Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: HU/18241/2019

THE IMMIGRATION ACTS

Heard at Field House (face to face hearing)	**Decision & Reasons Promulgated**
On 3 November 2021	**On 22 November 2021**

Before

UPPER TRIBUNAL JUDGE SMITH
DEPUTY UPPER TRIBUNAL JUDGE WOODCRAFT

Between

MR FREDERICK RUKONDO

Appellant

-and-

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellant: In person
For the Respondent: Mr T Melvin, Senior Home Office Presenting Officer

DECISION AND REASONS

BACKGROUND

1. By a decision promulgated on 30 July 2021, Upper Tribunal Judge Smith found an error of law in the decision of First-tier Tribunal Judge Cartin itself promulgated on 20 January 2021 allowing the Appellant's appeal against the Respondent's decision dated 7 October 2021 refusing his human rights claim. That claim was made in the

context of a decision to deport the Appellant to Uganda. The error of law decision is annexed hereto for ease of reference.

2. Having found an error of law in Judge Cartin's decision, Upper Tribunal Judge Smith set that aside and gave directions for a resumed hearing. Although she gave the Appellant the opportunity to provide up-to-date evidence, he did not do so. We do not intend any criticism in that regard as the Appellant acts in person. However, as we will come to, we can decide this appeal only on the basis of the evidence before us. We have before us the Respondent's bundle (referred to hereafter as [RB/xx] and two bundles of evidence previously adduced by the Appellant. Those bundles are unpaginated and so we refer to that evidence by its content. We have read all the evidence but refer only to that which is relevant to the issues we have to decide.

3. The resumed hearing was attended by the Appellant in person and Mr Melvin for the Respondent. The Appellant explained to us that he had hoped that at least some of his children might be able to attend, but in the event his youngest child (his son [F]) is now at university in Nottingham and his other three adult children had to work or had family commitments.

4. We permitted the Appellant to give oral evidence also by way of submissions notwithstanding the lack of any further witness statement. He was asked some questions by Mr Melvin, and we asked some other questions by way of clarification of his evidence. Again, we refer below to that evidence which is relevant to our consideration. Mr Melvin also produced a short skeleton argument for the hearing. As the Appellant is in person, we did not require him to make any submissions on the law which is in any event relatively well settled. We gave him the opportunity to answer the points made by Mr Melvin in submissions so far as he felt able. Having heard from the Appellant and Mr Melvin, we indicated that we would reserve our decision and provide that in writing which we now turn to do.

LEGAL FRAMEWORK

5. In order to succeed in his appeal, the Appellant must either fulfil the exceptions to deportation set out in the Immigration Rules ("the Rules") or demonstrate that there are very compelling circumstances over and above those exceptions. The exceptions in the Rules are essentially the same in content as the exceptions set out in section 117C Nationality, Immigration and Asylum Act 2002 ("Section 117C") and we therefore set out those exceptions by reference to that section.

6. Section 117C provides as follows so far as material:

> "**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. There can be no dispute that Section 117C applies to the Appellant. He has been sentenced to a term of imprisonment of over twelve months. Although Section 117C (6) on its face does not apply to the Appellant as he was not sentenced to at least four years, the Court of Appeal in NA (Pakistan) v Secretary of State for the Home Department [2016] EWCA Civ 662 at [24] to 27] of its judgment held that this applied equally to "medium offenders who fall outside Exceptions 1 and 2". This means that, even if the Appellant does not meet Exceptions 1 and 2, we are still required to consider whether "there are very compelling circumstances over and above" those exceptions. In order to conduct that exercise we need also to consider the extent to which the Appellant meets or does not meet the exceptions.

8. The only ground of appeal before us is that the refusal of the Appellant's human rights claim breaches section 6 Human Rights Act 1998 on the basis that it is a disproportionate interference with the private and family life of the Appellant and others impacted by the decision.

9. As confirmed by the Court of Appeal in HA (Iraq) and RA (Iraq) v Secretary of State for the Home Department [2021] EWCA Civ 1176 ("HA (Iraq)"), whereas, when considering the position within Exceptions 1 and 2, there is no room for balancing the interference with the Article 8 rights of the Appellant and others affected by the decision against the circumstances of the offending, the position is different under Section 117C(6).

EVIDENCE AND FINDINGS

10. The basic facts of this case are adequately set out at [2] and [3] of the error of law decision and we do not repeat what is there said.

11. Although Mr Melvin submitted in his skeleton argument that Judge Smith had preserved Judge Cartin's findings in relation to Exceptions 1 and 2, that is incorrect (see [28] of the error of law decision). It is however appropriate to take into account

the evidence which Judge Cartin received regarding those exceptions when making our findings.

12. Dealing first with Exception 1, the Appellant has not lived in the UK lawfully for half his life. At the date of the deportation decision, he had been here lawfully for under nineteen years and was aged fifty-seven years. Judge Cartin found that the Appellant had socially and culturally integrated in the UK. He has been here since January 1990 and therefore for over thirty years. As Mr Melvin accepted, the Appellant has shown that he has worked (and is still working) in the UK and paying taxes. It is accepted that he has family and friends here. He speaks English. We accept that the Appellant is socially and culturally integrated.

13. The final element of Exception 1, however, is whether there are very significant obstacles to the Appellant's integration in Uganda. The Appellant made no mention of this factor and there is no direct evidence about obstacles said to exist. Judge Cartin concluded that the Appellant "failed to advance any evidence to show he would have any real difficulty reintegrating in Uganda let alone very significant obstacles as opposed to merely inconvenience or experiencing a culture shock". The Judge found therefore that the Appellant was "far from satisfying this exception" (see also [9] of the error of law decision).

