Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: HU/12029/2019 (P)

THE IMMIGRATION ACTS

Decided under Rule 34 without a hearing	**Decision & Reasons Promulgated**
On 2 July 2020	**On 14 July 2020**

Before

UPPER TRIBUNAL JUDGE SMITH

Between

A L

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

DECISION AND REASONS

Anonymity

Rule 14: The Tribunal Procedure (Upper Tribunal) Rules 2008
An anonymity order was made by the First-tier Tribunal. As this is a case involving minor children, it is appropriate to continue that order. Unless and until a Tribunal or court directs otherwise, the Appellant is granted anonymity. No report of these proceedings shall directly or indirectly identify him or any member of his family. This direction applies, amongst others, to both parties. Failure to comply with this direction could lead to contempt of court proceedings.

BACKGROUND

1. The Appellant appeals against the decision of First-tier Tribunal Judge S P J Buchanan promulgated on 30 December 2019 ("the Decision"). The Judge dismissed the Appellant's appeal against the Respondent's decision dated 5 July 2019 refusing his human rights claim in the context of the making of a deportation order against him.

2. The Appellant is a national of Albania. The Appellant was convicted, on 8 August 2013, of attempting/assisting unlawful immigration into an EU member state. He was convicted in a different name, claiming to be a Greek national. There is however no dispute that it is the Appellant who was convicted nor that his real name is as now given and that he is Albanian and not Greek. The Appellant was sentenced to two years in prison reduced to one year on appeal. Accordingly, it is not disputed that he is a "foreign criminal" for the purposes of section 32(5) UK Borders Act 2007, the Immigration Rules and Section 117A-D Nationality, Immigration and Asylum Act 2002, in particular section 117C of that Act ("Section 117C").

3. The Appellant's human rights claim centres on his relationship with his partner [M], his stepson [K] (born in 2014) and his biological daughter [A] (born in 2016). [K] was aged nearly six years at the date of the Decision and [A] was aged three years. The Respondent accepts that the Appellant has a genuine and subsisting relationship with his partner and both children. It is not disputed that [M] is a naturalised British citizen (of Iranian origin) and that both children are British nationals. The crux of the dispute between the parties is whether it would be unduly harsh for the children to remain in the UK without the Appellant or to go with him and their mother to Albania.

4. The Judge accepted that it was in the best interests of both children that they remain in the UK with both parents. However, he did not accept that it would be unduly harsh for the children to either go with their parents to Albania or to remain with their mother in the UK. For those reasons, the Judge dismissed the appeal on human rights grounds. I will come to the detail of the reasoning below.

5. The Appellant appealed the Decision out of time, but time was extended by the Judge granting permission to appeal and I need say no more about that. The grounds of appeal focus on the findings as to the children. In relation to whether it would be unduly harsh for the children to leave the UK, it is submitted that the Judge has failed to consider this question in conjunction with the case-law relating to best interests. It is said that the Judge has failed to consider their British nationality when addressing this question. As to whether they could remain in the UK without the Appellant it is said that the Judge's findings (at [48] to [54] of the Decision) do not include findings about the evidence of [M] as to the impact of the Appellant's deportation on her and has also failed to give weight or

adequate weight to the report of the independent social worker, Ms Weeks. I point out at this stage that the Appellant can only succeed in establishing a material error of law if both grounds are made out. If the Judge was entitled to conclude that it would not be unduly harsh either for the children to go to Albania or to remain in the UK without the Appellant, then the Appellant's appeal would fail in any event and any error as to one or other conclusion would be immaterial.

