**Upper Tribunal**
**(Immigration and Asylum Chamber)** Appeal Number: HU/12135/2019

**THE IMMIGRATION ACTS**

| **Heard at Field House** | **Decision & Reasons Promulgated** |
|---|---|
| **On 2nd August 2021** | **On 21st September 2021** |

**Before**

**UPPER TRIBUNAL JUDGE KEITH**

**Between**

**ADEFEMI ADEBISI**
**(ALSO KNOWN AS ODUNAYO PETER BABALOLA)**
**(NO ANONYMITY DIRECTIONS)**

Appellant

**and**

**THE SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Respondent

**Representation:**
For the Appellant: Ms S Khan, instructed by Legal Justice Solicitors
For the Respondent: Mr T Lindsay, Senior Home Office Presenting Officer

**DECISION AND REASONS**

**Introduction**

1. This is the remaking of the decision in the appellant's appeal against the respondent's refusal of his human rights claim, in the context of a deportation order having been made against him as a "foreign criminal" (as defined by Section 117D of the Nationality, Immigration and Asylum Act 2002). The deportation order was made as a consequence of the appellant's sentence of 54 months' imprisonment for

causing death by careless driving whilst under the influence of drugs, specifically cannabis. The appellant had received the sentence on 7th February 2019 and a deportation order had been made on 3rd July 2019 pursuant to Section 32(2) of the UK Borders Act 2007.

2. In terms of the appellant's wider history, the appellant, who is a citizen of Nigeria, and who previously had indefinite leave to remain in the UK, had originally entered the UK on 24th September 2004 on a student visa. He subsequently applied for permission to marry his now wife, Nicole Pryce, a British citizen, on 15th October 2008; and he applied for, and eventually obtained, indefinite leave to remain as the spouse of a British national, on 16th February 2011. The couple have two children: child "A", whose date of birth is 8th October 2010; and child "B," born on 9th December 2015. Both children are British citizens, and it has never been in dispute that the appellant has a genuine and subsisting relationship both with Ms Pryce and their children, living with them as a family, apart from the period of his imprisonment and a brief period of separation, which I refer to later in these reasons. Following his conviction on 21st December 2018 and sentencing on 7th February 2019, the appellant was imprisoned and released on licence, following the grant of immigration bail by a Judge of the First-tier Tribunal, Judge Neville, on 26th May 2021.

**The Respondent's refusal of the appellant's application**

3. As noted in my error of law decision, which is annexed to these reasons, and which I gave orally on 21st October 2020, the respondent considered the appellant's family and private life, in refusing the appellant's human rights claim. The respondent accepted the relationships were as claimed but did not accept that the effect of the appellant's deportation on Ms Pryce and their children would be unduly harsh, on the basis that it would not be unduly harsh either for them to live with him in Nigeria (the so-called "go" scenario); or to remain in the UK without the appellant (the so-called "stay" scenario).

4. In respect of the appellant's private life, the appellant had not been resident in the UK for most of his life, having arrived aged 22 in 2004. The respondent did not accept that the appellant remained socially and culturally integrated in the UK, as a result of the seriousness of his offending, but before me, Mr Lindsay says that the respondent has changed her position and concedes that the appellant has remained integrated. However, the respondent also asserts that, when considering the appellant's circumstances through the lens of 'Exception 1' relating to private life (Section 117C(4) of the 2002 Act) there are not very significant obstacles to the appellant's integration in Nigeria, as he has received training and an education in the UK as well as having worked in a variety of practical employment roles in the UK that would assist in his integration in Nigeria.

5. Considering both the appellant's family and private life, the respondent also maintains that there are no very compelling circumstances over and above Exceptions 1 and 2 for the purposes of Section 117C(6) of the 2002 Act.

## The First-tier Tribunal's Decision

6. Following the hearing before First-tier Tribunal Judge Carroll (the "FtT"), promulgated on 6th March 2020, she dismissed the appellant's appeal on human rights grounds. The appellant appealed and in my error of law decision to which I have already referred, I found that there was an error of law in the FtT's decision and set it aside, whilst preserving the finding that the appellant has genuine and subsisting relationships with Ms Pryce and their children. I also regarded it as appropriate to retain the remaking of the appellant's appeal decision in the Upper Tribunal.

7. Following the error of law hearing, I conducted a Case Management Review hearing by telephone on 25th March 2021, at which I gave directions. These included the disclosure of any expert report and responsibility for the appellant to produce and agree a finalised paginated and indexed bundle. Two aspects of compliance with the directions caused a significant delay (one and a half hours) in the start of the hearing scheduled to take four hours. The first was that the bundle which had been directed to be served by 31st July 2021 appears to have been sent to an incorrect email address. Second, on the morning of the hearing and without criticism of Ms Khan personally, she had indicated that the appellant had not appreciated the need to adduce a further witness statement from the appellant's sister-in-law, Nerissa Pryce, and was in the process of obtaining a witness statement on the morning of the hearing. One was eventually produced, and Mr Lindsay did not object to its production, given its relative brevity and the fact that Nerissa Pryce was not attending to give witness evidence. Whilst the late production of the evidence has not ultimately affected the decision, it did cause was a substantial delay in the first part of the hearing. I mention this issue in these reasons as I do not encourage the production, at such late notice, of evidence which could, it seems to me, have been readily obtained well in advance of this hearing.

## The Issues in this Appeal

8. I identified and agreed with the representatives that the issues in this case were:

   (a) whether the appellant meets the requirements of Exception 2, namely whether the effect of the appellant's deportation on his wife and children would be unduly harsh either in the "stay" or the "go" scenarios. In doing so, I needed to consider the best interests of the two children;

   (b) whether there are very compelling circumstances over and above Exceptions 1 and 2, in the context of the appellant's family and private life and also noting the factors set out in Section 117B of the 2002 Act as part of a balance sheet assessment These also include the appellant's family life with Nerissa Pryce and her daughter, with whom the appellant also lives. The real focus in relation to Exception 1 was the extent to which there were very significant obstacles in relation to the appellant's integration into Nigeria.

## The documents and evidence

9. I was referred to the following documents:

   (a) an appellant's bundle ("AB") which included witness statements of the appellant and his wife, as well as the report of an independent social worker Christine Brown;

   (b) a respondent's bundle that ran alphanumerically to several hundred pages. Ms Khan confirmed that the only part of that bundle she sought to rely on was the Sentencing Judge's remarks at divider B;

   (c) an emailed copy of an unsigned witness statement of Nerissa Pryce;

   (d) a loose copy of a bank statement for Nerissa Pryce which showed a common address with the appellant and his wife;

   (e) the decision of the Court of Appeal (Criminal Division) in refusing the appellant's appeal against his length of sentence (R v Adebisi [2020] EWCA Crim 1446); and

   (f) the authority of Patel (British citizen child - deportation) [2020] UKUT 45 (IAC).

10. The appellant and his wife gave oral evidence before me. What is notable is that Mr Lindsay accepted the credibility of both witnesses as to their evidence on the facts; and he also accepted the expertise and contents of the independent social worker report prepared by Christine Brown. There were some omissions in the latter, as it did not refer to the fact of the cohabitation of the appellant, his wife and their children, with Ms Pryce's sister, her daughter, and their mother (nor was this referred to in the witness statements) but I was not invited to draw any adverse credibility as a result of the admission. This is therefore not a case where it is necessary for me to recite and resolve differences in evidence. Rather, I am able to make findings based on undisputed evidence and then analyse the consequences of deportation both in respect of the appellant's private life and also his family life, within the statutory scheme.

