmed the evidence relied upon by the appellant is set out in two bundles. The first is a bundle comprising of 94 pages that was before the FtT previously. The second is a bundle comprising of 86 pages filed and served by the appellant's representatives on 11 March 2024. I also have a copy of he respondent's bundle that was previously before the FtT. In reaching my decision I have had regard to all the evidence before me, whether or not it is referred to.

10. The appellant attended the hearing of the appeal with his parents and they gave evidence. The appellant adopted his witness statement dated 11 March 2024. In his oral evidence the appellant said that he left Ghana in 2004 when he was about six years old. He travelled from Ghana to Italy using a Ghanaian passport. He confirmed he lived with his family in Italy until 2016. He was granted an Italian passport in 2015. The appellant said he arrived in the UK with his father and sister in 2016. Since his arrival in the UK he has always lived with his parents, his elder brother and younger sister. He relies upon his parents and elder brother in particular, for financial and emotional support. The appellant was sentenced on 7 July 2020 and he confirms that following his release in July 2022, he returned to the family home. Since October 2022 he has been working for 'World of Books'. He said that he has no recollection of his family having travelled abroad since their arrival in the UK, although he could not be sure whether his parents had visited either Ghana or Italy during the period when he was incarcerated. The appellant said that he would be unable to live in Ghana because he has no connections to Ghana at all having left there at a young age. He said that he would be unable to live in Italy because he has no hope there, no one to turn to for support and finding employment would be difficult because of his conviction. He claims his family would be unable to support him financially because they already have a limited income.

11. The appellant's father adopted his undated witness statement that was before the FtT previously. He confirms the appellant is an Italian national and that the family moved from Ghana to Italy when the appellant was six years old. He states that when the appellant was convicted he was naïve and had been influenced by his peers. He states that the appellant would be unable to live in Ghana without support from his family. In his oral evidence before me he confirmed that the appellant continues to live with the family in the family home that comprises of him, his wife and their three children. He said that he would like the appellant to continue living with the family so that they can continue to support and guide him. He

confirmed that he last visited Ghana in 2020 and last visited Italy to attend a funeral of a church member in 2019. On that occasion he stayed in Italy for a period of about four days and stayed at a friend's house.

12. The appellant's mother adopted her undated witness statement that was before the FtT previously. She describes the appellant as a hard-working individual, and explains the upheaval caused by the appellant's offence and the prosecution that followed. She too confirms that the appellant had been influenced by his peers and is now driven to learn from his error. She confirms that it would be very difficult for her and her husband to support the appellant outside the United Kingdom because of the limited income they have. In her oral evidence before me she said that the appellant would effectively be homeless in Italy, and he would be without anywhere to live or any friends or family to support him. She said that she would not be able to support him financially because of her own ill-health and limited income.

13. In addition to the evidence of the appellant and his parents, I have been provided with letters in support of the appellant's appeal from Anthony Archer, the Business Inventory Manager at 'World of Books', Alyaanaa Ahmed, the Captain at Dunlop FC and David Watkins, a Coach at Dunlop FC. They each speak in glowing terms of the appellant's employment and activities.

14. I have a copy of the AOSys assessment completed on 22 August 2022. There is reference in the assessment to the index offence. At section 12.9 of the assessment there is reference to attitudes contributing to the risk of offending and harm. The assessment records that the appellant's actions within the index offence show pro-criminal attitudes, supported by his willingness to carry a knife. The assessment records this was the appellant's first custodial sentence and since his release he has engaged with the probation officer. The assessment records the appellant appears to have an excellent attitude towards rehabilitation and is showing a commitment to not offend in the future. Overall the assessment is that the appellant presents as a low risk of reoffending but a 'medium' risk of serious harm to the public in the community, if he does offend.

15. I have been provided with a copy of an email provided by Stewart Simpson, a Probation Service Officer who confirms the appellant has engaged fully throughout his period of probation. Mr Stewart confirms the appellant has shown high levels of victim awareness and remorse, and that there is no evidence to suggest that he has been in contact with pro-criminal peers. Mr Stewart describes the appellant as a young man who has matured and developed greatly since committing the index offence. He states: "Whilst his current OASys assessment records Mr Manyo being 'Medium ROSH', I fully expect so long as he continues in the same positive vein his next OASys will reflect his ROSH to be assessed as LOW.".

16. The submissions made on behalf of the parties are a matter of record. In summary, Mr Lawson adopted the respondent's decision. He submits the appellant holds an Italian passport and that he lived in Italy until he

was 17 years old. The appellant can be returned to Italy and he would be in the same position as that of any adult child who leaves the family home.