6. Permission to appeal was granted by First-tier Tribunal Judge J M Holmes on 13 March 2020 in the following terms so far as relevant:

> "… 3. Although the grounds suggest that the Respondent informed the Appellant on 11 December 2013 that deportation would not be pursued as a result of his conviction of 27.6.13, the grounds do not suggest the Judge fell into error of law in failing to take this into account in his assessment of proportionality. The Appellant may wish to consider amending the grounds in this respect.
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> 4. The grounds, as drafted, argue that the Judge fell into error in his approach to the weight to be given to the circumstances of the Appellant's partner and children and his relationships with them, pursuant to s117C(5). It was not in issue that these were genuine and subsisting relationships with 'qualifying' individuals, and it is arguable that the Judge fell into error in his approach to whether deportation would be 'unduly harsh' on either or both of them. It is in particular arguable that no specific consideration was given to ability of the British citizenship to exercise [sic] the privileges of citizenship in the event of a family move to Albania, and that the Judge erred in his approach to the unchallenged evidence of the independent social worker who advised that deportation would have a detrimental emotional impact on the children and a significant emotional and physical impact on his partner, and thus in his approach to the assessment of the 'best interests' of the children."

7. Based on the merits, time was extended if the application was in fact out of time. I note that there has been no application to amend grounds pursuant to what is said at [3] of the decision granting permission to appeal and nor is this mentioned in the further submissions to which I refer below. The point is alluded to in the initial grounds; it is said that the Respondent informed the Appellant on 11 December 2013 that deportation would not be pursued. However, in the Appellant's original notice of appeal the Respondent's decision, the following is said:

> "6. As a result of this reduced sentence, and **on the basis of him using a false Greek identity**, the respondent decided not to pursue deportation **as the appellant did not meet the criteria for deportation under the 2006 regulations**…"
>
> [my emphasis]

The Appellant was convicted as an EEA national. The original notice of deportation in 2013 was issued in that identity. It was not until September 2018 when the Appellant applied for leave to remain based on his family relationships that he admitted to his real identity and nationality. I

assume therefore that it is accepted that, factually and legally, the position has changed since the Respondent indicated that she would not deport the Appellant and therefore the potential challenge to the Decision identified by Judge Holmes is not made out on the facts.

8. By a Note and Directions dated 23 April 2020 and sent on 6 May 2020, having reviewed the file, I reached the provisional view that it would be appropriate to determine without a hearing (pursuant to Rule 34 of the Tribunal Procedure (Upper Tribunal) Rules 2008 – "the Procedure Rules") the following questions:

   (a) whether the making of the First-tier Tribunal's decision involved the making of an error of law and, if so

   (b) whether that decision should be set aside.

   Directions were given for the parties to make submissions in writing on the appropriateness of that course and further submissions in relation to the error of law. The reasons for the Note and Directions was the "present need to take precautions against the spread of Covid-19, and the overriding objective expressed in the Procedure Rules".

9. Written submissions including a copy of the core documents were filed by the Appellant on 20 May 2020. On 29 May 2020, the Respondent filed and served submissions in response. Although those are two days out of time, I extend time as the delay is minimal. No submissions were filed by the Appellant in response to what is said by the Respondent.

10. The Appellant's submissions refer back to and elaborate on the original grounds. The Appellant expressly accepts at [18] of those submissions that "[s]ubject to the respondent's reply, the appellant does not see there is a need for an oral hearing to determine the error of law". As I have already noted, the Appellant has not changed that stance in reply to the Respondent's submissions. Although it is said at [20] that "the appellant has been denied to [sic] a fair hearing", it is my understanding that this unfairness relates to what is said in the body of the submissions about the asserted failure by the Judge to consider and take into account relevant evidence. As such, this submission relates to the forum for the re-making of the decision and not the error of law stage. The Respondent seeks to uphold the Decision. She says at [11] of her submissions that "this error of law matter should be determined on the papers without an oral hearing".

