Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: HU/21225/2018

THE IMMIGRATION ACTS

Heard at Birmingham	**Decision & Reasons Promulgated**
On 31st January 2020	**On 14th March 2020**

Before

UPPER TRIBUNAL JUDGE MANDALIA

Between

MIM
(Anonymity Direction Made)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellant: Ms M Sardar, Counsel
For the Respondent: Mr C Bates; Senior Home Office Presenting Officer

DECISION AND REASONS

1. An anonymity direction was made by the First-tier Tribunal. 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 other member of his family. This direction applies both to the appellant and to the respondent.

2. The appellant is a national of South Africa. He arrived in the UK with his mother in 2000 as a visitor and has remained in the UK since. He was granted indefinite leave to remain in the UK on 13th May 2014. On 15th

December 2016, the appellant was convicted of possession of a knife blade/sharp pointed article in a public place, possession of a controlled drug, Class A - Crack Cocaine with intent to supply and possession of a controlled drug, Class A - Heroin with intent to supply. He was sentenced to a total months of 44 months imprisonment.

3. In February 2017 the appellant was informed that in light of his convictions he is liable to deportation under the Immigration Act 1971 and may be subject to automatic deportation in accordance with s32(5) of the UK Borders Act 2007, unless one of the exceptions apply. The appellant was invited to set out any reasons he has for believing that the exceptions do apply. The appellant made representations dated 28th February 2017 and 24th March 2017 and on 10th October 2018 a deportation order was signed. The appellant was served with a decision to refuse the human rights claim dated 11th October 2018. The appellant's appeal against that decision was heard by First-tier Tribunal Judge Ford on 11th April 2019 and dismissed for reasons set out in a decision promulgated on 25th April 2019.

The decision of the First-tier Tribunal

4. The background to the appeal is set out at paragraphs [2] to [3] of the decision. the judge records at paragraph [4], concession made that the appellant does not meet the requirements of paragraph 399A(i) of the immigration rules. The human rights claim made by the appellant is summarised at paragraph [9] in the following way:

> "The appellant claims that he will not be able to survive in South Africa economically socially or culturally. As an individual who has not lived in South Africa since he was a child of 5, who knows nobody there and who cannot speak any of the local languages and has no knowledge of the social mores, culture or way of life there he says he will be *(sic)* find it virtually impossible to integrate. To show this he relies on an expert report of Jacob Van Garderen who is a public interest advocate, in South Africa, a member of the South Africa Bar and a human rights expert."

5. At paragraphs [10] to [14], the judge refers to the evidence set out in the reports of Jacob Van Garderen, and Dr Lisa Davies. The judge refers to the evidence received from the appellant, his mother, stepfather, sisters and his current employer, at paragraphs [21] to [29] of the decision. The findings and conclusions are set out at paragraphs [31] to [42] of the decision. The judge found, at [32], that the appellant has done everything within his power to rehabilitate himself within the time available. The judge noted however that the appellant had received two adjudications

during his time in custody and rejected his explanation that a cellphone that he was found to be in possession of, belonged to his cellmate. The judge considered the adjudications to show that there were still reasons to be concerned about the appellant's ability to control his own behaviour as at 3rd February 2018 and his conduct showed a lack of maturity.

6. At paragraph [32] of her decision, the judge listed the factors relied upon by the appellant to support his claim that there are very compelling circumstances that outweigh the public interest in his deportation. At paragraphs [34] to [36], the judge stated:

> "34. While I accept that it will be difficult financially for this family to visit the appellant in South Africa, they can remain in contact through letters, Skype and social media until such time as the family can save enough money for one or more of them to visit him.
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> 35. I accept that the appellant will face difficulties in relocating to South Africa, but I find that the difficulties have been exaggerated. The appellant is a national of South Africa and his exposure to xenophobia will not be the same as those who do not enjoy the rights of citizens of South Africa. He does not speak the local languages which may limit his social integration, but I do not accept that it will limit his employment opportunities in the cities which is where he would naturally wish to live.
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> 36. He is a personable and presentable young man who has benefited from secondary education in the UK. He has acquired additional qualifications as a personal trainer, and he is now older and wiser than when he got himself into difficulties in 2016. He has done behaviour and thinking courses that will be a protective factor for him. He has acquired some work experience which will stand him in good stead. He has no health difficulties. While I accept that rates of youth unemployment are very high in South Africa, this appellant has qualifications, work experience and skills that will stand him in good stead in finding employment or alternatively setting up in business as a personal trainer. He has the capacity to earn a decent wage. I do not accept that this particular appellant, will not be able to find employment and secure accommodation even though both are in short supply in South Africa. He has no vulnerabilities and he speaks well and is a confident young man who has the capacity to do well in life."