## Findings of Fact

11. The appellant entered the UK in 2004; met Ms Pryce and married her in 2008 since when they have lived together, apart from a brief period of separation of between three to four months in 2011/12 when, as the appellant indicated in oral evidence, there was something of a disagreement between him and his mother-in-law in whose home the couple live. The appellant has never entered or remained in the UK unlawfully. He came to the UK on a student visa. His father funded his studies, as he had the financial means to do so at the time. However, his father is now 70 years old, having retired from the Nigerian Electricity Company and the appellant's mother is 65 years' old and is a housewife. Whereas when he first came to the UK, at least in respect of his studies, he was dependent upon his parents, more recently, the appellant has been remitting monies to his parents.

12. The appellant described having had many jobs as a licensed security guard, paying taxes and national insurance contributions and not wishing to be reliant upon the state. Ms Pryce, also works full-time, including during "lockdown" and works in legal education administration for the University of Law. Immediately prior to the index offence, the appellant had worked for Uber from 7th May 2016 and had completed 1,191 trips before the incident. He had had a clean driving licence for 10 years. He had had no previous criminal convictions.

13. In terms of the family setting, the appellant lives with his wife; their two sons; the appellant's sister-in-law, Nerissa Price; and Nerissa's young child. Ms Pryce's mother also lives from time to time in the family home, which in fact belongs to her, but she spends significant periods of time away travelling, carrying out charity work.

14. Whilst the family home belongs to the appellant's mother-in-law, (and it is where Ms Pryce and her sister have lived for around 20 years), when working, the appellant contributed financially to the household expenses. Nerissa Pryce's daughter was born in February 2017 and Nerissa Pryce's statement describes the appellant as having a close relationship with his children's cousin, treating her as a daughter and involving him in all of the activities in which he assisted with his own children. He is almost like a second father. Whilst the witnesses have been careful to add that Nerissa Pryce's daughter has a continuing relationship with her biological father and visits him on a regular basis, nevertheless the appellant plays a significant part in Nerissa Pryce's daughter's life. In summary, the family are a close-knit one and Ms Brown, in her report, describes the appellant's comments, at §3.4 (page [28] AB):

> "We were a routine, normal happy family, we had friends, friends at church, friends from Nigeria (living within the UK) friends from work. We went on family outings. I came as a single man, now all my friends have got families. We are a consolidated solid network, a big network (of friends and family). Mr Adebisi described playing drums at his church and in other settings and bands."

15. The appellant has not returned to Nigeria for the past 15 years, last doing so in 2007 prior to his marriage to Ms Pryce. He confirms that this is not because of any difficulty in relationships or problems in Nigeria. Rather, because he has established a life in the UK and is focussed on his UK family.

16. In terms of the events relating to the offence for which the appellant was convicted, I have considered carefully the sentencing remarks of His Honour Judge Raynor, a copy of which is in divider B of the respondent's bundle. As all parties accept, the events are tragic. The appellant was indicted on one count of causing death by careless driving when exceeding the specific limit for drugs. He pleaded not guilty but was later convicted after an eight-day trial. The event had occurred on 1st October 2016 and had caused the death of a 27-year-old lecturer, Joshua Hayes, who was a popular, valued and gifted teacher at a college. The appellant had been working until in the early hours of the morning of 1st October 2016 as an Uber driver. He had decided to finish work for the night and had picked up one final fare on his way home. Initially pursuing the route suggested by his "satnav", the appellant's passenger suggested he take a quicker route and turn down a smaller side road. At

this time, Mr Hayes had fallen into the road in question having staggered down the street when he was unsteady on his feet and to some extent Mr Hayes's unsteadiness had been affected by alcohol, although I do not in any way blame Mr Hayes for the events that took place. He lay in the road, about seven metres along from the turning into the road, after a speed "hump" at the entrance to the street. The area was described by the Judge as reasonably well lit, with the appellant using his headlights and there were no material obstructions interfering with his line of sight. The appellant struck Mr Hayes twice, the first time with the car body and the second time when the front wheel went over Mr Hayes. The appellant then drove backwards in an attempt to clear what he thought was an obstruction from under the car and it was only when he got out of the car and looked beneath that he realised that he had struck a person. The appellant was described as distraught, seeking to give comfort to Mr Hayes, who sadly died at the scene. The police arrived and the appellant provided a cannabis test which was negative. The appellant then volunteered that he had smoked cannabis about 26 hours earlier on Friday, 30th September and he was asked to provide a further sample of saliva which tested positive. That led to a blood sample being taken which revealed a level of tetrahydrocannabinol or THC above the limit of two micrograms in response to which a prosecution would follow as part of a zero-tolerance approach to drug driving.

17. The prosecution, the Judge noted, did not have to prove impairment, just that the appellant had cannabis in his system but nevertheless the expert's evidence was that a level above five micrograms would result in an unacceptable risk of involvement in a road traffic accident with an impairment level broadly equivalent to the alcohol limit. The appellant's level of THC was 7 micrograms. The Judge noted that the appellant had taken cannabis since 2008 when he first obtained his licence to drive. He had smoked normal weed, not skunk cannabis, around four to five times a week and had not disclosed his cannabis habit to the taxi licensing authorities or to the DBS authorities who carry out an enhanced check. The Judge accepted that when considering the Sentencing Council guidelines, the appellant was not a dangerous offender, as defined as presenting a significant risk of serious harm in the future by way of commission of further offences. The Judge went on to consider that the appellant no longer used cannabis and there was low risk of reconviction. Having been sentenced, the appellant appealed against the length of his sentence to the Court of Appeal.

18. The Court of Appeal recorded in its decision (R v Adebisi [2020] EWCA Crim 1446) the powerful personal victim statements from Mr Hayes's parents and the effect that it had had upon Mr Hayes's family. Whilst at §23 of its decision, the Court of Appeal expressed some concern about the lack of clarity in the sentencing remark as to which of the levels of the Sentencing Guidelines applied to the appellant's circumstances, nevertheless when read as a whole it appeared tolerably clear that the Judge was focussing on two levels identified in the guidelines: a moderate quantity of drugs; and a level of carelessness that was not much more serious than "momentary inattention". Whilst conviction did not require the proof of impairment, nevertheless the fact of impairment was clearly relevant to the

seriousness of it and the Court of Appeal did not accept that the quantity of drugs fell below the "moderate" level in the guidelines.

19. I accept that the appellant has not sought to excuse or belittle the consequences of his actions and the effect on Mr Hayes and his family; was immediately distraught and was candid in his actions to the police; and, as Mr Lindsay accepts, the appellant is at very low risk of re-offending, not least because as well as receiving a prison sentence he also received a ban on driving of seven years and three months. The appellant is also required to take an extended retest before he can legally drive.