17. Ms Imamovic adopted the appellant's skeleton argument dated 20 May 2022. She concedes the appellant cannot rely upon Exceptions 1 and 2 set out in sections 117C(4) and (5) of the Nationality, Immigration and Asylum Act 2002 ("the 2002 Act"). On any view, the appellant has not been lawfully resident in the UK for most of his life for the purposes of Exception 1. He does not have a genuine and subsisting relationship with a qualifying partner or a subsisting parental relationship with a qualifying child for the purposes of Exception 2. As set out in paragraph [9] of the appellant's skeleton argument, the issue in the appeal is therefore whether there are very compelling circumstances over and above those described in Exceptions 1 and 2.

18. Ms Imamovic submits that although the appellant cannot benefit from Exception 1, there is evidence that the appellant is socially and culturally integrated in the United Kingdom and that there would be very significant obstacles to his integration into Italy and Ghana. She submits the appellant left Ghana as a child and having spent some years in Italy, he arrived in the UK as a young adult. He completed his education in the UK. He has worked and formed friendships and relationships. There is evidence before the Tribunal of the appellant's good character. He has always relied upon the support of his family and he has remained financially dependent on them throughout. The appellant has no ties to Ghana or Italy and the CPIN, Ghana: Background information including internal relocation, published September 2020 refers to extreme poverty, according to the country's own figures (7.1.6). There is evidence that record levels of economic growth experienced over the past decade have gone overwhelmingly to the wealthy and with no social assistance in place to support the unemployed, engagement in very low paying informal activity becomes a survival strategy (7.5). There is evidence of a housing deficit and many people end up living on the streets in public places and performing menial tasks (7.4).

19. Ms Imamovic submits the appellant has clearly established a private and family life in the United Kingdom and he has a support structure in the UK that he would not have in Ghana or Italy. The OASyS Assessment refers to the appellant as being very motivated to address his offending behaviour and records that the appellant has engaged well with his probation practitioner since release from custody. He acted on impulse joining his peers without considering the consequences of his actions. He was young and immature at the time, and, with the support of his family, he no longer has contact with pro-criminal peers. As Stewart Simpson reports, as long as the appellant continues to make progress it is likely that the risk of serious harm will be assessed as 'low'. Ms Imamovic submits that taking these matters cumulatively, the appellant has established that there are very compelling circumstances over and above those described in Exceptions 1 and 2 such that his deportation is disproportionate.

THE LEGAL FRAMEWORK

20. Section 32 of the UK Borders Act 2007 defines a foreign criminal, as a person not a British citizen who is convicted in the UK of an offence and, inter alia, sentenced to a period of imprisonment of at least 12 months. Section 32(4) of the 2007 Act sets outs out the clear proposition that deportation of a foreign criminal is conducive to the public good. That is a statement of public policy enacted by the legislature, which the courts and tribunals are obliged to respect. Section 32(5) of the 2007 Act requires the Secretary of State to make a deportation order in respect of every foreign criminal, subject to the exceptions set out in section 33. As far as is relevant that is:

> "(2) Exception 1 is where removal of the foreign criminal in pursuance of the deportation order would breach–
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> (a) a person's Convention rights, or
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> (b) the United Kingdom's obligations under the Refugee Convention.
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> …
>
> (7) The application of an exception—
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> (a) does not prevent the making of a deportation order;
>
> (b) results in it being assumed neither that deportation of the person concerned is conducive to the public good nor that it is not conducive to the public good.
>
> but section 32(4) applies despite the application of Exception 1 or 4.".

21. The appellant is a foreign criminal within the meaning of section 32(1). He is not a British citizen and he has been convicted of an offence in the UK and sentenced to a term of imprisonment of at least 12 months. The secretary of state was therefore obliged to make a deportation order under s.32(5). Here, the appellant relies upon the family and private life that he has established in the UK. The appellant claims his removal to Italy or Ghana would be in breach of Article 8 ECHR.

22. Part 5A of the Nationality, Immigration and Asylum Act 2002 informs the decision making. Section 117A in Part 5A provides that, when a court or tribunal is required to determine whether a decision made under the Immigration Acts breaches a person's right to respect for private and family life under Article 8, and, as a result, would be unlawful under section 6 of the HRA 1998, the court, in considering the public interest question, must (in particular) have regard to the considerations listed in section 117B and, additionally, in cases concerning the deportation of foreign criminals, to the considerations listed in section 117C. Section 117C specifically deals with the weight to be attached to the public interest in deporting foreign criminals and provides a structure for conducting the necessary balancing exercise, dependent in part, on the length of sentence imposed.