14. We accept that it has been many years since the Appellant lived in or even visited Uganda. Judge Cartin's decision mentions the Appellant's evidence that he had visited twice since 2004 on his way to Kenya and Rwanda. His handwritten letter submitted in this appeal explains his circumstances in that country. He grew up during the regime of Idi Amin. His mother brought him and his three siblings up alone. He did not meet his father until he was nineteen years old. As a result, he had no father figure to influence him. Due to a lack of money to pay for his schooling, the Appellant left school in 1988. He became caught up in smuggling marijuana into the UK. He was detained and imprisoned in the UK. He claims to have been at risk following his release and return to Uganda.

15. The Appellant's first asylum claim made in October 1990 was rejected but he was granted exceptional leave to remain for twelve months from January 1993. He did not appeal the refusal of asylum. Thereafter, he was given notice of deportation as an overstayer in January 1995 whereupon he claimed asylum again, this time on the basis of political affiliations. That claim was refused, and his appeal dismissed on 7 March 2003. The appeal decision is at [RB/G1-7]. The Tribunal concluded that the Appellant's claim was not credible, and he would not in any event be at risk given his lack of political profile and an amnesty in force in Uganda.

16. There is a letter from a Church Elder at Holy Tabernacle Baptist Church, Mr Eugene Kabuga, dated 10 July 2019 at [RB/P1]. In that letter, he says that he is "made to understand" (presumably by the Appellant) that the Appellants' parents are deceased and that "he practically has no family to return to let alone land to dwell on". There is no direct evidence from the Appellant on this issue. He did say in his

asylum screening interview that his father was dead but at that time his mother was still alive. There is no evidence that she has died or when. There is also no evidence concerning the whereabouts of other family members (for example, the Appellant's siblings). Judge Cartin's decision mentions that the Appellant said that his sisters had died. We accept that is possible, but we have no evidence that this is so.

17. In any event, we were provided with no evidence that the Appellant could not find employment in Uganda. The Appellant has provided evidence that he has a pension as a result of his employment as a bus driver. His normal retirement age is 2028 but there is no evidence that he could not take that pension earlier to provide himself with some income in the short term whilst he finds a job. We were not provided with any evidence about any savings which the Appellant may have but we note that the Appellant is acting as a guarantor for his son's rent at university and we assume that the landlord must have been satisfied that he has sufficient assets to take on that responsibility.

18. Although the Appellant made no reference to his health, he has included in his bundle medical notes up to August 2019. Those are unremarkable. They do not suggest any serious, long-term medical conditions and the Appellant did not mention any. He has suffered from Bell's Palsy for which he was on medication for a short time in 2017 but there is no evidence of reoccurrence. There is no suggestion that he could not obtain the necessary medication in Uganda were that condition to reoccur. He is a sickle cell carrier but does not appear to receive any medication or suffer any long-term ill effects from that diagnosis. The notes show that the Appellant gave up alcohol and smoking in February 2017 but is recorded as a smoker in August 2019. As we will come to, his abstinence from alcohol was also not permanent.

19. Having considered the very limited evidence about the Appellant's circumstances were he to be deported to Uganda, we are satisfied that there are no very significant obstacles to integration there. The Appellant grew up and lived there until he was in his twenties. He will be familiar with the culture even though we accept that it may be many years since he has visited. The fact that he has no family there (or at least no close relatives) does not impact on his ability to reintegrate.

20. Turning then to Exception 2, it is accepted that the Appellant is no longer in a relationship with his partner. As we will come to, whilst the Appellant may entertain hopes of a reconciliation, there is no updated evidence to suggest that the situation has or is likely to change. We find that unsurprising given the circumstances of the index offence. At the time of Judge Cartin's decision, the Appellant had a minor child, [F]. However, [F] is now eighteen. He is no longer a child. It follows that the Appellant is unable to meet the second exception based on his relationship with his son. We will consider the impact of the Appellant's relationship with [F] below.

21. We turn now to the evidence said to demonstrate that there are very compelling circumstances over and above the exceptions.

22. As we have already set out, the Appellant has lived in the UK lawfully for nineteen years and has been here for thirty of his fifty-nine years. There is evidence that he has worked in the UK and paid taxes. He told us that he currently works as a bus driver earning £450-£500 per week. We accept that evidence.

23. The Appellant is now a Christian and regularly attends church. The letter from Mr Kabuga speaks of the Appellant's regrets for the index offence and his commitment to change. Mr Kabuga believes that the Appellant's deportation "will do him no justice" and says that the church "is willing to step in and cater for his upkeep and rehabilitation". He asks that the Appellant be given a second chance. There is no updated statement from the church, and no-one attended to give evidence on his behalf. He told us that the pastor is in Africa and had been unable to return due to the pandemic. He did not explain why the pastor or some other person from the church could not provide an updated letter of support.

24. The main thrust of the Appellant's case is his relationship with his children. He has four children. The eldest, [L], is aged 32 years. She has a child of her own. [D] is aged 25 years and works at Kingston University Hospital as a nurse. [G] is aged 22 years and also has a child of her own. [F] is now aged 18 years and is studying at Nottingham University. The main relationship which the Appellant maintains is with [F] and we will therefore deal with that last. There is negligible evidence from the Appellant's three daughters. The evidence which is before us is not entirely supportive.

25. We begin with the evidence from [D]. There are several emails from her sent whilst the Appellant was in prison indicating that she wished to visit but had on occasion been unable to do so. She records that the Appellant's children love him and forgive him. She mentions that the Appellant's grandchildren also miss him and ask when he is coming to see them.