20. I also accept the evidence that during his period of imprisonment, the appellant has undertaken a number of practical courses which will assist in his subsequent re-employment and his positive engagement with the prison authorities is confirmed in correspondence from the careers adviser at HM Prison Maidstone dated 10th May 2021 (page [50] AB) as well as a supporting statement dated 26th November 2020 from the Family Services Unit (page [48] AB) within the same prison, which commented upon his positive engagement with his children, his strong bond with them, regular visits from his children and every effort having been made to maintain the relationship with them

21. This is consistent with the evidence both from the appellant, his wife, and Ms Brown, that notwithstanding his absence from the family unit during the period of his imprisonment from 2019 to 2021, the appellant has remained part of a strong family unit, playing an important role in the upbringing of his children and also having a close relationship with his sister-in-law and her young daughter.

22. I turn next to the contents of Mr Brown's report. I do not repeat the contents in full and, whilst I have considered them, pick out the salient points. Ms Brown's expertise was not challenged, and Mr Lindsay accepted her report as detailed and helpful to the issues that I was being asked to consider. I have already touched upon the family setting and also the context of the appellant working as an Uber driver. The flexibility allowed him to get his children ready for school and nursery each morning; to do the "school run"; and take the older son to football (§3.13, page [31] AB) and Ms Brown noted the low risk of reoffending on which I have already commented (§3.18, page [32] AB).

23. Ms Brown also commented on the impact on the appellant's wife and children of his period of imprisonment. He had only been recently released from detention when Ms Brown conducted her assessment on 31st May 2021. Prior to his imprisonment, the children had been used to their father being at home other than when he was out working, and their absence had had an impact. The children nevertheless were able to physically see their father when he was in prison regularly, which would not be able to be replicated were the appellant to be removed to Nigeria. During the period of imprisonment, the children had been struggling to sleep in his absence and he had maintained video access to the children, which was a costly process, incurring some £5,000. Ms Pryce and her mother had also been ill with COVID and when restrictions were imposed in late December 2020 and the children were home-

schooled, they were upset, crying and confused. Ms Pryce had been unable to take their children to visit their father in person for much of 2020, because of Covid. The prison visits that had occurred had helped the appellant's wife to maintain focus, and the family bond between the appellant, her and their children.

24. Ms Brown described Miss Pryce's wider family network within London (§3.30, page [36] AB) including two brothers, both with children of their own, all of whom live within the London area, in addition to Ms Pryce's sister, with whom she lives, with her mother. The appellant's mother is one of seven siblings, all with families of their own, albeit Ms Pryce described her family as enjoying close relationships with one another but each with their own respective commitments to family and work. They saw one another often for family gatherings but perhaps less so during the COVID restrictions (§3.31, page [36] AB).

25. The appellant's children attend the same school that Ms Pryce attended before she left to attend senior education in Jamaica, before returning to take her degree at Kingston University in the UK where she had studied law. Ms Pryce has never visited, nor has any family ties or affiliations to, Nigeria.

26. The couple's eldest child is now in year 5 of his primary education and next year he will make his selection for his senior education, hoping to transfer with his year cohort. The younger child is currently in reception year. None are said to have any health issues or special educational needs.

27. When the appellant was in prison, Ms Pryce described the youngest child crying and often shouting at her and wanting the appellant, albeit unaware of the precise circumstances of the appellant's imprisonment. She sensed that the older child was aware of his father's surroundings, and this was something that they would have to discuss more fully with the child, to explain the context. The report described Ms Pryce, at §3.41 finding herself alone, coping with two children and having to work from home in addition to home-schooling during the Covid pandemic. Whilst her sister had tried to support her, she too had parenting and work commitments and their mother was often away for long periods of time. The children were said to be delighted upon their father returning to the home environment and were pleased to be able to "show off" their dad. Ms Pryce feared a breakdown in the family unit as he would not be able to see the children grow and there would be no male figure.

28. Ms Brown's report also touches on her interviews with the appellant's children themselves. The eldest child had said that it was hard when his father was absent and now he was back, he could "show him off" at school and they were all together again. He had missed his father and not being able to see him in person, and it was now really good that he could see him. He wanted things to stay the same forever and was very happy with him. The youngest child was largely running in and out of the room, trying to avoid Ms Brown, but sat happily on his father's knee unprompted.

29. In terms of her opinion and recommendations at section 4 of her report (starting at page [42] AB) Ms Brown described the difficult period of the appellant's imprisonment. Ms Pryce had been without her long-term partner and the father of her children and the children without their father. The eldest had grown from a young child aged 7, to now 10 years old and nearing puberty and senior schooling, whilst the youngest had gone from a toddler aged 2, to now attending school. It was important, in Ms Brown's view, for the early life structures to remain in place, particularly in the context of the children having established a strong and happy family life prior to the appellant's imprisonment. Whilst these bonds were maintained in very challenging circumstances during the appellant's imprisonment, this was not really in a manner in which the children would have wanted to continue with their relationship with their father and other means of communication such as video chats were insufficient to replace in person contact and when he was in prison, the children struggled to understand, on visits to him, why he was not returning home with them. More recently, the eldest child may have come to know of his father's imprisonment and if he had not, it would not be long before he did from those in the community who have seen the media coverage of the event. How the children will respond will depend, in Ms Brown's opinion, in part, on their parents' management of this and it is important this is done collectively. At §4.5, (page [43] AB), Ms Brown described the appellant's role in his children's lives as becoming ever more critical because of what they have lived through. It was important for their parents to remain a visible force, including a physical force and whilst parents may not always be able to live together, parents could still provide unity by being a cohesive and visible force in their children's lives including attending parents' evenings, taking their children to extracurricular activities; and other activities at which the children could boast, in a positive sense, of activities being undertaken with their parents. In contrast, Ms Brown described experiences of children who have lost a parent, perhaps through deportation or long-term separation, and the child feeling less worthy. Ms Brown referred to the leading academic material of the effect on such children, even with the ability for major recovery.

30. Ms Brown described the potential adversity for both children (§4.10, page [44] AB) as twofold: first, the adverse event of their father's offence and his subsequent imprisonment, without the children's full knowledge of what this involved; and second, the potential separation in the event of the appellant's deportation. The long-term impact would be for Mr Pryce to be left alone to raise two children and to answer their many questions as to why their father has left the family unit. Ms Brown described the appellant as a "good man" and a loving father to his two children. To remove the appellant would serve only to undermine their future childhood progression and it would be contrary to their best interests, leaving other, possibly outside agencies to manage the aftermath of the loss to the family, instead of what would otherwise be a happy and functioning family unit.