7. At paragraph [37] the judge stated:

> "The appellant can only succeed under the Article 8 Deport rules if he can show that the public interest in his deportation is outweighed by very compelling circumstances over and above those described in paragraphs 399 and 399A. He has failed to show that he meets the requirements of paragraph 399A. While he will face difficulties in integrating into South Africa, I do not accept that the difficulties that he will face will amount to "very significant obstacles to his integration". Even if I am wrong on this, he still could not show that he has lived in the UK for most of his life."

8. The judge noted the public interest in the appellant's deportation is strong given the nature of his offending and the length of his sentence. The judge went on to refer to the public interest considerations set out in s117 Nationality, Immigration and Asylum Act 2002 ("the 2002 Act") and rejected the claim that there are compassionate circumstances in this case such as to outweigh the strong public interest in the appellant's removal as a foreign criminal. At paragraph [42], the judge concluded:

> "Having considered the proportionality outside the rules placing the great weight I must place on the public interest and on Rules which express the will of Parliament in achieving the proper balance between that interest and private and family life rights, I find that this is a decision that is in accordance with the law. The decision is justified on the facts and it goes no further than is necessary to protect the public interest. It is a proportionate decision and there is no breach of protected article 8 rights to family and private life of the Appellant, his mother, stepfather, sisters and niece"

The appeal before me

9. The appellant advances two grounds of appeal. First, in reaching her decision the judge failed to consider material factors when considering whether there are very compelling circumstances over and above those described in Exceptions 1 and 2 set out in the 2002 Act. The appellant claims the judge did not have any or any adequate regard to the appellant's length of residence in the UK. Although the appellant had conceded that he had not lived lawfully in the UK for most of his life, that was not to say that the substantial length of residence in the UK from a young age was not relevant when the Judge was considering whether there are 'very compelling circumstances'. Furthermore, in addressing that question, the judge referred to the evidence of Dr Lisa Davies but did not engage with her conclusion that the risk of reoffending and risk of harm is low. The appellant claims the risk of reoffending and/or risk of harm should have been considered and featured as part of the overall assessment of whether there are 'very compelling circumstances'. Second, the judge failed to engage with the conclusions set out in the report of Mr Jacob Van Garderen and departed from the conclusions without undertaking and articulating a proper assessment of the evidence in relation to prospective integration on return and whether there are 'very compelling circumstances'.

10. Permission to appeal was granted by First-tier Tribunal Judge Nightingale on the second ground only, on 21st May 2019. The judge observed:

> "The Judge sets out the expert report with regard to the background situation in South Africa but, I accept, it is arguable that the judge failed to give reasons for departing from the expert conclusions with the finding that the "difficulties have been exaggerated. This ground is arguable".

The application for permission to appeal on the first ground was renewed to the Upper Tribunal. Permission was granted by Upper Tribunal Judge Coker on 2nd July 2019. She observed:

> "Although less arguable than the ground upon which permission was granted, it is arguable that the combination of grounds relied upon renders the appeal arguable although the appellant is reminded that the threshold is high."

11. The matter comes before me to determine whether the decision of the First-tier Tribunal is vitiated by a material error of law, and if so, to remake the decision.