11. The Tribunal has the power to make a decision without a hearing under rule 34 of the Procedure Rules. Rule 34(2) requires me to have regard to the views of the parties. In this case, neither party objects to this course. The exercise of my discretion is subject to the overriding objective in rule 2 to enable the Tribunal to deal with cases fairly and justly. The Appellant has had two opportunities to set out his challenge to the Decision in writing (and a third to reply to the Respondent's submissions which he has not taken). Although the grounds are quite concise, the issues raised are

narrow and depend on what is said in the evidence and about that evidence in the Decision. My attention is drawn in the grounds and the further submissions to those parts of the evidence and the Decision which are particularly relevant, and I have read those carefully when reaching my decision. It is difficult to see what more could be said orally in support of the grounds if a hearing were to be convened. Although it is possible for the Tribunal to hold remote hearings and even limited face-to-face hearings at the present time, its capacity to do so is reduced from what would normally be available. The convening of an oral hearing is accordingly likely to lead to some delay in the determination of this appeal. I have therefore reached the view that it is appropriate to deal with the error of law issue on the papers and without an oral hearing.

12. At this stage, the issue for me is whether the Decision contains an error of law. If I conclude it does, I need to consider whether I should set aside the Decision based on that error. If I decide to do so, I would either re-make the decision or remit the appeal to the First-tier Tribunal to do so.

DISCUSSION AND CONCLUSIONS

13. The Appellant's arguments may be summarised as follows:

Ground One

- The Judge has failed to consider cases such as ZH (Tanzania) and Zoumbas when looking at the children's best interests;
- The Judge's finding that the children would suffer upheaval in their education "could, of itself or in combination with other factors, reach the threshold of unduly harsh". The Judge is said to have excluded this because it was not raised in the skeleton argument or submissions, but the Judge has a duty to safeguard the best interests of the children;
- The absence of evidence about potential places where the children could live in Albania is not an answer to the impact of taking British children out of their country of nationality. The children's "current circumstances must be the starting point into any enquiry into their best interests";
- Reliance on [M] having not learned Albanian as a ground for concluding that taking British children out of the UK would not be unduly harsh is "manifestly perverse";
- "Overall, the judgement [sic] is demonstrably obtuse in its approach to the best interests of qualifying British children, in respect of whether it would be unduly harsh for them to be taken out of the UK. In this regard, the judge has failed to conduct this legal test with the best interests of the children as a primary consideration and has thereby erred".

Ground Two

- Although the Judge has made findings at [48] to [54] of the Decision regarding the impact of removal of the Appellant on [M] and her ability to parent the children, the Judge has not made findings about [M]'s own evidence and the credibility of it and has failed to give reasons why the independent social worker's report on this issue was given little or no weight.

Both Grounds

- The Judge has drawn adverse inferences based on what is missing from the independent social worker's report rather than giving weight to what is contained in the report;
- The Judge has failed to adopt a "sensitive fact-finding approach", has failed to consider [M]'s own evidence and has failed to provide reasons why the evidence of the independent social worker's report was not taken into consideration.

14. The Respondent has responded to both grounds as one. Her arguments can be summarised as follows:
    - The Judge took the case at its highest based primarily on the independent social worker's report at [34] of the Decision onwards;
    - At [54] of the Decision, the Judge concluded that [M]'s evidence as to what would occur was difficult to assess due to "lack of clarity on likelihood in the independent assessments";
    - The burden of establishing that deportation was unduly harsh is on the Appellant. He failed to demonstrate this taking into account [M]'s evidence which did not suggest any previous mental health problems or that she would be unable to work ([48] and [58] of the Decision);
    - The Judge summarised the reasons why deportation was said to be unduly harsh on both bases at [43] and [46] of the Decision. He gave sufficient reasons for his conclusions on those elements.
    - The Judge had regard to "the particularly demanding nature of these thresholds" which required the Appellant to demonstrate consequences "beyond the normal impact of deportation on those qualifying parties". That approach is in accordance with Court of Appeal case-law.

15. The Judge summarised the issues at [23] of the Decision. The focus of the Appellant's grounds is on issues (ii) and (iii) as there set out. I need say no more about the remaining issues. As is clear from what is there said, the Judge recognised the need to consider the children's best interests before moving on to consider the issue of undue harshness.