31. As to the ability of Ms Pryce to cope and look after her children if the appellant were removed and she and her children were to remain in the UK, Ms Pryce accepted that during the appellant's imprisonment, albeit for a limited period of just over two years, she was able to continue to work full-time from home, albeit it was a

challenging period, particularly when she was also having to home-school at the same time. However, what she also made clear was that the University of Law was now requiring its staff to work full-time from its offices, something she had carried out for a period prior to the COVID pandemic without the appellant, albeit it was difficult and had resulted in expensive childcare. Put simply, she had been able to maintain a full-time job and do so working at her place of work rather than a home setting, albeit in circumstances where there was a significant cost. She said that she would "have to cope" if the appellant were removed. She described only being able to rely upon the close family network within London and the UK to a limited extent because she could not depend upon them for extended periods of time. Her relatives all had their own responsibilities and careers. By way of example, Nerissa, her sister, with whom she lived, also worked full-time. Ms Pryce had never contemplated moving with the appellant to Nigeria and had no idea of the environment there. She was aware that some English was spoken in Nigeria, but she did not speak Yoruba, the appellant's first language, and she had no family unit or support network in that country. She was aware of the appellant's relatives in Nigeria, but nothing really beyond that. The entirety of her family setting, including: her mother's accommodation in which she lived; the school setting which her children attended and which she herself had attended; and the career that she had developed over the years in London, was a stable one. In contrast, she would not know where to begin if the family were attempting to start again in Nigeria. The appellant described the inability to obtain work in Nigeria which was precisely the reason that he had undertaken studies, aged 22, in the UK. He had never managed to obtain work in Nigeria and even though he had obtained a graduate degree, the Nigerian economy was burgeoning with graduates who are unable to find work. Whilst one of his siblings was described as a "banker", in reality he was only "making ends meet" and his parents were not able to financially support him. Whilst he therefore did not rule out the family connections, he did not accept that they would be able to support him in the event of his return. He admitted that he had not considered or conducted any research into the ability to find work in Nigeria, having carried out a number of roles in the UK; nor had he investigated the possibility of schooling for the children; but what he did add was that his father's ability to assist in funding education as he had for the appellant was no longer a proposition for the appellant's children.

**The respondent's submissions**

32. Mr Lindsay relied upon the refusal letter and reiterated his concession that the appellant was socially and culturally integrated into the UK. The respondent also accepted that the circumstances may be termed tragic and that the appellant had no criminal intent but was criminally liable as a result of his actions. There nevertheless remained a very significant public interest in deportation. I needed to consider both the length of the sentence and the circumstances of the offending. Considering the exceptions, the respondent accepted that the "stay" scenario with the consequential split of the family unit would be a very difficult matter but that there was a wider family unit and the possibility of support from the wider family. Whilst the respondent did not take issue with what the independent social worker had said, the report had its limitations. In particular, it did not say what would happen in the

event of the appellant's removal and was silent notably about the fact that the appellant and his wife also lived with other family members. The threshold of unduly harsh effects was a heightened one and was not met in either circumstance. Mr Lindsay accepted that there were strong matters in the appellant's favour on both limbs but that in terms of the "go" scenario it could not be assumed simply because the children and Ms Pryce were British citizens that the rights and expectations of growing up as British citizens and living in the UK would be lost; or that life would be worse in Nigeria. Moreover, in terms of the "stay" scenario, it had not been clear, but it was far clearer now, that there was a wider UK family, with strong bonds, including Nerissa. This did not ignore the appellant being described as a father figure to his children's cousins and there would be undoubtedly difficulties for Ms Pryce and their children, but not such that she could not work or find a way to live. Regarding the two children, nothing had been shown that they had not been able to cope or engage with their education in the appellant's absence.

33. In terms of the appellant's integration into Nigeria, the test of "very significant obstacles" could not be met. The appellant had lived in Nigeria until aged 22, including a short period as an adult; retained close family members there; spoke the language and there was no reason why, in the sense of SSHD v Kamara [2016] EWCA Civ 813 that he would not be able to return as an insider and to set himself back up in Nigeria.

34. Considering the seriousness of the appellant's crime, I was asked to note the Judge's sentencing remarks; the particularly serious nature of the offence; and the fact that there was nothing that could replace the life of the appellant's victim. The appellant's appeal against his sentence had been dismissed by the Court of Appeal. Whilst it was right that the appellant's voluntary disclosure and cooperation with the police could weigh in his favour and no issue was taken with the witnesses' credibility, nevertheless there was a public interest in deterring others. It might be not as strong as in other cases but there was some importance in the public confidence of deporting those who have committed serious criminal offences. In summary, neither of the exceptions was met and there were not very compelling circumstances over and above those two exceptions.

**The appellant's submissions**

35. The two witnesses, the appellant and his wife, were credible. This was a tragic case not only for the appellant's victim and his family but also for the appellant. The fact that the appellant had been sentenced to a period of imprisonment of more than four years set the bar at a certain level, but it was also, even at an elevated level, one where deportation could still breach the family's Article 8 rights. I was asked to bear in mind the unique nature of the circumstances. This was not a run-of-the-mill case where an individual had wilfully chosen to break the law and what society expected of them. The sentencing Judge had described the appellant as a responsible driver who upon being involved in the accident was deeply distressed and tried to help the victim. The appellant was not dangerous, and he was a generally competent driver and he had since stopped taking cannabis. He was compliant with the prison

authorities and engaged positively with them. There was no value in "deterrence" in deporting the appellant, as his crime was not intentional. There was not, as there might be in other cases, public interest in deporting those who consciously sought to break the law. As the case of AA (Nigeria) v SSHD [2020] EWCA Civ 1296 reminded us, even where I was considering a very compelling circumstances case, I had to consider all of the circumstances of the case and not just the offending but rehabilitation and the effect on the appellant's British wife and children.

36. In terms of the viability of a "go" scenario, the appellant had not returned to Nigeria since 2007; had never worked there and his parents, who had initially funded him, had since retired and he was sending them remittances. He had left Nigeria because he could not get employment. He would be returning back with a wife not of Nigerian heritage and two children who had never been there and had never attempted to manage living there. The lack of their ability to relocate tipped that into it being unduly harsh, regardless of the children and the impact on the appellant's children's cousin.

37. In terms of the "stay" scenario, the impact had been acknowledged by the independent social worker, who had referred to impact on the children of the appellant's absence. Even during that absence whilst the appellant was in prison, there had been regular visits, as demonstrated in the visitor log, and separation would destroy the family. What this meant was that the destruction of the family would be unduly harsh and was tipped further into becoming very compelling because of the extraordinary circumstances of the offence. If there were ever a case of there being very compelling circumstances it was this case and if not met here, it was unclear as to what else and in what other circumstances it would be met. The appellant was a member of a very close family, a key caregiver and it was not in the public interest to subject the children to further turmoil.

**The Law**

38. I set out the relevant statutory provisions, without gloss, and the core principles.

39. Sections 117A to C of the Nationality, Immigration and Asylum Act 2002 provide:

> *"PART 5A*
>
> *Article 8 of the ECHR: public interest considerations*
>
> *117A Application of this Part*
>
> *(1) This Part applies where a court or tribunal is required to determine whether a decision made under the Immigration Acts -*
>
> *(a) breaches a person's right to respect for private and family life under Article 8, and*
>
> *(b) as a result would be unlawful under section 6 of the Human Rights Act 1998.*
>
> *(2) In considering the public interest question, the court or tribunal must (in particular) have regard -*

*(a) in all cases, to the considerations listed in section 117B, and*

*(b) in cases concerning the deportation of foreign criminals, to the considerations listed in section 117C.*

*(3) In subsection (2), 'the public interest question' means the question of whether an interference with a person's right to respect for private and family life is justified under Article 8(2).*

*117B Article 8: public interest considerations applicable in all cases*

*(1) The maintenance of effective immigration controls is in the public interest.*

*(2) It is in the public interest, and in particular in the interests of the economic well-being of the United Kingdom, that persons who seek to enter or remain in the United Kingdom are able to speak English, because persons who can speak English -*