12. Before me, Ms Sardar submits the judge failed to consider the appellant's length of residence in the UK and the risk of reoffending expressed in the report of Dr Lisa Davies. She submits the judge lists, at paragraph [32], the factors relied upon by the appellant to establish that there are very compelling circumstances in this case that outweigh the public interest in his deportation. The length of the appellant's residence in the UK and the risk of reoffending and harm are noticeably absent from that list, and neither is there any reference to those matters in the judge's assessment of proportionality. Ms Sardar refers to the decision of the Court of Appeal in Akinyemi -v- SSHD (No 2) [2019] EWCA Civ 2098 in which the Court of Appeal held that the correct approach to the balancing exercise is to recognise that the public interest in the deportation of foreign criminals is a flexible one, and that there would be a small number of cases where the individual circumstances reduced the legitimate and strong public interest in removal. The Court of Appeal held the Upper Tribunal had attached insufficient weight to the fact that the appellant had been lawfully in the UK his whole life. In view of that fact, and given that he had the right to acquire British citizenship and lacked any significant social or cultural links with the country to which he was to be deported, the weight to be attributed to the fact that he had never known any other environment than that of the UK, was of central importance. Ms Sardar submits the First-tier Tribunal judge erred here in a similar way, by failing to have regard to the appellant's length of residence in the UK and his lack of ties to South Africa.

13. Ms Sardar submits the judge outlines and summarises the report of Dr Lisa Davies but does not consider the conclusions set out in the report. The judge does not take issue with the credentials of the expert, and at paragraph [31], the judge found the appellant has done everything he can to rehabilitate himself. The two adjudications had been referred to by Dr Davies and were considered by the expert in her assessment of the risk of reoffending and the risk of harm. She submits the fact that the risk of reoffending is low, does not feature in the judge's assessment of proportionality. At paragraph [49] of Akinyemi the Court of Appeal confirm that the strength of the public interest must depend on such matters as the nature and seriousness of the crime, the risk of re-offending and the success of rehabilitation. Ms Sardar submits the omission of the length of residence and conclusions set out in the report of Dr Davies were material omissions in the judge's assessment of proportionality.

14. Ms Sardar submits the judge outlined the conclusions set out in the report of Jacob Van Garderen at paragraph [10] of her decision. The judge accepted at paragraph [35] that the appellant will face difficulties in relocating to South Africa but found the difficulties have been exaggerated. Ms Sardar submits the judge fails to give adequate reasons for departing from the conclusions of the expert at paragraphs [35] and [36] of her decision. In Akinyemiu, Sir Ernest Ryder, the Senior President of Tribunals reiterated what had previously been said by Sales LJ in Kamara -v- SSHD [2016] EWCA Civ 813:

> "The idea of "integration" calls for a broad evaluative judgment to be made as to whether the individual will be enough of an insider in terms of understanding how life in the society in that other country is carried on and a capacity to participate in it, so as to have a reasonable opportunity to be accepted there, to be able to operate on a day-to-day basis in that society and to build up within a reasonable time a variety of human relationships to give substance to the individual's private or family life."

15. Ms Sardar submits there is an emphasis on being an insider and the extent to which the appellant is an 'outsider' because of the length of his absence from South Africa, was critical to the assessment of whether there are compelling circumstances and the assessment of proportionality. Ms Sardar submits that what is lacking in the decision, is actual engagement with relevant factors. The judge did not carry out the balance sheet exercise identifying the factors that weigh in favour of, and against the appellant. She submits that even when read as a whole, it is not clear what weight the judge applied to the length of residence and the risk of re-offending.

16. In reply, Mr Bates submits that the judge clearly had in mind the appellant's length of residence in the UK. At paragraph [4], the judge recorded the concession that the appellant could not meet the requirements of paragraph 399A(i), because he has not lived lawfully in the UK for most of his life. At paragraph [16] of the decision, the judge notes the appellant cannot meet the immigration rules and she expressly states she has "*considered the extent to which he does not need them.*" At paragraph [17], the judge referred to the decision in Maslov -v- Austria Application No. 1638/03 and noted that where an appellant has been lawfully resident in the UK since childhood, the long-held view is that the 'Maslov factors' should be considered. Maslov was a case in which the individual had spent lengthy period of time in the UK from a young age. At paragraph [18], the judge also referred to the decision of the Court of Appeal in Olarewaju -v- SSHD [2018] EWCA Civ 557 in which Newey LJ held that where paragraphs 399 and 399A of the Rules did not apply, "only a claim which was very strong" would succeed. There, the Tribunal judge had drawn attention to the respondent's youth and his apparent rehabilitation. However, it had only been two years since his last conviction and the significance of rehabilitation was limited by the fact that the risk of reoffending was only one facet of the public interest. Newey LJ held that "Very real culture shock" was not the same as "very significant obstacles".