16. The Judge set out the independent social worker's conclusion that the best interests of the children were to remain in the UK with both parents. Although the Judge noted at [36] the absence of information in the social worker's report about the family's circumstances if they were to go to Albania at [36] of the Decision nothing turns on that because at [37] of the

Decision, the Judge reached the following conclusion about the children's best interests:

> "Having regard to the whole evidence in appeal, I am persuaded that for each child it would be in his or her best interests if the appellant remained in the UK. I reach that conclusion because (i) there is no suggestion that the appellant has not been a positive influence on the lives of the two children; (ii) the independent social worker, Julie Meek's conclusion is consistent with the remaining evidence that the children are given parental support by the appellant; and (iii) the respondent's conclusion at RFR31 is that deportation would have a harsh and emotional impact on the children. The respondent's contention about the consequences on the children, is plainly based on an assessment that there is a strength of relationship and bond between the appellant and children which forms the basis of such an assessment. Nothing presented in evidence, including the appellant's criminality, gave me cause to doubt the depth of relationships and bonds."

17. As is self-evident from what is there said, the Judge therefore reached the conclusion that it would be in the best interests of the children to remain in the UK with both parents. He reached that conclusion before moving on to consider whether it would be unduly harsh for the children to accompany their parents to Albania or remain with their mother in the UK. The best interests of the children were therefore given the appropriate primacy. The real complaint of the author of the grounds is that those interests were not given sufficient weight when reaching the conclusions as to undue harshness.

18. Attention is drawn in the grounds to case-law about the primacy of the best interests of children. However, both cases on which reliance is placed are cases involving removal and not deportation of foreign criminals. The weight to be given to best interests has to be viewed in the context of the public interest considerations which apply. As the Respondent points out, the test whether deportation outweighs the public interest in terms of its consequences on children is a high and demanding one. That is consistent with the relevant case-law as cited by the Respondent, in particular Secretary of State for the Home Department v KF (Nigeria) [2019] EWCA Civ 2051. Having determined that the best interests of the children lay in remaining with both parents in the UK, the issue for the Judge was whether, nonetheless, the consequences of deportation for the children were of "a degree of harshness going beyond what would necessarily be involved for any child faced with the deportation of a parent".

19. For those reasons, there is no error of law in the Judge's consideration of the children's best interests. That issue was determined in the Appellant's favour.

20. Moving on then to the issue of undue harshness, the Judge rightly identified, as I have already indicated, that "the benefit of the exception to the public interest requirement (that there be deportation) can only be claimed as regards qualifying children, where both sets of circumstances

as specified in paragraph 399(a)(i) (a) **and** (b) would give rise to undue harshness" ([42]). In other words, the Appellant has to show both that it would be unduly harsh for the children to relocate to Albania with him and [M] and that it would be unduly harsh for them to remain in the UK with [M] and without him. There is no error of law in that self-direction.

21. Moving on then to whether it would be unduly harsh for the children to relocate to Albania, the Judge summarised the reasons why it was said that it would at [43] of the Decision. In short summary, those were that the Appellant did not know where he would live in Albania, the two children are respectively at school and nursery and doing well, [M] does not speak Albanian, [M] and both children are British citizens and [M] says that she does not intend to relocate with the children to Albania. As to that latter reason, the Judge had already discounted that because, as he pointed out at [42], the issue is not whether the family would in fact go to Albania but whether it would be unduly harsh to expect them to do so. I note that the reasons preventing deportation as recorded at [43] of the Decision are taken directly from the Appellant's skeleton argument before Judge Buchanan.