26. More troubling though is the evidence sent via [D] from her sisters. [D] says in her email dated 23 July 2019 that she had asked [L] for a message, but she was "not sure her heart is quite ready". There is a lengthy message from [G] sent via [D] on 10 November 2019. We have read this with some care. [G] speaks of giving birth to her child and the insight it gave her into her own childhood. We do not set this email out in full as it is deeply personal, but we do record extracts which give some insight into the Appellant's relationship with at least this one of his children and his former partner as follows:

> "... I remember growing up how often you would say you have no money, are stressing and that you wanna leave this country and go back to Africa. Now you're in a high stress facility, with less money than you came to the country with and facing deportation. If there is no greater example of proclamation and power of the tongue, its your life. You spoke all these situations into existence, you're a god, a creator and

> you created this story. You had warnings and signs and dreams and messages, yet you chose the darkness that's within you to lead you: You cannot blame it all on the devil dad, it's not fair on him. You have to take responsibility. You have to look the evil in your life directly in the face and either divorce it or remain married to it. I want you to know I've forgiven you, but it took a lot of decision making because I don't want to end up with father issues like you. I hated you for what you did to my mother and I didn't care if I never saw you again. It was totally demonic and disgusting what you did. I would ask myself what if he killed her? What if I had to live my life with a father in jail and a dead mother? He has been abusive to her his whole marriage and cheated on her as well, yet no one tried to kill him in McDonalds. I'll be honest with you entering McDonalds makes my stomach upset and my head feel funny, I get very uncomfortable and that's something I have to deal with…"

27. We recognise that the email goes on to speak about the Appellant having changed but does demonstrate that the Appellant's children (or at least [G] and [L]) are finding it difficult to forgive the Appellant. It also appears that [G] did not have a happy relationship with her father even before his attack on her mother. She mentions him hitting her when she was young. It is also worthy of note that [G] asks the Appellant to leave her mother alone and to let her go. As we will come to, that is not something which the Appellant appears prepared to do.

28. We should add for completeness that the Appellant told Judge Smith at the error of law hearing that what [G] said about his relationship with her mother was not true, that "he had forgiven his daughter for writing this" and that "she had since realised 'what she said was not correct'". However, we are not prepared to accept the Appellant's word for this. We do not understand why his daughter would say such things about her father were they not true and she has not provided any letter withdrawing her comments. As we will come to, we can also well understand her reaction to the attack on her mother given the details of it.

29. Whether or not the Appellant's daughters have now been prepared to forgive him, they are in any event independent adults with jobs and families of their own. There is little evidence about the Appellant's relationship with their minor children or that those children would be impacted in any way by his deportation. The Appellant's daughters have not provided any updating statements or letters in support. They did not attend the hearing. As Mr Melvin pointed out, Judge Smith made plain in her error of law decision that the reason for adjourning the re-making of the decision to a further hearing was to permit the Appellant to adduce further written evidence and/or call witnesses including family and friends to give oral evidence ([30]). Although the Appellant acts in person he could not have been under any misapprehension about his ability to provide further evidence whether in writing or orally. We reiterate that we can only decide the appeal on the evidence before us.

30. We accept that the Appellant has a closer relationship with his son, [F]. In the past, although [F] lived with his mother, he stayed with his father every other week at weekends. To that end, the restraining order imposed on the Appellant in consequence of the index offence was tailored to ensure that the Appellant could

maintain his relationship with [F]. Notwithstanding that, Judge Cartin was not satisfied that it would be unduly harsh for [F] to remain in the UK without the Appellant. At that time, he lived with his mother who was able to care for him.

31. Things have moved on somewhat. [F] is now an adult. He has moved to Nottingham to attend university. The Appellant provided evidence in the form of a guarantee agreement to show that he is acting as guarantor for [F]'s rent. He also said that he buys [F] food on a regular basis as the money provided by the government is insufficient to meet [F]'s needs. Mr Melvin pointed to the lack of other evidence of [F]'s current circumstances. The Appellant was willing to show us a video of him taking [F] to university. We did not need to see that. We are satisfied that the Appellant was telling us the truth about this.

32. However, that does not mean that the circumstances have changed in relation to the impact of the Appellant's deportation on [F]. If anything, the impact is less as [F] has now become an adult and is forging his own life independently of his family. We are prepared to accept that the Appellant is giving [F] financial support even though he provided no evidence as to the extent and amounts. We are less prepared to accept that [F]'s mother is unable to assist if the Appellant cannot provide for him. The Appellant said that his former partner was not working during the pandemic as she is a live-in maternity nurse. He is not however in contact with her and does not know her current circumstances. In principle at least, there appears to be no reason why she could not now work. In any event, [F] as other students could presumably find part-time work to fund himself if his family cannot assist.

33. We turn then to the circumstances of the Appellant's offending. His PNC record begins with a conviction at Crawley Magistrates Court on 9 April 1987. The Respondent provides no details about this. We assume it to be the conviction for smuggling marijuana into the UK which the Appellant mentions in his handwritten letter. Having arrived again in 1990, the Appellant was convicted of motoring offences on 22 November 1993 and fined. On 21 February 2005, the Appellant was convicted of handling stolen goods and failing to surrender to custody. He was sentenced to three concurrent terms of twelve months' imprisonment and one consecutive term of one month in prison. He was not made subject to deportation action but was warned what would be the consequence of reoffending. He was refused naturalisation on two occasions based on his criminal offending.