17. Mr Bates submits the factors identified by the FtT judge at paragraph [32] of her decision are all directed to the length of time that the appellant has been absent from South Africa and the time he has spent in the UK. The entire thrust of the appellant's claim was the length of his residence in the UK.

18. The judge accepts the appellant has done what he can to rehabilitate and, Mr Bates submits, it was open to the judge to depart from the conclusions of the expert. Mr Bates refers to the decision of the Upper Tribunal in RA (s.117C: "unduly harsh"; offence: seriousness) Iraq [2019] UKUT 123 in which a Presidential panel of the Upper Tribunal held that "Rehabilitation will not ordinarily bear material weight in favour of a foreign criminal", and confirmed the test for 'very compelling circumstances' is an extremely demanding one. Mr Bates submits that in considering 'rehabilitation' the judge was entitled to have some concerns about the behaviour of the appellant and to conclude that his actions show a lack of maturity.

19. Mr Bates submits the judge accepted the difficulties the appellant would experience in South Africa. The judge considered the matters set out in the report of Jacob Van Garderen and reached her decision based upon the findings that the judge made. The judge found the appellant would be able to secure employment and live in the bigger cities. He has work experience and no health problems. The judge had regard to the employment prospects of a healthy and fit individual, that has some work experience and skills. The judge had regard to a number of relevant factors at paragraph [36] of the decision and the reasons given by the judge are entirely adequate, when the decision is read as a whole. Mr Bates submits there is a high threshold for the appellant to meet and it was in the end, open to the judge to reach the conclusions that are set out at paragraphs [37] to [42] of her decision for the reasons set out in the decision read as a whole.

Discussion

20. Section 32 of the UK Borders Act 2007 defines a foreign criminal, 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. Insofar 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
>
> (b) the United Kingdom's obligations under the Refugee Convention.
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> …
>
> (7) The application of an exception—
>
> (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. Part 5A of the Nationality, Immigration and Asylum Act 2002 NIAA 2002 informs the decision making in relation to the application of the section 33 exceptions. 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.

22. In NA (Pakistan) -v- SSHD [2016] EWCA Civ 662, Lord Justice Jackson held that the fall back protection set out in s117C(6) also avails those who fall outside Exceptions 1 and 2 and that on a proper construction of section 117C(3), the public interest requires the person's deportation unless Exception 1 or Exception 2 applies or unless there are very compelling circumstances, over and above those described in Exceptions 1 and 2. As to the meaning of "very compelling circumstances" over and above those described in Exceptions 1 and 2, Lord Justice Jackson said:

> "28. ... The new para. 398 uses the same language as section 117C(6) . It refers to "very compelling circumstances, over and above those described in paragraphs 399 and 399A." Paragraphs 399 and 399A of the 2014 rules refer to the same subject matter as Exceptions 1 and 2 in section 117C , but they do so in greater detail.
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> 29. In our view, the reasoning of the Court of Appeal in JZ (Zambia) applies to those provisions. The phrase used in section 117C(6), in para. 398 of the 2014 rules and which we have held is to be read into section 117C(3) does not mean that a foreign criminal facing deportation is altogether disentitled from seeking to rely on matters falling within the scope of the circumstances described in Exceptions 1 and 2 when seeking to contend that "there are very compelling circumstances, over and above those described in Exceptions 1 and 2". As we have indicated above, a foreign criminal is entitled to rely upon such matters, but he would need to be able to point to features of his case of a kind mentioned in Exceptions 1 and 2 (and in paras. 399 or 399A of the 2014 rules), or features falling outside the circumstances described in those Exceptions and those paragraphs, which made his claim based on Article 8 especially strong.

23. Whether there are "very compelling circumstances" is a demanding test, but nonetheless requires a wide-ranging assessment, so as to ensure that Part 5A produces a result compatible with Article 8.

24. I reject the claim that the judge failed to have proper regard to the appellant's length of residence in the UK. The judge referred to the

appellant's immigration history at paragraph [3] of her decision. At paragraphs [8] and [9] of her decision, the judge referred to the respondent's decision, and noted the claim made by the appellant that he has no ties to South Africa having left there as a child at the age of five. At paragraph [17], the judge refers to the decision of the ECtHR in Maslov -v- Austria, which emphasised the importance of age and youth spent in the host country. At paragraph [24] of her decision, the judge records the oral evidence of the appellant that he has not visited South Africa since he was a child and has no relatives or contacts there. At paragraph [32], the judge lists the factors relied upon by the appellant to show that there are very compelling circumstances that outweigh the public interest in his deportation. The judge referred to the appellant's age, and at (vi), to the fact the appellant left South Africa when he was five. As Mr Bates submits, the factors identified in paragraph [32], are all referable back to the appellant's age when he left South Africa, and the length of his presence in the UK.