*(a) are less of a burden on taxpayers, and*

*(b) are better able to integrate into society.*

*(3) It is in the public interest, and in particular in the interests of the economic well-being of the United Kingdom, that persons who seek to enter or remain in the United Kingdom are financially independent, because such persons -*

*(a) are not a burden on taxpayers, and*

*(b) are better able to integrate into society.*

*(4) Little weight should be given to –*

*(a) a private life, or*

*(b) a relationship formed with a qualifying partner,*

*that is established by a person at a time when the person is in the United Kingdom unlawfully.*

*(5) Little weight should be given to a private life established by a person at a time when the person's immigration status is precarious.*

*(6) In the case of a person who is not liable to deportation, the public interest does not require the person's removal where –*

*(a) the person has a genuine and subsisting parental relationship with a qualifying child, and*

*(b) it would not be reasonable to expect the child to leave the United Kingdom.*

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

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

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

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

*(4) Exception 1 applies where –*

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

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

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

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

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

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

40. There is an increasing scale of hurdles, to succeed in a human rights appeal, ranging from a person who is not liable to deportation at all, who may succeed on the basis of Section 117B(6), to the most significant hurdle for foreign criminals who have been sentenced to a period of imprisonment of four years or more (this appellant's case). However, where he cannot meet 'Exception 1', or 'Exception 2', I can nevertheless consider his circumstances through the initial lens of those exceptions when considering "very compelling circumstances".

41. Noting the case of HA (Iraq) v SSHD [2020] EWCA Civ 1176; AA (Nigeria) v SSHD [2020] EWCA Civ 1296, when considering whether an effect is "unduly harsh", I do not apply any notion of exceptionality or a baseline of the "ordinary" effects of deportation on "any" child. I accept that every assessment of "unduly harsh" must have as its focus the effects on the appellant's wife; child A and child B; and their cousin. The wording "unduly harsh" reflects section 117C(1), that the deportation of foreign criminals is in the public interest, so it does not start off as a neutral evaluation, but in the context of that public interest, the focus remains on the effects on the children. Unduly harsh effects may be commonplace and are highly fact-specific, particularly as they centre on the effects on individual children, by way of example, their ages; educational and emotional needs; and the role played by the appellant.

42. The assessment of "very compelling circumstances", reflects the strong public interest in deportation. However, that public interest has a moveable quality, i.e., the public interest may not have the same weight for all serious foreign criminals; and at its heart, it is helpful to assess very compelling circumstances through the "balance-sheet" approach, weighing on the one hand, the factors in the appellant's favour,

holistically, against the strong (but not immovable) public interest in deportation. They include the effects on Nerissa Pryce and her daughter.

43. Whether or not there are very compelling circumstances, I also need to consider the wider section 117B factors.

**Discussion and Conclusions**

44. Whilst the appellant cannot rely upon Exception1, as already noted, I can consider whether there are very compelling circumstances through the lens of Exception 1. The first element of that, namely the period of time spent by the appellant in the UK, is not met but the respondent accepts that the appellant is socially and culturally integrated into the UK. The nature of that integration is important, with the appellant involved in his local church since 2016 as well as having carried out a variety of jobs and he is clearly somebody who is willing to work and is involved in his local community. Even whilst in prison, the appellant's willingness to assist with the prison's careers service was evident. He is somebody who, in prison, positively engaged with the authorities and I have no doubt that who would positively contribute and engage in the future with his wider community.

45. Nevertheless, for the purposes of the third limb, I conclude that there are not very significant obstacles to the appellant's integration in Nigeria, were the appellant to return alone, without Ms Pryce and their children. Whilst I have noted the appellant's evidence that he was unable to find work up to the age of 22 despite being a graduate and also noting his point that there are many graduates in Nigeria who may struggle to find jobs, I am also conscious that in addition to his Nigerian academic qualifications, the appellant has worked in a number of UK sectors as reflected in the independent social worker report including in construction (§3.4, page [27] AB), as an Uber driver; as a security guard; and also with qualifications as a ticket inspector with Anglia Railways (see page [125] AB), health and social care and auxiliary nursing (page [132]), CCTV operations (page [114]), sterile cleaning and packing processes (page [115]) and preparing to set up a digital business (page [103]). I do not list all of the qualifications, but I am satisfied that the appellant has had substantial experience working over the years in the UK since 2004, during which time he had helped fund his studies together with numerous courses, which means he has more than the simple graduate qualification he had upon leaving Nigeria. He has candidly accepted that he has not done any research into the Nigerian job market, and I would expect him, with the benefit of the additional practical experience of work in the UK, be able to find remunerative work in Nigeria to be able to support himself. Whilst it has not been suggested that he would need the financial support of his retired parents or sibling, whom it is said is just about able to make ends meet, nevertheless he has a number of relatives in Nigeria whom he remains close to and no doubt even if not able to provide financial support, would provide a support network upon his return to Nigeria. He would not in any sense be returning as an outsider and would, notwithstanding the fact that he has not returned since 2007, be able to support himself and also, in the event of a "stay" scenario, do so sufficiently that he would be able to maintain at least social network contact with Ms

Pryce and his two children even if, as I accept, the couple would not be able to afford regular visits between the two by way of travel to Nigeria. In these circumstances, therefore, Exception 1 is not met.

46. I turn to the question of Exception 2. I separate this out into the two scenarios, the "go" scenario and the "stay" scenario. Mr Lindsay urged me to consider the case of Patel (British citizen child - deportation) [2020] UKUT 45 (IAC). Whilst I note the fact that the appellant's two children are British citizens does not mean that it would be necessarily unduly harsh for them to leave with Ms Pryce and the appellant as a family unit and that some substantial interference with the rights and expectations that come with being British citizens is possible without it being unduly harsh, nevertheless I conclude that in the appellant's circumstances, the effect of the "go" scenario would be unduly harsh upon Ms Pryce and the two children.

47. I take as my starting point that it would not be in the best interests of those two children but that is only one factor to consider. More broadly, the circumstances are where the two children and Ms Pryce live in the same neighbourhood where Ms Pryce has lived for the vast majority of her life, having lived in the same family unit since the age of seven, albeit with a brief period of schooling in Jamaica. Her extended family is within the UK as are her siblings, with whom she has close connections. Whilst I note that the appellant had described having Nigerian friends, part of the Nigerian diaspora community in the UK, nevertheless Ms Pryce has no knowledge or connections with Nigeria. The stability of the family's settings, which is the only setting they have ever known, is in the context of living in Ms Pryce's mother's family home together with Ms Pryce's sister and now her young daughter. Ms Pryce's university experience and career has been developed whilst in the UK. Her ability to support the couple's children, including when the appellant was in prison, was through the ability to obtain childcare, albeit at an expense, in the UK. Her role in the administration of legal education is one within the context of UK legal services, having obtained a law degree in England. Whilst that may stand her in certain stead in the event of the family's relocation to Nigeria, I find that the family's return to Nigeria as a whole would be a very different proposition to the appellant returning alone and able to find remunerative work just to support himself. There is no suggestion that the appellant's relatives in Nigeria would be able to house or provide financial support to the appellant's larger family. In simple terms, they would need to fund and find accommodation themselves as well as schooling and remunerative work, in circumstances where both the appellant and Ms Pryce have formerly worked. Whilst the appellant may be able to access Nigerian society as an insider and may to an extent be able to assist Ms Pryce, I recognise that she has simply no connection with that country whatsoever and her ability to therefore work and provide support to the family must therefore be at serious risk, even if the couple have not explored in detail the availability of job vacancies. There is every possibility that the family would be dependent upon the appellant's income alone, which, very broadly speaking, in the UK, has been limited to what might be termed skilled manual work such as security-guarding, driving and the like.