34. The index offence occurred on 6 May 2019. The Appellant pleaded guilty to an offence of threatening a person with an offensive weapon and assault by beating. He was sentenced to two concurrent terms of fourteen months' imprisonment and made subject to a restraining order for three years preventing him making direct or indirect contact with his wife who was the victim of the offence. The sentencing remarks are at [RB/L1-5] and read as follows so far as relevant:

> "I need to outline quite shortly what happened in this case. I have heard that you are separated from your wife after a marriage of 30 years or more …with four children, three of them grown up, one still a teenager. You have kept in contact with your wife

via a number of messages, and on occasions you have met up, including, she has said in her statement, on occasions when she was seeking to help you, when you were in a disturbed state, and talking about taking your own life.

Problems seemed to have built up at a point where you seemed to have thought she might be seeing somebody else, and on Sunday 5 May you rang her; she thought you sounded as though [you were in drink?] and it is quite clear she was right about that, and you were talking about killing yourself.

She agreed to meet you at McDonald's in Woolwich. It appears you waited until she had gone into the McDonald's branch there. She went upstairs to the toilets. In the toilets you confronted her; you kicked the door open; went into the cubicle where she was; grabbed her round the throat, pushing her downwards. Another woman came in; that did not stop you, and your wife screamed at the other lady to call the police. When she tried to resist, you grabbed her round the collar, dragged her into another cubicle, and shoved her back down onto the toilet, holding her down. At that point you pulled a knife, she says, from the inside of your coat, and she believed you were going to hurt her with it; what other thought could there have been in her mind?

I accept that [it] was not, in fact, your intention to strike her, or cause her injury with the knife, but I have seen photographs of it – a kitchen knife with a significant blade – possibly four inches or so, and what a frightening implement to be produced in a confined space. Instead, the knife went back in your pocket. You put your hand over her mouth to stop her from screaming, and punched her when she struggled. It took the arrival of another two men, one to assist her and another one to try and hold you and restrain you, and in the course of the ending of this incident, your wife managed to take the knife out of the pocket, and it was thrown on the floor where it was later photographed by the police.

Despite all that, there were no particularly visible injuries, although your wife complained of aching and being very sore; she has had trouble sleeping with pain and anxiety, and why you, of all people, should attack her. One of the things that is so hard to understand about this case, is that it was your wife of 30 years, the mother of your children on whom you decided to inflict such frightening violence. In the interview, you candidly said you could not remember very much as you were drunk; you described it as being 9.5 on a scale of one to 10, I have read, and you wondered if your wife had gone into the toilets for sex, and that was maybe a motivation in the state in which you were.

So that is the offence; those are the circumstances in which I have to deal with you. I have read that you are 55 years old; you have appeared before criminal courts but nothing that has any necessary bearing on today. There were old matters in 2003 and 2005, and an excess alcohol offence in 2007, which suggests that the problem with alcohol may be a longstanding one.

On the other side, Mr Lynch has taken me to references from your two daughters, no doubt agonising over what is happening to the family; those are full of love and affection, and a degree of understanding for your predicament that does them credit, and a reference from a friend of yours of longstanding, who describes you as generous, caring and speaks of your volunteering work. It is important that I see that because that is a very positive side of your character; it is the better half of your behaviour, and it shows what you are capable of.

But on this occasion, sadly, what happened is that you have committed an assault by beating/injuring. You have deliberately pursued a woman who has been such an important part of your life, and you have assaulted her over some alcohol-fuelled obsession that she might have found someone else. It was a confined space, all that violence aggravated by the threatening appearance of a knife pulled from your pocket.

> It is fortunate, indeed, that there was no long-lasting physical injuries sustained but the mental trauma and the difficulties she has contemplating the future is plainly significant, as I have read in her latest statement."

35. The Judge recorded a starting point for sentencing of at least twenty-one months but that was discounted for the Appellant's guilty plea. The restraining order was made for three years to reflect "the circumstances and ongoing fears" of the Appellant's wife.

36. This was a vicious attack as the Judge has recorded. It was made the worse by the victim being the Appellant's wife. They had been married for a lengthy period. The impact on her is evident from the sentencing remarks and from the making of the restraining order.

37. It is to the Appellant's credit that he pleaded guilty to the offence although since it was a witnessed attack it might have been difficult for him to do otherwise. He says in his statement and has reiterated to us that he accepts what he did was wrong and that he has changed.

38. In that regard, Mr Melvin submitted to us that the Appellant has sought to make excuses for the offence. Whilst we accept that the Appellant recognises his mistakes, we do agree with Mr Melvin's submission to this extent. The Appellant says in his handwritten statement that his wife had been seeing other men. It appears that he sought to rely on what amounts to feelings of jealousy as well as his drunken state as motivation for the offence when he was sentenced. As Judge Smith observed also at [22] of the error of law decision, the Appellant referred to his wife as having "provoked" the offence. Moreover, in his handwritten statement and orally before us, the Appellant sought to excuse his criminal offending more generally by reference to the struggles of growing up with a single mother, the "fears" which came from those struggles and the absence of a father figure.

39. We have regard to the email written by [G] to which we refer at [26] above. Whilst it is not entirely clear whether the abuse which [G] witnessed towards her mother was physical or otherwise, she does refer to the relationship being what can best be described as toxic. We were particularly concerned therefore by the Appellant's reply to a question about his intentions once the restraining order comes to an end. It was clear that although he said that he would have to "tread very carefully", that he "had no plans" and that he would "let it happen if it does", he still entertains a hope of reconciliation. Given what is said by [G] about the relationship and the reaction provoked in the Appellant on the last occasion he saw his wife which led to the index offence, we are concerned that any such attempts might well pose a risk. Clearly, the Appellant's wife and the sentencing Judge considered that such risk existed as otherwise a restraining order (which does not finish until end of 2022) would not have been imposed.