25. I also reject the claim that the judge did not engage with the report of Dr Lisa Davies and in particular, her conclusion that the risk of reoffending and risk of harm is low. At paragraph [31], the judge accepted the appellant has done everything within his power to rehabilitate and has completed relevant courses in thinking skills and behaviour and that he has complied with the conditions of his reporting and of his licence. The judge was however entitled to have regard to his conduct during the period of his imprisonment and the two adjudications. In RA (s.117C: "unduly harsh"; offence: seriousness) Iraq [2019] UKUT 00123 (IAC), the Upper Tribunal considered the approach to s117C(6) of the 2002 Act and the significance to be accorded to the particular issue of rehabilitation. The Tribunal said, at [32]:

> "As a more general point, the fact that an individual has not committed further offences, since release from prison, is highly unlikely to have a material bearing, given that everyone is expected not to commit crime. Rehabilitation will therefore normally do no more than show that the individual has returned to the place where society expects him (and everyone else) to be. There is, in other words, no material weight which ordinarily falls to be given to rehabilitation in the proportionality balance (see SE (Zimbabwe) v Secretary of State for the Home Department [2014] EWCA Civ 256, paragraphs 48 to 56). Nevertheless, as so often in the field of human rights, one cannot categorically say that rehabilitation will never be capable of playing a significant role (see LG (Colombia) v Secretary of State for the Home Department [2018] EWCA Civ 1225). Any judicial departure from the norm would, however, need to be fully reasoned."

26. In his report, Mr Jacob Van Garderen confirms the appellant acquired South African citizenship by birth. At section 5 of his report, he confirms that South Africa is generally considered to be a net-receiver of migration, hosting a significant number of migrants that have moved to the country in recent years. He states that although there is significant awareness and political focus on the deportation of migrants from South Africa, relatively little is known about returnees to the country. He states deportees to South Africa face serious challenges when they are returned and no assistance is available from the South African government or, as far as he is aware, any civil society organisations. He expresses the opinion that it will be extremely difficult for someone in the appellant's circumstances to adapt to a new society with vastly different cultural foundations, and no social network nor support. He states that in South Africa, while English is used as the language of business, science, politics and media, it is often considered a subordinate language in the broader social context, where the majority racial population are black Africans from a range of ethnic groups. It is said that the appellant's inability to communicate in an African language is likely to increase his profile as an "outsider" and expose him to discrimination and stigmatisation. Mr Jacob Van Garderen refers to the unemployment rate among young people aged 15-34, which currently stands at 38%. He states that the relatively high levels of crime and violence, specifically xenophobic violence in South Africa, are important factors that may impact on the appellant's ability to integrate. He refers to the South African government's inability to stem the ongoing xenophobic violence and states the exposure to violent crime and xenophobia is substantially determined by socio-economic factors. He concludes:

> "Reintegration can be exceptionally complex in the case of deportation, due to the forced, hostile and spontaneous manner in which a deportee is forced leave and return to their country of origin. In [the appellant's] case there are a myriad of challenges that will negatively affect his reintegration experience in South Africa.
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> Such challenges will be exacerbated by the absence of effective post deportation assistance and long-term resettlement support. In order to adjust positively to deportation [the appellant] will not only need financial support but also technical, emotional, and psychological support, all of which are currently non-existent and are extremely unlikely to materialise. Lack of such support, with no financial or social capital or benefits, would render him extremely vulnerable."