48. In those circumstances, Ms Pryce's role within a graduate job is of significant importance to the family's financial prospects and her inability to replicate that role in Nigeria, where she has no experience would therefore have serious implications for the family's ability to sustain themselves. That in turn would have an impact on the family's ability to source education for the two children, who are settled and at important stages of their education, with the eldest child about to move, the year after next, with his cohort to secondary school. In circumstances where Ms Pryce and her children would be moving to a country that is entirely unknown to them, with serious risks as to the family's ability to support itself, and without the close support network which Ms Pryce has enjoyed for the entirety of her life, I accept that the effect of the "go" scenario would be unduly harsh, even taking into account the starting point that the public interest is in the deportation of the appellant as a foreign criminal.

49. I then turn to consideration of the "stay" scenario, whereby the appellant is deported to Nigeria, but Ms Pryce and her children remain in the UK with her sister, her sister's child and her immediate support network. I have considered carefully the independent social worker report and I have no doubt the impact which will be emotionally upsetting to both the children (including the cousin) and also to Ms Pryce and her sister. I am also mindful of not falling into the trap of looking for something beyond the commonplace or usual, when considering unduly harsh effects. I find it likely, given the couple's financial resources, that the ability of them to see one another physically would be limited, if not at all, bearing in mind the context that the appellant has not been able to afford to visit Nigeria himself since 2007. I have little doubt that therefore any contact would be by means of social media communication only, albeit one that would not incur the £5,000 expense that the appellant incurred whilst in prison. The consequence would be that the appellant would be physical absent from his two sons' lives as well as the life of their cousin, Ms Pryce, and Nerissa, with all of whom he has close relationships and with whom he is part of a close family unit living together.

50. However, it is within the closeness of the wider family unit, that I conclude that ultimately, the effect of deportation in the "stay" scenario would not be unduly harsh. Ms Pryce accepted that during the period of the appellant's imprisonment, she was able to work full-time and, albeit with childcare arrangements which were expensive, was able to cope. She lives in the family home belonging to her mother, and there is no risk of the family losing their home in the event of the appellant's deportation. The couple's children go to school in the same neighbourhood she is familiar with, with long-developed social networks. She has a close family support network and even if, as I accept, her close family support network may have their own careers and families to attend to, I have no doubt that as from time to time they would, if necessary, provide Ms Pryce with support. Indeed, Ms Pryce described that she and her twin sister Nerissa helped one another with childcare arrangements when they both worked, in the appellant's absence. I do not in any way belittle the central importance that the appellant has played in his children's lives actively as a loving father and having, for example, been there so that they can be proud of him, as well as the close relationship he has with Nerissa and her daughter. Equally, I do

not limit the weight that Ms Brown has eloquently described of the desire of both children to have a father whom they can show off and show and be around physically, which was possible even during his period of imprisonment. I am nevertheless satisfied that Ms Pryce and the two children would be able to cope and ultimately thrive in the appellant's absence. This is testament to the love and support of Ms Pryce for her children as well as the support of the close-knit wider family. I have carefully considered the impact too upon Nerissa Pryce, with whom the appellant has a close relationship, and her daughter, aged four years old. Nevertheless, it is noteworthy that that daughter continues to have a relationship with her biological father and also will remain cohabiting with her cousins, the appellant's children. Whilst the appellant's two children are at important stages of their education, moving to primary school and in the next year to secondary school, nevertheless there was no evidence of worsening educational attainment during the period of the appellant's absence nor, noting child A's medical condition of asthma, is there any suggestion of any caring needs that Ms Pryce or her relatives could not fulfil. Put simply, whilst the outcome is, I have no doubt, harsh, I also have no doubt that Ms Pryce and her close-knit and wider family in the UK will be able to cope and thrive. Even taking into account and noting that it is not in the best interests of the children, it would not, in my view, be unduly harsh for the appellant to be deported and for Ms Pryce and her children to remain in the UK.

51. I go on to consider whether there are very compelling circumstances over and above Exceptions 1 and 2, even though Exception 1 and the "stay" scenario of Exception 2 are not met. I include in that assessment, fresh consideration of the Exception 1 and 2 factors, as well as the impact on Nerissa Pryce and her child. It is also at this stage that I also consider the nature of the appellant's offending and his involvement. I have considered in particular the 'Boultif' factors (see Boultif v Switzerland [2001] 33 EHRR 50) referred to at §49 of the Patel decision. I am conscious that this was a single offence and that the appellant is at no risk of reoffending. I am also conscious that he was distraught at his offence and that the appellant's conduct since his offending has been without criticism. I take into account the fact of his British wife and children and the fact that the "go" scenario would be unduly harsh. I also take into account that the appellant has been married since 2008 and, albeit for a brief period of non-cohabitation, has a loving and close family relationship with Ms Pryce but also as part of the wider close family unit, including Nerissa and her child. I take into account the fact that the appellant has never been in the UK unlawfully and I also take into account the challenges that Ms Pryce will face in the event that the appellant is deported. Nevertheless, this is in my view not a case where, what were the described as the unique features by Ms Khan, mean that there are very compelling circumstances. On the one hand, the sentence was for just over four years in question, and I take into account that the actions of the appellant, who ultimately killed another man, were not intentional. I also take into account that, as the sentencing Judge said, that he is not a dangerous offender. I take into account the Court of Appeal's assessment of the sentence as possibly harsh but one that was open to the Judge to make. Nevertheless, the circumstances of the appellant having killed a man, whose family's lives have been shattered for ever, places a heavy

weight indeed on the public interest in deporting the appellant. Whilst I recognise that this is not a case where deterrence would have a particular effect as there was no suggestion that the appellant intended to commit the offence in question, the appellant's culpability for such a serious offence, in circumstances where Exception 1 and the "stay" scenario of Exception 2 are not met, combined with the heavy weight of the public interest in the appellant's deportation, ultimately outweighs the factors in support of right to respect for his family and private life developed in the UK in a period when he was in the UK lawfully and also in the context of an undoubtedly close and loving relationship with his family members as a part of the family life in the UK. I conclude that there are not very compelling circumstances in this case, over and above Exceptions 1 and 2, on an assessment of all of the evidence.

52. Considering the wider Article 8 considerations, including by reference to section 117B of the 2002 Act, while the appellant has never been a burden on the UK taxpayer; speaks English; established his family life when in the UK lawfully and much of his private life when he had settled status; while the decision to deport the appellant undoubtedly has an effect sufficient to engage Article 8, the strong public interest in deportation ultimately outweighs the appellant's right to respect for his family life, and the best interests of the minor children involved. The decision to refuse the appellant's human rights claim is proportionate.