40. We accept there is evidence that the Appellant has undergone suitable courses with a view to his rehabilitation. Those were to deal with his attitude to drink and to

manage his anger. We observe however at [18] above, the Appellant's attempt to give up drink in the past which clearly did not lead to continued abstinence.

41. For the foregoing reasons, we are not persuaded that the Appellant has ceased to pose a risk in particular to his former partner.

DISCUSSION AND CONCLUSIONS

42. We now turn to draw together our findings.

43. We have found that the Appellant does not meet Exceptions 1 and 2. He does not meet Exception 1 because he has not been here for half his life lawfully and because there are no very significant obstacles to reintegration in Uganda. He does not meet Exception 2 as he is no longer in a subsisting relationship with his former partner and his children are all now adults.

44. When considering whether there are very compelling circumstances over and above the two exceptions though, we take into account our findings that the Appellant is socially and culturally integrated in the UK and our findings about his relationships with his children.

45. Although we take into account what we have said about the Appellant's length of residence in the UK, that much of it was lawful and that he has worked in the UK, paid taxes and attends church, there is very limited evidence before us about the strength of the private life which the Appellant has developed here. We can give some weight to the length of residence and the lawfulness of it, but we are unable to give any significant weight to the interference with the Appellant's private life due to lack of evidence.

46. We give some weight to the relationship which the Appellant has with his children. Although that relationship may not be a very good one with his eldest and youngest daughters, we accept that he has a loving relationship with his middle daughter and a stronger relationship with his son. We do not doubt that his children will miss him if he is deported to Uganda. However, all of his children are now leading lives independently outside the family. [F] is now away studying at university. Whilst the bond with his father may well remain strong, it is doubtful that he would wish to spend every other weekend with him. Since his children are now adults, they would in any event be able to visit him in Uganda as and when they are able to afford to do so and can maintain contact via social media and the like. There is no evidence of any strong relationship between the Appellant and his two grandchildren or that his deportation would impact on them. There is no evidence that their best interests require the Appellant to be in the UK. In any event, one of those grandchildren is the child of [G] who appears to be struggling to forgive her father.

47. Against the above factors, we have to balance the importance of the public interest. Deportation of foreign criminals is in the public interest. As we have indicated above the index offence was a particularly nasty one inflicted on a victim known to the Appellant and who he described to us as his "high school sweetheart". We accept that the index offence may have been fuelled by alcohol. That neither excuses it nor provides reassurance that it would not happen again for reasons we have explained. Whilst the restraining order is in place, the risk will of course not eventuate (so long as the Appellant continues to observe it). However, we are unpersuaded that the Appellant is not still a risk at least to his former partner.

48. We accept to some extent that the Appellant has sought to rehabilitate via the undertaking of suitable courses. However, for reasons we have explained, we are not persuaded that the Appellant has fully demonstrated that he has rehabilitated. In any event, rehabilitation is unlikely to be a weighty factor when assessing the public interest (see HA (Iraq) at [132] to [142]). We note what is said by the Court of Appeal about the relevance of and weight to be given to rehabilitation in SM (Zimbabwe) v Secretary of State for the Home Department [2021] EWCA Civ 1566 (see [34] to [36] of the judgment). The circumstances of that case were however very different to the case before us. The arguments relating to rehabilitation in that case were linked to the family relationship between perpetrator and victim. In this case, there is no evidence that the Appellant's former partner has forgiven him or that their relationship has resumed. To the contrary, a restraining order was imposed by the criminal courts to ensure he could not try to contact her. As we have already observed, we consider that the Appellant remains a risk at least to his former partner. For that reason, also, in spite of the courses which the Appellant has attended, we do not consider that the Appellant's rehabilitation is complete.

49. Even if we were persuaded that the risk has lessened or disappeared, risk of reoffending is only one facet of the public interest in deportation. There is also a public interest in deterring other foreign nationals from committing crimes.

50. Balancing the interference with the Appellant's family and private lives against the weight of the public interest which we judge to be significant in this case, we conclude that the refusal of the human rights claim is a proportionate response. Put another way, the factors on which the Appellant relies do not come close to demonstrating that there are in this case very compelling circumstances over and above the exceptions set out in Section 117C which might outweigh the public interest.

51. For those reasons, we conclude that the Respondent's decision does not breach section 6 of the Human Rights Act 1998 and the Appellant's appeal is therefore dismissed.

DECISION

The Appellant's appeal is dismissed on human rights grounds.

Signed: L K Smith

Upper Tribunal Judge Smith

Dated: 15 November 2021

APPENDIX: ERROR OF LAW DECISION

Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: HU/18241/2019

THE IMMIGRATION ACTS

Heard at Field House (face to face hearing)
On Thursday 15 July 2021

Decision & Reasons Promulgated

…30 July 2021……

Before

UPPER TRIBUNAL JUDGE SMITH

Between

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

-and-

MR FREDRICK RUKONDO

Respondent

Representation:
For the Appellant: Mr S Walker, Senior Home Office Presenting Officer
For the Respondent: In person

DECISION AND REASONS

BACKGROUND

1. This is an appeal by the Secretary of State. For ease of reference, I refer to the parties as they were in the First-tier Tribunal. The Respondent appeals against the decision of First-tier Tribunal Judge Cartin promulgated on 20 January 2021 ("the Decision"). By the Decision, the Judge allowed the Appellant's appeal against the Respondent's decision dated 7 October 2019 refusing his human rights claim on Article 8 grounds. That claim was made in the context of a decision to deport the Appellant to Uganda.