22. The Judge dealt with each of those reasons at [44] of the Decision as follows:

> "In my judgement, the factors claimed by the appellant to constitute unduly harsh consequences for the children living in Albania are not truly unduly harsh. Factors (2), (3), (5) and (6) having no bearing on whether living in Albania and attending school or nursery there would give rise to, or materially contribute towards unduly harsh consequences for either child. Although there might be an argument that a move from present schooling arrangements could be disruptive for either child or both of them, that argument is not advanced in the skeleton argument and not advanced at appeal. As regards factor (1) there is no evidence of any attempt to investigate possible places for the family to live if the children went to live in Albania; and I am far from persuaded, without more, that ignorance about where the family might live could give rise to, or materially contribute towards, unduly harsh consequences for either child. As regards factor (4), there is no evidence of any attempt by [M] to learn the language; but no evidence of the mother suffering any personal difficulty in picking up foreign languages in general either. In these circumstances, I am far from persuaded that, without more, the fact that mother does not speak Albanian might give rise to, or materially contribute towards, unduly harsh consequences for either child."

23. As I have already pointed out, the burden of establishing the interference with human rights lies with an appellant. I therefore start with the evidence produced. I do not understand it to be disputed that the Appellant's skeleton argument does not deal with the disruption to the children's education other than to note that they are doing well at school. Neither do I understand it to be disputed that neither of the social worker's reports deal with this issue. That appears to be because both have assumed that the family would not accompany the Appellant. However,

the fact remains that evidence and argument was not addressed to this issue.

24. Notwithstanding that lack of evidence, the Judge did consider what it might mean for the children to relocate to Albania. As he points out, he was not provided with evidence about where the family might go and, therefore he was not in a position to deal in detail with what the position would be as to education opportunities. I note of course that both children are very young and have only just begun their education which is relevant. It is not suggested that either child has special educational needs which need to be taken into account. Whilst I accept that disruption to education could render deportation unduly harsh for a child, the position depends on the evidence. Here, that evidence was absent.

25. The author of the grounds appears to have misunderstood what is said about [M]'s inability to speak Albanian. The Judge accepted the evidence that she does not speak Albanian but pointed out that there was no evidence that she could not learn it. That comes in particular from the fact that [M]'s initial statement shows that she is Iranian by birth and came to the UK in 2011, then aged nearly 30 years. She now speaks English.

26. I turn finally to the point which appears to have persuaded Judge Holmes to grant permission on this aspect namely the effect of the children being British and losing their right to an education in the UK and other rights as British citizens. If this were a removals case, I would certainly agree with that view. However, the Immigration Rules, Section 117C, the Respondent's policy and, most importantly, binding case-law makes it quite clear that the fact of a child being British is no barrier to deportation of a foreign criminal parent. As the case-law cited by the Respondent makes clear, what is required to be shown is that the consequences of deportation go beyond what would be the norm for a child impacted by the deportation of a parent. In the case of a British citizen child, the removal of that child from the education system of the UK is a natural consequence unless it is otherwise unduly harsh for them to relocate to the country of that parent.

27. For those reasons, the grounds challenging the first conclusion of the Judge that the children could relocate with both parents to Albania do not show an error of law. Strictly, as I have already pointed out, that conclusion means that any error as to the impact if the children remain in the UK could not be material and I do not need to consider the second ground. Nonetheless, I do this for completeness.

28. The reasons the Appellant says that the children and [M] cannot remain in the UK without him are set out at [46] of the Decision as follows:

> "… (1) [M]'s inability to cope with 'being a single mother'; (2) [M] would have to leave her job and claim benefits; (3) [M] 'has previously been in a position where her partner left her; (4) father's absence 'negatively affects children's social-emotional development particularly

> by increasing externalising behaviour'; (5) pronounced effects if 'father absence occurs during early childhood'; and 'chronic or extreme adversity can interrupt normal brain development'; (6) the appellant's inability to cope alone; and (7) 'the previous breakdown in relationship [M] suffered resulted in her being unable to properly function without support."

Once again, what is there said is lifted in large part from the Appellant's skeleton argument which itself relies in large part on the independent social worker's report.