23. It is uncontroversial that the appellant is a foreign criminal, as defined in s117D(2) of the 2002 Act. By operation of s117C(3), in the case of a

foreign criminal who has not been sentence to a period of imprisonment of four years or more, the public interest requires their deportation unless Exceptions 1 or 2 apply. Applying s117C(6) of the 2002 Act, the public interest requires deportation unless there are very compelling circumstances, over and above those described in Exceptions 1 and 2.

24. In *HA (Iraq) v Secretary of State for the Home Department* [2022] UKSC 22, Lord Hamblen referred to the 'very compelling circumstances' test. He cited the judgement of Sales LJ in *Rhuppiah v Secretary of State for the Home Department* [2016] 1 W.L.R 4203, at [50], that the 'very compelling circumstances' 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".

25. In *Yalcin v Secretary of State for the Home Department* [2024] 1 WLR 1626, Lord Justice Underhill explained:

> "53. The starting-point is to identify the basic structure of the law in this area. At para. 47 of his judgment in *HA (Iraq)* Lord Hamblen approved the summary which I gave at para. 29 of my judgment in this Court:
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> > "(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 decision-maker 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'."
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> …
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> 57. *NA (Pakistan)* thus establishes that the effect of the over-and-above requirement is that, in a case where the "very compelling circumstances" on which a claimant relies under section 117C(6) include an Exception-specified circumstance ("an Exception-overlap case")[9] it is necessary that there be something substantially more than the minimum that would be necessary to qualify for the relevant Exception under subsection (4) or (5): as Jackson LJ puts it at para. 29, the article 8 case must be "especially strong". That higher threshold may be reached either because the circumstance in question is present to a degree which is "well beyond" what would be

> sufficient to establish a "bare case", or – as shown by the phrases which I have italicised in paras. 29 and 30 – because it is complemented by other relevant circumstances, or because of a combination of both. I will refer to those considerations, of whichever kind, as "something more". To take a concrete example, if the Exception-related circumstance is the impact of the claimant's deportation on a child (Exception 2) the something more will have to be either that the undue harshness would be of an elevated degree ("unduly unduly harsh"?) or that it was complemented by another factor or factors – perhaps very long residence in this country (even if Exception 1 is not satisfied) – to a sufficient extent to meet the higher threshold; or, as I have said, a combination of the two.
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> …
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> 62. … I agree that it would in principle conduce to transparent decision-making if the tribunal identified with precision in every case what the something more consisted of; but that will not always be straightforward. The proportionality assessment is generally multi-factorial and requires a holistic approach. A tribunal must of course in its reasons identify the factors to which it has given significant weight in reaching its overall conclusion. It is no doubt also desirable that it should indicate the relative importance of those factors, but there are limits to the extent to which that is practically possible: the factors in play are of their nature incommensurable, and calibrating their relative weights will often be an artificial exercise. It would in my view place an unrealistic burden on tribunals for them to have to decide, and specify, in every case whether the something more consists of the Exception-specific circumstance being present to an elevated degree, or of some other circumstance or circumstances, or a combination of the two. There may be cases where for some reason peculiar to the case this degree of specificity is necessary; but I do not believe that there is any universal rule. We should not make decision-making in this area more complicated than it regrettably already is."

DECISION

26. The appellant has appealed the respondent's decision to refuse his human rights claim under s.82 of the Nationality, Immigration and Asylum Act 2002 on the ground that the decision is unlawful under s.6 of the Human Rights Act 1998. The appellant must satisfy me on the balance of probabilities that Article 8 ECHR is engaged. If it is, the burden shifts to the respondent to establish that the decision is proportionate.

27. In reaching my decision I have had regard to all of the evidence before me whether it is referred to or not.

28. I begin by considering whether the appellant has established a family life within the UK. It is well-established in the authorities that there is no relevant family life for the purpose of Article 8 simply because there is a family relationship between two adults (such as a parent and child). There must be something more than normal emotional ties: see *Kugathas v Secretary of State for the Home Department* [2003] EWCA Civ 31. Having heard the evidence of the appellant and his parents, I am satisfied that although the appellant is now 25 years old, he continues to enjoy a family life with his parents. The appellant lived with his parents previously in

Ghana as a child. The family moved from Ghana to Italy in 2004, when the appellant was six years old. He came to the UK in February 2016 with his mother in 2016 when he was seventeen and he has remained living with his parents since. Although the appellant has worked, he has remained dependent on his parents to provide him with accommodation and I accept, emotional support. In any event, even if the appellant does not have a 'family life' with his parents, there can be no doubt that he has established a 'private life' during the time he has lived in the UK with his parents.