2. The Appellant is a national of Uganda. He is aged fifty-eight years. He entered the UK last in January 1990 (although it appears that he had also been in the UK previously). Having entered as a visitor, he claimed asylum. His asylum claim was refused but he was granted discretionary leave for twelve months in 1993 until 1994. Thereafter, he overstayed. He claimed asylum for a second time in 1995 and his application was refused again. An appeal was dismissed. The Appellant married his partner in March 1997. He applied for settlement based on that marriage in 2001. He was granted indefinite leave to remain in November 2004. The couple have four children, born in 1988, 1994, 2000 and 2003. They are now aged thirty-three, twenty-six, twenty and seventeen years (eighteen on 17 August 2021). The Appellant is estranged from his partner.

3. The Appellant has been convicted of a number of criminal offences dating back as far as 1987. His offences in 1987 and 1993 were minor. He was convicted of handling stolen goods in 2005 and sentenced to twelve months in prison. The index offence consisted of threatening a person with offensive behaviour and assault by beating. He was convicted following a guilty plea on 6 May 2019. The attack was on the Appellant's former partner. In addition to concurrent terms of fourteen months' imprisonment for the offences, a restraining order was imposed for a term of three years, preventing the Appellant from direct or indirect contact with his former partner ("the Restraining Order").

4. The Judge concluded that the Appellant could not meet either of the exceptions in the Immigration Rules ("the Rules") or Section 117C, Nationality, Immigration and Asylum Act 2002 ("Section 117C"). The Judge went on to consider whether there were very compelling circumstances over and above those exceptions. He concluded that there were and allowed the appeal on that basis. In so doing, he found the public interest to be reduced by the Appellant's compliance with the Restraining Order.

5. The Respondent appeals on what is essentially one ground. She says that, having found that the exceptions were not met, the Judge has failed to provide adequate reasons for a finding that there are very compelling circumstances justifying the allowing of the appeal on that basis.

6. Permission to appeal was granted by Upper Tribunal Judge Martin as a First-tier Tribunal Judge on 3 February 2021 in the following terms so far as relevant:

> "... 2. It is arguable, as set out in the grounds, that the Judge has erred in, having found neither of the exceptions in para 399 of the Immigration Rules applied, then found the same factors discounted in considering the exceptions constituted very compelling reasons and that those matters lessened the public interest in deportation."

7. So it is that the matter came before me to determine whether the Decision contains an error of law and, if I so concluded, to either re-make the decision or remit the appeal to the First-tier Tribunal to do so. The hearing took place on a face to face basis. The Appellant attended in person. I heard oral submissions from Mr Walker for the Respondent. I made clear to the Appellant that I would not proceed to a re-making

hearing immediately if I found an error of law and therefore he could confine his submissions to the issue whether there was an error of law in the Decision. Nonetheless, I permitted him to make submissions about the substance of his case. At the end of the hearing, I reserved my decision and indicated that I would give that in writing with reasons which I now turn to do.

DISCUSSION AND CONCLUSIONS

8. In order to set in context the Judge's conclusions about which complaint is made, I need to deal first with the Judge's findings concerning the exceptions under the Rules and Section 117C.

9. In relation to the first exception, the Judge dealt with that at [42] to [49] of the Decision. The Judge concluded that the Appellant had not lived in the UK lawfully for half his life. He had leave at the date of the deportation decision for under nineteen years and was aged fifty-seven years. The Judge noted the impact of the Appellant's offending on his integration but concluded, having regard to the length of residence and family and private life ties in the UK that the Appellant had socially and culturally integrated. The Judge considered whether there were very significant obstacles to integration in Uganda but concluded that there were not. The Judge's conclusion in that regard and in relation to exception one generally is in the following terms:

> "49. … He … has failed to advance any evidence to show he would have any real difficulty reintegrating in Uganda let alone very significant obstacles as opposed to merely inconvenience or experiencing a culture shock. Overall, therefore, the Appellant has not satisfied me that he would face very significant obstacles to reintegration in Uganda. In terms of how close he comes to satisfying exception 1 therefore, despite him being socially and culturally integrated in the UK, he is far from satisfying this exception."
> [my emphasis]

10. The Judge dealt with the second exception at [50] to [58] of the Decision. The Appellant is no longer in a relationship with his partner. He has only one child under eighteen, his son [F]. That was the only relationship relevant to exception two. The Judge set out the evidence in relation to [F]. [F]'s primary carer is his mother (the Appellant's former partner). The Judge accepted that [F] visits the Appellant at the weekend and stays with him. It appears that this finding was based on the Appellant's evidence only. [F] did not attend to give evidence. The Judge found that it would be "highly unlikely" that [F] would move to Uganda with the Appellant (although did not expressly find that it would be unduly harsh for him to do so). The Judge therefore approached the second exception on the basis that [F] would remain in the UK without the Appellant. The Judge concluded as follows:

> "58. Emotional harm suffered by [F] as a result of the Appellant's deportation is not sufficient to meet the test. What is required is identification of what separates him from others who are separated from a parent who is involved in their life. His British citizenship is a relevant, but not necessarily a weighty factor. As there is no likelihood of him moving to Uganda, his citizenship and the benefits which flow from this are not materially impacted

> and so little weight is to be attached to this point. There is nothing in my view that establishes [F] would be more affected than any other child separated from a parent. He is at the top end of his childhood and will be an adult in his own right next year. He can continue with the regular remote contact he has with his father. He can continue his living and education arrangements as they already are, by living with his mother. Exception 2 is therefore not made out."