53. In the circumstances, the respondent's decision to refuse the appellant's application for leave to remain on the basis of his human rights is upheld and the appellant's appeal fails and is dismissed.

**Notice of Decision**

The appeal on human rights grounds is dismissed.

No anonymity direction is made.

Signed *J Keith* Date: 9th August 2021

Upper Tribunal Judge Keith

**TO THE RESPONDENT**
**FEE AWARD**

I have dismissed the appeal and therefore there can be no fee award.

Signed *J Keith* Date: 9th August 2021

Upper Tribunal Judge Keith

**ANNEX – ERROR OF LAW DECISION**

IAC-FH-CK-V1

**Upper Tribunal**
**(Immigration and Asylum Chamber)** Appeal Number: HU/12135/2019 ('V')

**THE IMMIGRATION ACTS**

| **Heard at Field House** | **Decision & Reasons Promulgated** |
|---|---|
| **On 21st October 2020** | **On** |

**Before**

**UPPER TRIBUNAL JUDGE KEITH**

**Between**

**MR ADEFEMI PETER ADEBISI**
**(ANONYMITY DIRECTION NOT MADE)**

Appellant

**and**

**THE SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Respondent

**Representation:**
For the appellant: Ms S Khan, Counsel, instructed by Legal Justice Solicitors
For the respondent: Mr A McVeety, Senior Home Office Presenting Officer

**DECISION AND REASONS**

**Introduction**

1. These are the approved record of the decision and reasons which were given orally at the end of the hearing on 21st October 2020.

2. Both representatives attended the hearing via Skype and I attended the hearing in-person at Field House. The parties did not object to the hearing being via Skype and I was satisfied that the representatives were able to participate in the hearing.

3. This is an appeal by the appellant against the decision of First-tier Tribunal Judge Carroll (the 'FtT'), promulgated on 6th March 2020, by which she dismissed the appellant's appeal on human rights grounds, following the respondent's refusal of his human rights claim on 3rd July 2019, in the context of the respondent having made a deportation order against the appellant on the same date. The automatic deportation provisions of section 32(2) of the UK Borders Act 2007 applied. The appellant, a Nigerian national, with indefinite leave to remain in the UK since February 2011, had been sentenced on 7th February 2019 to 54 months' imprisonment for causing death by careless driving while under the influence of drugs, specifically cannabis.

4. The respondent accepted that the appellant was in a long-standing relationship with his British national wife, who had been born in the UK and who had no connections to the appellant's country of origin, Nigeria. The couple had two British children, born in 2010 and 2015 and the appellant was, except for his time in prison, a resident father. The eldest child, ('A') suffered from asthma and his behaviour at school was said to have worsened during the period of the appellant's imprisonment. The appellant had entered the UK in 2004, aged 22 years' old and had always had leave to remain in the UK since his arrival. He had no prior criminal convictions.

5. In refusing the appellant's human rights claim, the respondent considered the appellant's family life. While the appellant had a family life with his wife and children, who were 'qualifying' for the purposes of section 117C of the Nationality, Immigration and Asylum Act 2002, the respondent concluded that the effect of the appellant's deportation on his wife and children would not be unduly harsh ('exception 2' – section 117C(5)), on the basis that it would not be unduly harsh either for his wife and children live with him to Nigeria, or to remain in the UK without the appellant.

6. In respect of the appellant's private life, ('exception 1' – section 117C(4)), the appellant had not been resident in the UK for most of his life (just over 14.5 years, having arrived aged 22) and the respondent did not accept that he was 'fully' socially and culturally integrated, as a result of the seriousness of his offending. The respondent also did not accept that there would be very significant obstacles to his integration in Nigeria, as he had received training and an education in the UK as well as having worked in variety of roles, which would assist in his integration. There were no very compelling circumstances outweighing the public interest in the appellant's deportation.

**The FtT's decision**

7. The FtT's analysis of the evidence was brief. She noted the offence (§[18]); the appellant's remorse and low risk of reconviction (§[20] and [21]) and his continuing family connections (parents and a brother) in Nigeria and the appellant's wife's

contacts with her parents-in-law. While the FtT cited the children's best interests, she concluded that separation from the appellant did not amount to exceptional circumstances and they could either choose to relocate to Nigeria as a family, or maintain contact with the appellant, while remaining in the UK (§[25] to [27]).

8. Having considered the evidence as a whole, the FtT dismissed the appellant's appeal.

**The grounds of appeal and grant of permission**

9. The appellant lodged grounds of appeal which, while citing section 117C of the 2002 Act and relevant case law, engages very little with the appellant's specific circumstances. The grounds assert that the FtT had failed to consider the effect on the appellant's children of his separation from them (ground (1)); and had failed to set aside the appellant's offending when considering the unduly harsh effect on the appellant's children of his deportation (ground (2).

10. First-tier Tribunal Judge Easterman initially refused permission, but on renewal, permission was granted by Upper Tribunal Judge Jackson on 14th August 2020. While permission was granted on all grounds, Judge Jackson identified materiality as the issue, given that there was nothing apparently identifiable which could establish either the unduly harsh effects of deportation on the appellant's children or very compelling circumstances. She indicated that the appellant would need to satisfy this Tribunal that the brevity of the reasoning was material to the outcome of the appeal.

**The hearing before me**

**The appellant's submissions**

11. In the appellant's more detailed submissions before me, I was referred to the two recent authorities of HA (Iraq) v SSHD [2020] EWCA Civ 1176, and AA (Nigeria) v SSHD [2020] EWCA Civ 1296. The concerns that had been raised by both Judges Easterman and Jackson were reiterated. The key point here was this was not a case where an adequate analysis of the evidence would have made no difference in terms of an outcome. In relation to the authority of HA (Iraq), I was referred to §[152] and in particular the point that a decision to deport a parent may produce hugely detrimental consequences for a child but provided his or her best interests had been adequately identified and weighed in the balance as a primary consideration, the decision would be lawful. There had been no such analysis here.

12. Ms Khan then went on to cite from §[153] that there was no substitute for a careful consideration of all relevant factors when the best interests of a child were involved in an article 8 assessment; and at §[154] that a child would not usually be in a position to urge his or her point of view and that the decision maker cannot treat the child as if he or she had some burden of proof.

13. Returning to an earlier part of the decision at §[53], it was the express will of parliament that Tribunals should, in each case, make an informed evaluative

assessment of whether the effect of deportation on the partner or parent would be unduly harsh in the context of the strong public interest in the deportation of foreign criminals; and at §[56] the Court had identified its concern around the risk of a test of harshness beyond that ordinarily expected. Such a test, if used incautiously, could be misleading, particularly where Tribunals treated the essential question as being one of whether the circumstances were out of the ordinary. How a child would be affected by a parent's deportation would depend on an almost infinitely variable range of circumstances and it was not possible to identify a 'baseline' assessment, all of which was consistent with §[38] to [41] of AA (Nigeria).