27. I reject the claim the judge failed to engage with the conclusions set out in the report of Mr Jacob Van Garderen and failed to consider the matters set out in report when undertaking her assessment of the evidence in relation to prospective integration on return. The judge accurately

summarised the conclusions set out in the report of Mr Jacob Van Garderen at paragraph [10] of her decision. At paragraph [35] the judge accepted the appellant will face difficulties in relocating to South Africa but found the difficulties have been exaggerated. The judge noted the appellant is a national of South Africa and his exposure to xenophobia will not be the same as those who do not enjoy the rights of citizens. She accepted he does not speak the local languages and that may limit his social integration, but she did not accept that it will limit his employment opportunities in the larger cities which is where he would naturally wish to live. The judge noted, at [36], the appellant is a personable and presentable young man who has benefited from secondary education in the UK. He has acquired additional qualifications as a personal trainer, and he has acquired work experience which will stand him in good stead. He has no health difficulties. The judge accepted that rates of youth unemployment are very high in South Africa, but noted the appellant has qualifications, work experience and skills that will undoubtedly assist him in finding employment or alternatively setting up in business as a personal trainer. The judge found the appellant has the capacity to earn a decent wage and did not accept the appellant will be unable to find employment and secure accommodation in South Africa.

28. In Akinyemiu, the appellant was born in the UK in 1983 and had never left. His parents were Nigerian nationals who had come to the UK lawfully. Due to the legislation in force at the time of his birth, the appellant did not acquire British nationality automatically; nor did he acquire it subsequently, despite having been entitled to it for many years. Since his teenage years, the appellant had been convicted of 42 offences, including causing death by dangerous driving and drug offences. His mother's death when he was 14 had had a significant impact on him. He had a history of self-harming and suicide attempts and suffered from epilepsy and depression. The appellant had not offended since January 2017, which he attributed to the relationship he had been in for almost three years. In January 2015, a deportation made against him was upheld by the UT on the basis of the 2002 Act. In reaching its decision, the Upper Tribunal took into account the appellant's repeat offending and expert psychological evidence that he was at medium risk of reoffending. Other factors included his moderate risk of suicide, his social and cultural integration into the UK and his lack of family connections in Nigeria. At paragraph [39] Sir Ernest Ryder set out the correct approach:

> "... The correct approach to be taken to the 'public interest' in the balance to be undertaken by a tribunal is to recognise that the public interest in the deportation of foreign criminals has a moveable rather than fixed quality. It is necessary to approach the public interest flexibly, recognising that there will be cases where the person's circumstances in the individual case reduce the legitimate and strong public interest in removal. The number of these cases will necessarily be very few i.e. they will be exceptional having regard to the legislation and the Rules..."

29. At paragraph [40], Sir Ernest Ryder held that *"one has to be careful to identify as a relevant fact that the appellant was in the UK lawfully for the whole of his life."* Here, the fact that the appellant had left South Africa at the age of five and had spent the major part of his childhood and youth in the UK are matters that the judge considered when considering whether there are very compelling circumstances that outweigh the public interest in deportation. In her conclusions set out at paragraphs [37] to [42], the judge accepted the appellant will face difficulties in integrating into South Africa but did not accept the difficulties that he will face amount to very significant obstacles to his integration.

30. The judge undoubtedly considered all matters in the round. The public interest in the deportation of a foreign criminal is not set in stone and must be approached flexibly. In my judgement, the judge had proper regard *inter alia* to the appellant's length of residence in the UK, the ties that he retains with his family, his immigration and offending history, and the family circumstances described in the evidence and the matters set out in the experts reports. It was in my judgment open to the judge to conclude there are no compelling circumstances which make the appellant's claim based on Article 8, especially strong. It follows that in my judgement, it was open to the judge to conclude the deportation of the appellant is in the public interest and not disproportionate to the legitimate aim for the reasons given by her.

31. As the Court of Appeal said at [18] of Herrera v SSHD [2018] EWCA Civ 412, it is necessary to guard against the temptation to characterise as errors of law what are in truth no more than disagreements about the weight to be given to different factors, particularly if the judge who decided the appeal had the advantage of hearing oral evidence. The assessment of such a claim is always a highly fact sensitive task. The FtT judge was required to consider the evidence as a whole and she plainly did so, giving adequate reasons for her decision. The reader of the decision might consider it harsh, but the findings and conclusions reached by the

judge are neither irrational nor unreasonable. The decision was one that was open to the judge on the evidence before her and the findings made.

32. It follows that I dismiss the appeal

Decision:

33. The appeal is dismissed and the decision of First-tier Tribunal Judge Ford, stands.

Signed Date 24th March 2020

Upper Tribunal Judge Mandalia