11. Although the Appellant understandably did not raise the point (as he is in person), I have considered whether there is an error in the Appellant's favour in what is there said as the analysis suggests that the Judge has measured the impact on [F] by reference to any other child whereas the test, following the Court of Appeal's judgment in HA(Iraq), RA(Iraq) v Secretary of State for the Home Department [2020] EWCA Civ 1176 is the impact on the particular child. Having regard to the evidence in relation to [F] as set out at [28], [37], [40] and [50] to [58] of the Decision, including the summary of the impact on [F] of the Appellant's deportation in the final three sentences of [58], however, there is no error of law in the Judge's conclusion. It cannot sensibly be suggested that the Judge should have found the impact on [F] to be unduly harsh, particularly where the only evidence from [F] (in the form of an email) "[did] not elaborate as to why separation from his father would have any particular adverse effects on him". The Judge did not accept that [F] would go to live with the Appellant in the UK as the Appellant claimed would be the case.

12. I turn then to the Judge's reasoning for allowing the appeal, notwithstanding that neither of the exceptions were met. That reasoning appears at [63] to [76] of the Decision. No complaint is made by the Respondent about the Judge's self-direction in this regard. Although, as I will come to, it might be said that the Judge, at [75] of the Decision, has failed to recognise that the "very compelling circumstances" must be over and above the exceptions, the Judge does direct himself appropriately at [19] of the Decision and must be expected not to have lost sight of that requirement.

13. Ultimately, the Judge had to balance the impact on the Appellant's family and private life against the public interest, recognising the strength of the public interest which applies in criminal cases and the high threshold which is set out in the Rules and Section 117C.

14. The Respondent's main complaint is as to the weight given to the public interest. Before dealing with that, however, it is necessary to look at the Judge's reasoning in relation to impact on the Appellant's private and family life, bearing in mind the Judge's earlier findings in relation to the exceptions.

15. Paragraphs [70] to [72] of the Decision focus on the Appellant's private life. The Judge was obviously entitled to give weight to the length of the Appellant's lawful residence in the UK and his integration here. However, there is some inconsistency between the Judge's finding at [72] of the Decision that the Appellant's ability to find new employment given his age would be "no less significant if he were returned to Uganda" and the finding at [49] of the Decision that there was no evidence of "any real difficulty reintegrating in Uganda let alone very significant obstacles".

16. The Judge deals again with the Appellant's family life at [73] and [74] of the Decision. The Judge was clearly entitled at this juncture to take into account the evidence from the Appellant's other children who were no longer minors. That evidence (given only in writing it seems) was that "they wish him well and express a wish to maintain a relationship with him". It is said that their "ability to do so will be hampered by his deportation". The Appellant's daughters are said to have "moved out on their own" at the time of the Appellant's conviction ([28] of the Decision). One of his daughters had provided an email stating that the Appellant had been "abusive to his wife their whole marriage" ([33] of the Decision). Although the Appellant said that this was not true and had forgiven his daughter for writing this (and he said that she had since realised that "what she said was not correct"), that does not suggest a desire to have a continuing relationship. There are communications suggesting that one of the daughters ([J]) tried to visit her father in prison but also a suggestion that one of the other daughters ([L]) was not yet ready even to send a message to her father. I therefore find it difficult to see what was the evidential basis for the Judge's assertion nor why the Appellant could not continue a relationship with his adult children remotely.

17. In relation to [F], the Judge said this:

> "74. Further, the interruption with the Appellant's family life with his 17-year-old son is a factor deserving of some weight in the overall assessment of proportionality. The best interests of a child are not a trump card but are a primary consideration. The best interests of [F] in this case would be in my view of the status quo to continue. Namely, that he continues living with his mother and studying as he does at present but whilst also maintaining a relationship with his father, not just remotely but in person at weekends also. This is therefore a further factor to take into account in assessing the balance between the public interest and the Appellant's Article 8 rights and those of his son."

18. I do not suggest for a minute that the Judge was not entitled to take into account the position of [F] and the impact on his relationship with his father when assessing the interference with family life. However, given the earlier finding that separation from his father would not have an unduly harsh impact on [F], and given the evidence about the level and extent of the relationship, it is not clear how this factor could have weighed heavily in the balance on the Appellant's side.

19. As I say, however, the main complaint made by the Respondent is that the Judge has failed to have due regard for the public interest. It is in this regard that I agree the Judge has clearly erred.

20. This is a case where the Judge has made all the right noises about the level and strength of the public interest which applies (at [60] to [62] of the Decision) but has then failed properly to apply what is there said to the facts of this case. I say that for the following reasons.

21. First, although the Judge recognised at [64] of the Decision that the index offence was "clearly unpleasant offending", that he gave "no credence to the Appellant's attempts to downplay the offence or his version generally" and that the public interest includes not simply the risk of further offending but also deterrence, the Judge then went on at [65] of the Decision to comment that "the sentence length [was] not especially long". That ignores the stated public interest in the deportation of foreign criminals, defined as those sentenced to more than twelve months in prison. That the sentence was not much more than twelve months does not weaken the public interest in deportation although I accept that it might not strengthen it.

22. Second, although the Judge was clearly entitled to have regard to the motivation for the offence and the Appellant's rehabilitation, the finding that the Appellant had rehabilitated is undermined by the Judge recording the Appellant's "attempts to downplay the offence" and his version of the events. That description is consistent with the Appellant's assertion in his submissions to me that the offence was fuelled partly by alcohol but also "provoked" by his wife.