29. As the Judge notes at [47] of the Decision, factors (1), (2), (3) and (7) rely on the impact on [M]'s ability to parent the children in the absence of the Appellant. The Judge goes on to deal with the evidence about that at [48] to [58] of the Decision which I set out in full since most of the complaints made about the Decision in ground two focus on that evidence:

> "48. At AB2-4, [M] states at WS4 that she would have to leave her job to look after her children, if the appellant was not living in the UK. She does not state there what her job is; and does not explain why she might be forced to leave her job. In oral evidence, [M] said that she is a company director for a company registered to her address; and that she organises paperwork for the business. She said that the business is a plumbing business and that there are three plumbers who work for the company. She said that she currently works from home.
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> 49. When pressed on why [M] would have to give up her job if the appellant is deported, [M] said: 'My mental health is important. If [AL] is deported my mental health would be at risk. I will get depression. It would be very difficult for me to cope with my kids. He helps with everything in our daily life. He's helping raise the kids. If I was alone it would be so difficult for me. I couldn't cope with anything'.
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> 50. At RB1-I, the independent social worker records [M]'s concerns about what would happen if the appellant was deported. At 3.2 it is recorded that '[M] advised that it would be hard if [AL] was not here with them, he is her main support. [M] informed me that she would be worried about becoming depressed if [AL] was not here, he supports her both emotionally and physically'.
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> 51. At 5.3 it is opined '..the constant worry of the unknown in terms of their future as a family and what would happen to [AL] should he be deported is also having an emotional impact on [M]. If [M] is not emotionally stable herself then she could potentially be unable to recognise and meet the emotional needs of the children in relation to the loss of their father should [AL] be deported.
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> 52. Although [M] is reported to have been 'hurt a lot by her ex-husband' [3.1], there is no detail given about what happened to [M] and her son at that time. There are no examples given of the day-to-day impact that her separation had on her; or of the impact on her emotional stability at that time [using the phrase used by the author].
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> 53. There are no examples of [M] being unable to recognise and meet the emotional needs of [K] at any time in the past, to any degree.

> 54. There is no discussion about the degree of likelihood of the range of potential outcomes which might follow the appellant's deportation. I am therefore unable to assess the scale of risk of the stated potential of [M] being unable to recognise and meet the emotional needs of her children.
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> 55. I note that the author of the report does not conclude that [M] is not 'emotionally stable' either now or at any time in the past.
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> 56. In the Addendum to the Independent Social Worker's Report at AB2-56 it is recorded at 3.3 that [M] said, 'she would be worried about becoming depressed if [AL] was not here, he supports her both emotionally and physically'.
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> 57. Again the opinion is expressed at 4.4 at AB2-58 that 'if [M] is not emotionally stable herself then she could potentially be unable to recognise and meet the emotional needs of the children in relation to the loss of their father should [AL] be deported'; but that expression of opinion does not discuss the degree of likelihood of that scenario coming to pass; and there are no examples of any past circumstances which resulted in such inability to recognise and meet the emotional needs of the children from which it might have been possible to gauge future prospects.
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> 58. There is no medical evidence concerning [M]'s mental health or any previous mental health issues showing a susceptibility to suffer from depression."

30. Based on that record of evidence, the Judge reached the following conclusions:

> "59. In my judgment, the factual bases relating to factors (1),(2) and (7) are not established in evidence. I am not persuaded (a) that [M] would not be able to cope as a single mother; (b) that [M] would have to leave her job; (c) that [M] was left unable to properly function without support on the breakdown of her previous relationship. In my judgement, the factual basis relating to factor (3) is true but there is little detail about what happened when [M] had to cope as a single parent"

31. It is not suggested in the grounds that the Judge has misunderstood or failed to record the evidence about the reasons why deportation is said to be unduly harsh on the premise that [M] and the children remain in the UK. The initial grounds submit that the Judge has failed to make findings as to credibility of [M]'s evidence and/or has failed to explain why the views of the social worker were given little weight. There is a very straightforward answer to that submission. The evidence of [M] and the social worker was predicated on what might happen if the Appellant is deported. That has not yet occurred. This is not so much an issue of credibility of the evidence, therefore, as an assessment of what may transpire in the future. The Judge was required to assess the possible outcome based on the facts and all the evidence. Indeed, the level of detail included in the Judge's assessment undermines the point made in the further submissions about the failure to make a fact-sensitive enquiry.