29. I accept therefore that the appellant has established a family and private life in the UK given his length of residence and the support that he receives from his parents. I accept that any interference with the appellant's Article 8 rights would be prescribed by law and in pursuit of a legitimate aim for the purposes of Article 8(2) ECHR. The only remaining issue for the Tribunal therefore is whether the deportation would be proportionate in all the circumstances.

30. Although the issue in this appeal is whether there are very compelling circumstances over above Exceptions 1 and 2, it is useful to consider the extent to which the appellant may have been exempt from deportation as a result of the private life exception set out at s117C(4) of the 2002 Act.

31. It is accepted by the appellant that on a purely arithmetical calculation, the appellant has not been lawfully resident in the UK for most of his life. The second criterion is that the appellant is socially and culturally integrated in the United Kingdom. To that end, Ms Imamovic refers to the decision of the Court of Appeal in *CI (Nigeria) v SSHD* [2019] EWCA Civ 2027, in which Leggatt LJ said:

> "58. Relevant social ties obviously include relationships with friends and relatives, as well as ties formed through employment or other paid or unpaid work or through participation in communal activities. However, a person's social identity is not defined solely by such particular relationships but is constituted at a deep level by familiarity with and participation in the shared customs, traditions, practices, beliefs, values, linguistic idioms and other local knowledge which situate a person in a society or social group and generate a sense of belonging. The importance of upbringing and education in the formation of a person's social identity is well recognised, and its importance in the context of cases involving the article 8 rights of persons facing expulsion because of criminal offending has been recognised by the European Court.
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> ...
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> 77. ...The judge should simply have asked whether – having regard to his upbringing, education, employment history, history of criminal offending and imprisonment, relationships with family and friends, lifestyle and any other relevant factors – CI was at the time of the hearing socially and culturally integrated in the UK. The judge should not, as he appears to have done, have treated CI's offending and imprisonment as having severed his social and cultural ties with the UK through its very nature, irrespective of its actual effects on CI's relationships and affiliations – and then required him to demonstrate that integrative links had since been "re-formed"."

32. The appellant arrived in the UK in 2016 aged seventeen and completed the latter part of his education at Coventry College. He speaks English. He has relationships with friends and relatives, and the letters provided in support of the appeal by Anthony Archer, Olyaanaa Ahmed and David Watkins regarding the appellant's employment and community activities speak to the ties formed by the appellant through employment and other unpaid work and activities. The letter from the Captain of Dunlop FC in particular, speaks of the appellant's dedication, and unwavering commitment to a local football club. There is some force to the claim made in the respondent's decision, and I acknowledge, that it was only eight months after being granted a Registration Certificate that the appellant went on to commit the index offence. However, despite his conviction, I accept the appellant has demonstrated that having regard to his upbringing, education, employment history, history of criminal offending and imprisonment, the appellant is socially and culturally integrated in the UK.

33. I turn then to whether there would be very significant obstacles to the appellant's integration into the country to which the appellant is proposed to be deported. In the respondent's decision, the respondent noted, at [36], that the appellant spent his youth and formative years in Italy. At paragraph [51], the respondent concluded the appellant would be able to maintain contact with his family upon his return to Italy. At paragraph [52] the respondent referred to the qualifications and skills the appellant has secured and said that the appellant has transferable skills that can be used to help him gain employment and help with his reintegration upon return to Italy. At paragraph [54], the respondent noted the appellant is an Italian national and that there are avenues for him to explore in Italy with regards to attaining employment and financial support. Finally, at paragraph [58] the respondent concluded there is no reason why the appellant cannot continue work towards rehabilitation in Italy.

34. As a national of Italy, the appellant will therefore be removed to Italy. The appellant has an Italian passport. The focus of the appellant's evidence is of the problems that he would face in Ghana, especially around unemployment, corruption, poverty, the high cost of living and lack of basic amenities. Although the appellant has not returned to Italy since his arrival in the UK, the evidence of his father was that he attended a funeral in 2019 of a church member in Italy. He stayed in Italy for about four days at a friend's house. Although the appellant may not have any familial ties to Italy, I do not accept that he and his family do not have any remaining connections to Italy. The appellant is a healthy young male who spent the formative years of his life in Italy, and I find that he will be enough of an insider in terms of how life in Italy is carried on, and that he has a capacity to participate in it, and be able to operate on a day-to-day basis in Italian society and build a variety of human relationships, as he has done in the short time he has been in the UK, so as to give substance to his private and family life.