23. Third, and most importantly, the Judge seems to have considered that the Appellant's adherence to the terms of the Restraining Order lessened the weight to be given to the public interest. Given the weight that the Judge placed on this factor, it is necessary to set out the Judge's reasoning:

> "67. Since his release, the Appellant must have been complying not just with the terms of his licence since release but also with the protective restraining order imposed. This reflects very well on him. I conclude that he has done so because otherwise he faces recall or prosecution for breach. He has obtained further employment swiftly; this also reflects well on him.
> …
> 69. I am particularly impressed by his compliance with the restraining order. This really indicates he has a changed attitude towards his partner and is respecting her wish not to see him and the Court's order not to do so. The collective effect of the above points is that the public interest in his deportation is lessened. He has offended in a very unpleasant way, however, he has taken steps to address the problems which led to the offending, by moving on from the relationship breakdown and stopping drinking alcohol. The circumstances which led to his offending, are consequently less likely to return and so the prospect of further offending is reduced.
> …
> 75. Taking account of the lessened public interest in this Appellant's deportation for the reasons I have set out, whilst weighing up the significant factors in support of respecting the Appellant's private and family life, I reach the conclusion that there are very compelling circumstances in this case as to why the Appellant's rights outweigh the need for his deportation.
> 76. I should make clear that the Appellant's adherence to the Restraining order in this case is something I have considered to count heavily in his favour. It has reduced the public interest in his deportation because it demonstrates an acceptance by the Appellant that the relationship is over. It acknowledges the need to respect his former partner's choices and the authority of the law over his private wishes. However, his expressed hopes for rekindling their relationship once the restraining order expires were in my view misguided and naïve. He must continue to respect his wife's wishes even when that order comes to an end. Any

> failure to do so, or any further offending or return to harmful alcohol consumption, is very much likely to undermine the conclusions I have reached in this case such that the public interest in deportation would be much greater and likely to outweigh his Article 8 rights. He should understand therefore the precariousness of his future, and the need for his continued good behaviour if he values his life in the UK."

24. I have already pointed out the inconsistency between the Judge's findings under the exceptions in relation to the Appellant's private and family life and weight given in the Article 8 balancing exercise. That is repeated at [75] in giving those factors "significant" weight even though the Judge accepted that neither exception was met and by some margin.

25. I accept of course that the Judge was entitled to have regard to future risk when carrying out the balancing exercise as that is relevant to the public interest in protecting the public. However, there is a major inconsistency in the Judge's reasoning in this regard which is self-evident from consideration of what is said at [67], [69] and within [76] of the Decision. The Judge finds at [67] of the Decision that the Appellant is not breaching the Restraining Order because of the risk of further imprisonment or recall were he to do so. The Judge however contradicts himself at [69] where he states himself to be "particularly impressed" by the fact of compliance with the Restraining Order because it reflects an acceptance by the Appellant that the relationship is over. That this is contrary to the Appellant's own evidence, however, is clear from what is said at [76] of the Decision which reflects the Appellant's evidence at [30] of the Decision that he hopes to reconcile with his wife once he is permitted to contact her.

26. Thus, it is clear from the evidence that the real reason the Appellant is complying with the Restraining Order is, as the Judge says, because otherwise he would face further imprisonment. It is entirely unclear why that should lessen the public interest at all. The Appellant, as any other person, is expected to act within the law and to comply with orders made by the court. That he is currently doing so might be neutral so far as concerns the public interest but in no way diminishes the weight to be given to it, let alone to a significant degree.

27. Moreover, the fact that the Appellant has stated a wish to reconcile with his wife once the Restraining Order is at an end suggests that the risk which the Appellant poses is far from reduced. He might, as the Judge accepted, have stopped drinking but the relationship which lay at the heart of the index offence is not, in the Appellant's mind at least, over.

28. Whether described as an inadequacy of reasons, a material misdirection in relation to the public interest or inconsistent findings, I am satisfied that the Judge has erred in law when carrying out the Article 8 balancing exercise. I am satisfied that there is no error of law in the Judge's findings in relation to the exceptions. Nonetheless, the human rights claim has to be determined at the date of hearing and therefore I set aside the Decision in its entirety so that I can consider the appeal afresh.

29. I have considered whether it is appropriate to remit the appeal. However, the extent of the fact-finding required in this case is not great and therefore the appeal can remain in this Tribunal.

30. Given the need to assess the current private and family life of the Appellant, I have given directions below to permit the Appellant to produce further evidence from himself and friends and family. There will then be a resumed hearing at which he will be entitled to call witnesses including his friends and family to give oral evidence.

CONCLUSION

31. For the foregoing reasons, I conclude that the grounds of appeal disclose an error of law in the Decision. I set the Decision aside in its entirety. I give directions below for a resumed hearing.

DECISION

The Decision of First-tier Tribunal Judge Cartin promulgated on 20 January 2021 involves the making of an error on a point of law. I therefore set aside the Decision. I give directions below for a resumed hearing before this Tribunal:

(1) Within 28 days from the date when this decision is sent, the parties shall file with the Tribunal and serve on the other party any further evidence and written submissions on which they seek to rely at the resumed hearing.

(2) The appeal will be listed for re-hearing on a face-to-face basis on the first available date after two months from the sending of this decision (time estimate ½ day). No interpreter is required.

(3) Documents or submissions filed in response to these directions may be sent by, or attached to, an email to [email] **using the Tribunal's reference number (found at the top of these directions) as the subject line. Attachments must not exceed 15 MB. This address is not generally available for the filing of documents which should continue to be sent by post.**

(4) Service on the Secretary of State may be to [email] **and on the Appellant, in the absence of any contrary instruction, by use of any address apparent from the service of this decision and directions.**

(5) The parties have liberty to apply to the Tribunal for further directions or variation of the above directions, giving reasons if they face significant difficulties in complying.

Signed: *L K Smith*

Upper Tribunal Judge Smith

Dated: 23 July 2021