32. When the passage I have cited is read as a whole, the Judge has made sufficient findings based on the facts and evidence in this case. He takes into account that [M] was in a previous relationship and was abandoned by her previous partner when [K] was a young child. Whilst I accept that her statement says that the Appellant, as a friend who she had met whilst still married, gave her emotional and physical support at that time, there is, as the Judge noted, no evidence that she was unable to parent [K] on her own at that time. Nor is there evidence that she has had any medical intervention to deal with mental health problems. In relation to her job, the Judge noted that [M] says that she works from home. Her own evidence was that she would have to give up work because she would be unable to cope mentally and so the points made by the Judge about the likelihood of that occurring apply equally. As such, the Judge was also entitled to reach the conclusion that the evidence from [M] did not support her assertion that she would have to give up work.

33. The Judge, when analysing the evidence, has explained why he did not accept that the evidence provided led to the assessment that deportation of the Appellant and separation from him would have unduly harsh consequences for either [M] or her ability to parent. The social worker's report is predicated on the assumption that the impact which [M] asserted would come to pass and it is self-evident that if the Judge did not accept on the totality of the evidence that this was the case, he would give the opinion of the social worker about the likely impact less weight.

34. I do not understand the submission that the drawing of adverse inferences from the absence of evidence amounts to an error of law. The Judge must make an assessment on the evidence which is produced to him and not evidence which might have been but was not produced. I come back to the point which I made earlier that it is for the Appellant to establish the level of interference with his human rights and the rights of those affected by his deportation. It is not for the Judge to assume facts where there is no substantiating evidence.

35. The complaints raised in ground two as to the Judge's conclusion regarding separation focus on the position of [M] and her evidence as to what would happen. I note for completeness that the Judge did not place reliance on the views of the social worker as to the impact on the children of separation from the Appellant because, as the Judge put it at [60] of the Decision, those factors are "so generally expressed by the author of the independent social worker that they would apply to all children faced with separation of a responsible and loving parent". It will be recalled, as noted by the Judge in the following sentence that what the Appellant is required to show is that the consequences would be "unduly harsh", that is to say beyond the degree of harshness which would normally be expected. Looked at in the context of what is said by the social worker at [5.2] to [5.4] of the report dated 22 July 2018 and [4.2] to [4.5] of that dated 3 December 2019, the Judge's description of the assessed impact on the children as "generally expressed" cannot be faulted. There is no error of

law in relation to the weight given to the social worker's views for the reasons he gave.

36. For those reasons, ground two is not made out. The Judge was entitled to reach the conclusions he did that the consequences of deportation of the Appellant and separation of him from [M] and the children would not be unduly harsh.

37. I do not understand the initial grounds or further submissions to take any issue with the Judge's further conclusions as to whether there are compelling circumstances over and above the two exceptions in Section 117C. Although part of the Decision in that regard is cited at [8] of the further submissions, the purpose of that citation appears to be to support the point made about drawing adverse inferences from the absence of evidence (with which issue I have already dealt). For completeness, I cannot identify any error of law in what is said at [67] to [69] of the Decision in that regard nor in the overall analysis in relation to Article 8 ECHR thereafter.

38. For those reasons, the grounds do not establish that the Decision contains any error of law and I therefore uphold the Decision with the consequence that the Appellant's appeal remains dismissed.

DECISION

The Decision of First-tier Tribunal Judge SPJ Buchanan promulgated on 30 December 2019 does not involve the making of an error on a point of law. I therefore uphold the Decision with the consequence that the Appellant's appeal remains dismissed.

Signed L K Smith Dated: 2 July 2020
Upper Tribunal Judge Smith