14. Ms Khan referred me not only to the appellant's statement before the FtT, but §[21] of the FtT's decision where she stated:

> *"I heard evidence at length from the appellant. He is deeply remorseful and did not attempt to diminish responsibility for any of his actions. Neither he nor Ms Pryce exaggerated any aspect of the appellant's case."*

15. Even if it were suggested that the elements of the appellant's witness statement which had dealt with the impact on his wife and children were brief, it was clear that there was substantial additional oral evidence before the FtT, none of which was recorded in any detail in the FtT's decision. In any event, the appellant had referred in his written witness statement aspects of the impact on his wife and children. At §[18] he had dealt with the emotionally damaging impact on his wife, which in turn would have an impact on her ability to care for their children. He also commented at §[21] about the close nature of his relationship with his children and the effect that that his deportation would have on his children.

16. The appellant's wife had also produced a witness statement to the FtT, to which I was referred, particularly §[4], which reiterated the closeness of the appellant's relationship with his children and the tight family unit, which was reflected in the evidence before the FtT at pages [43] and [44] of the appellant's bundle before the FtT, which included a prison visit log with regular, almost monthly visits by the applicant's wife and children to the appellant in prison, and an endorsement by the Prison Family Services officer at page [47]. It was simply no substitute to say that the appellant's wife, who had no Nigerian background and had never been to Nigeria, could simply move there, even if she were in contact with the appellant's parents.

17. In summary, the inadequacy of the FtT's reasoning in this case was highly material.

**The respondent's submissions**

18. In terms of the respondent's submissions, Mr McVeety agreed that an assessment of the human rights claim was intensely fact-sensitive, and he also accepted candidly that the FtT's reasoning had been brief. However, nothing in HA (Iraq) or AA (Nigeria) turned the absence of any detailed evidence into the basis to conclude that there were very compelling circumstances in the appellant's case. This was a case where there were a couple of brief references in the witness statements to the effect of

removal on the appellant's wife and children, but in reality, nothing that would begin to amount to very compelling circumstances.

19. The other factors that might be said to go in the appellant's favour in an assessment of very compelling circumstances, namely his honesty in confessing to his cannabis use prior to killing somebody, albeit accidentally, was not something that could realistically be seen in his favour and nor could the fact that he collected his children from school every day.

**Discussion and conclusions**

20. Drawing together the submissions from both parties, I first accept that the FtT's analysis in relation to both 'exception 1;' 'exception 2;' and also of 'very compelling circumstances' over and above those for the purposes of Section 117C of the 2002 Act, was insufficient, in the sense of the FtT explaining how she reached her conclusion that neither exceptions were met and that there were no very compelling circumstances. Indeed, the limitations of that analysis are at §[25] to [27]:

> *"25. The best interests of the children are a primary consideration under section 55 of the Borders, Citizenship and Immigration Act 209. They are, however, not sole or paramount and must be balanced against other factors. Only the strongest claim will outweigh the public interest will outweigh the public interest in deporting an individual sentenced to at least four years' imprisonment.*
>
> *26. Neither the British nationality of the children nor the likely separation from their father for a long period of time amounts to such exceptional circumstances such as to outweigh the public interest in deportation. It is of course open to Ms Pryce and the children to accompany the children to Nigeria should they choose to relocate to that country. Alternatively, Ms Pryce and the children will be able to keep in regular contact with the appellant by means of computer and telephone and there is nothing in principle to prevent them from visiting the appellant.*
>
> *27. Deportation will inevitably give rise to great sadness and to significant practical problems in terms of the ability of Ms Pryce to continue work and to care for her children. However, the evidence falls short of showing a degree of harshness above what would necessarily be involved for any child (or other family member) faced with the deportation of a parent (see paragraph 23 of KO (Nigeria) UKSC [2018] 53)."*

21. While the analysis at §[25] refers to the best interests of the children and correctly states that these best interests are not sole or paramount, the conclusion which almost immediately follows at §[26], that there are no exceptional circumstances which outweigh the public interest in deportation, provides no analysis at all of the impact of the appellant's removal either on his children or Ms Pryce, or any substantive analysis in relation to the practicability of the family relocating, as a unit, to Nigeria. The reasoning at §[29] in relation to 'very compelling circumstances' similarly lacks such analysis and is once again more of a statement:

> *"In light of all of the evidence, for the reasons given above, and for the reasons given by the respondent, I find that the appellant has failed to demonstrate that there are very compelling circumstances such as to outweigh the public interest in deportation…"*

22. Mr McVeety urged upon me that the absence of reasoning was of no practical import, where there was no evidence before the FtT to analyse. This is answered by two points. First, both the statements of the appellant and Ms Pryce addressed the issue of the substantial emotional impact that the appellant's removal would have on Ms Pryce and her consequential ability to look after their children even if it was put in brief terms. Second, as the FtT herself recorded at §[21], she heard evidence '*at length*' from the appellant. The nature of that evidence is mentioned in only two brief paragraphs at §[22] and [23], which described the appellant as a '*devoted husband and father*', but little more. The remainder of the substance of the oral evidence in relation the family unit in the UK is otherwise barely touched on. In these circumstances, it is not possible to safely reach a conclusion that the evidence that was given would not have had a material impact on the eventual decision reached, had it been set out clearly and analysed more fully; or the absence and limitations of such evidence was more clearly stated.

23. I accept Ms Khan's submissions, powerfully made, that this is not a case where the absence of reasoning is immaterial. In the circumstances and bearing in mind the grave impact of the FtT's decision to uphold the refusal of the human rights appeal, this is a case where the FtT's decision is unsafe and should be set aside.

24. In setting aside the FtT's decision, however, I preserve her findings (not in dispute) that the appellant continues to have a genuine and subsisting relationship with his wife, Ms Pryce, a qualifying partner; and a genuine and subsisting parental relationship with his two qualifying children, for the purposes of section 117C of the Nationality, Immigration and Asylum Act 2002.

**Decision on error of law**

25. The First-tier Tribunal's decision contains errors of law, such that it is unsafe and cannot stand. I set the decision aside, while preserving the finding that the appellant has genuine and subsisting relationships with his qualifying wife and children.

**Disposal**

26. With reference to paragraph 7.2 of the Senior President's Practice Statement, given the limited scope of the issues and disputed facts, it is appropriate that the Upper Tribunal remakes the FtT's decision. Directions for the remaking are set out below.

**Directions**

27. The following directions shall apply to the future conduct of this appeal:

    27.1 The Resumed Hearing will be listed before Upper Tribunal Judge Keith, if possible, or another Upper Tribunal Judge, and if the appellant remains in criminal detention, the hearing shall be heard at the Royal Courts of Justice, on the first available, time estimate **4 hours**, to enable the Upper Tribunal to substitute a decision to either allow or dismiss the appeal.

27.2 The appellant shall no later than **two weeks prior to the Hearing**, file with the Upper Tribunal and serve upon the respondent's representative a consolidated, indexed, and paginated bundle containing all the documentary evidence upon which he intends to rely. Witness statements in the bundle must be signed, dated, and contain a declaration of truth and shall stand as the evidence in chief of the maker who shall be made available for the purposes of cross-examination and re-examination only.

27.3 The respondent shall have leave, if so advised, to file any further documentation she intends to rely upon and in response to the appellant's evidence; provided the same is filed no later than **one week** prior to the Hearing.

**Notice of Decision**

**The decision of the First-tier Tribunal contains material errors of law and I set it aside, subject to the preserved findings set out above.**

No anonymity direction is made

Signed *J Keith* Date: 28th October 2020

Upper Tribunal Judge Keith