35. In the short term, I am left in no doubt that the appellant would receive emotional and financial support from his parents in the same way that

they have supported him in the UK. I accept the appellant's parents have a limited income and are doing their best to help and support each of their children. In Italy, as the respondent noted, there are avenues for the appellant to explore with regards to attaining employment and financial support so that he will not be destitute.

36. Looking at all the evidence before me holistically, there will inevitably be a period of adjustment, but in my judgement the appellant will be able to re-adjust to life in Italy within a reasonable timescale. The appellant is involved in community activities and has acquired transferable skills. There will be every opportunity for that to continue in Italy. He has benefitted from financial support from his parents and I find that some support will continue to be provided to him in the short-term. The appellant's parents are clearly very fond of him, and I find, would provide emotional support to the appellant. Life in Italy will not be easy initially, but I do not accept he could not cope. Having considered the evidence as a whole, whilst I accept that the appellant will naturally encounter some hardship in returning to Italy, I do not consider that hardship to approach the level of severity required by s117C(4)(iii). The appellant therefore fails to meet the first exception to deportation.

37. As I have already set out, the appellant does not have a genuine and subsisting relationship with a qualifying partner or a subsisting parental relationship with a qualifying child for the purposes of Exception 2.

S117C(6) OF THE 2002 ACT

38. The appellant therefore fails to meet the statutory exceptions to deportation in every respect and he must show, if he is to avoid deportation on Article 8 ECHR grounds, that there are very compelling circumstances, over and above those in the exceptions to deportation, which suffice to outweigh the public interest in deportation: s117C(6) of the 2002 Act.

39. The test in s117C(6) is a proportionality test, balancing the rights of the appellant against the public interest in his deportation. The scales are nevertheless weighted heavily in favour of deportation. Although the appellant has not been sentenced to a period of imprisonment of four years or more, he does not fall beneath the statutory threshold for automatic deportation as a foreign criminal, and I consider that there is a cogent and strong public interest in his deportation.

40. Against the cogent public interest in deportation, the importance of which is underlined in primary legislation, I am prepared to accept the appellant has a strong family and private life in this country. I have no doubt the appellant enjoys a strong relationship with his parents and siblings, and that he enjoys the community activities that he is involved in.

41. In reaching my decision I have also had regard to the fact that the appellant expresses remorse and that there is no evidence before me of any further offending. As the Supreme Court highlighted in *HA*, the time that has elapsed since the index offence was committed and the appellant's conduct during that period is a relevant consideration. I accept

that very much to the appellant's credit, there is no evidence before me that the appellant has engaged in criminal activity and he has not been convicted of any further offending since his release. The appellant has demonstrated that he is able to abstain from offending and I attach due weight to that in my proportionality assessment. I have had regard to the email provided by Stewart Simpson dated 11 March 2024, and the fact that the appellant has engaged fully throughout the time that he has been subject to probation and has shown high levels of victim awareness. It is to the appellant's credit that he presents as a young man who has matured and developed since committing the index offence.

42. In reaching my decision I have had regard to all of the factors that are relied upon by Ms Imamovic to support her submission that the appeal should be allowed because there are very compelling circumstances over and above those described in Exceptions 1 and 2. I have carefully considered the written submissions set out in paragraphs [10] to [23] of the appellant's skeleton argument dated 20 May 2022. I have taken into account what I have said at paragraphs [31] to [37] above, regarding the extent to which the appellant fails to satisfy the criterion set out in the exceptions to deportation.

43. Even giving credit to the appellant for his conduct since his release, and the factors that weigh in his favour, I am not satisfied that the public interest is weakened to the point where it is capable of being outweighed by the appellant's Article 8 claim. In my final analysis, I find the appellant's protected rights, whether considered collectively with rights of others that he has formed associations with, or individually, are not in my judgement such as to outweigh the public interest in the appellant's removal having regard to the policy of the respondent as expressed in the immigration rules and the 2002 Act. I am satisfied that on the facts here, the decision to refuse the appellant's human rights claim is not disproportionate to the legitimate aim and I am obliged therefore, to dismiss his appeal on Article 8 grounds.

NOTICE OF DECISION

44. The appeal is dismissed.

V. Mandalia
Upper Tribunal Judge Mandalia

Judge of the Upper Tribunal
Immigration and Asylum Chamber

5 July 2024