Upper Tribunal

(Immigration and Asylum Chamber)

MS (s.117C(6): “very compelling circumstances”) Philippines [2019] UKUT 00122 (IAC)

THE IMMIGRATION ACTS

Heard at Field House	**Decision & Reasons Promulgated**
On 14 February 2019	.....

Before

THE HON. MR JUSTICE LANE, PRESIDENT

UPPER TRIBUNAL JUDGE GILL

UPPER TRIBUNAL JUDGE COKER

Between

MS

(ANONYMITY ORDER MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation :

For the Appellant: Ms A Patyna, instructed by Gurney Harden Solicitors

For the Respondent: Mr M Pilgerstorfer, instructed by the Government Legal

Department

(1) In determining pursuant to section 117C(6) of the Nationality, Immigration and Asylum Act 2002 whether there are very compelling circumstances, over and above those described in Exceptions 1 and 2 in subsections (4) and (5), such as to outweigh the public interest in the deportation of a foreign criminal, a court or tribunal must take into account, together with any other relevant public interest considerations, the seriousness of the particular offence of which the foreign criminal was convicted; not merely whether the foreign criminal was or was not sentenced to imprisonment of more than 4 years. Nothing in KO (Nigeria) v Secretary of State for the Home Department [2018] UKSC 53 demands a contrary conclusion.

(2) There is nothing in Hesham Ali v Secretary of State for the Home Department [2016] UKSC 60 that requires a court or tribunal to eschew the principle of public deterrence, as an element of the public interest, in determining a deportation appeal by reference to section 117C(6).

DECISION AND REASONS

A. SECTION 117C(6) AFTER KO (NIGERIA)

1.
In this appeal, we look first at whether paragraphs 20 to 22 of the judgment of Lord Carnwath in KO (Nigeria) v Secretary of State for the Home Department [2018] UKSC 53 changed the way in which courts and tribunals must approach their task under section 117C(6) of the Nationality, Immigration and Asylum Act 2002.

2.
Section 117C provides as follows:-

“ **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.”

3.
In paragraphs 20 to 22 of his judgment, Lord Carnwath said this:-

“20. Turning to section 117C the structure is not entirely easy to follow. It starts with the general rules (1) that deportation of foreign criminals is in the public interest, and (2) that the more serious the offence the greater that interest. There is however no express indication as to how or at what stage of the process those general rules are to be given effect. Instead, the remainder of the section enacts specific rules for two categories of foreign criminals, defined by reference to whether or not their sentences were of four years or more, and two precisely defined exceptions. For those sentenced to less than four years, the public interest requires deportation unless exception 1 or 2 applies. For those sentenced to four years or more, deportation is required “unless there are very compelling circumstances, over and above those described in Exceptions 1 and 2”

21. The difficult question is whether the specific rules allow any further room for balancing of the relative seriousness of the offence, beyond the difference between the two categories. The general rule stated in subsection (2) might lead one to expect some such provision, but it could equally be read as no more than a preamble to the more specific rules. Exception 1 seems to leave no room for further balancing. It is precisely defined by reference to three factual issues: lawful residence in the UK for most of C’s life, social and cultural integration into the UK, and “very significant obstacles” to integration into the country of proposed deportation. None of these turns on the seriousness of the offence; but, for a sentence of less than four years, they are enough, if they are met, to remove the public interest in deportation. For sentences of four years or more, however, it is not enough to fall within the exception, unless there are in addition “very compelling circumstances”.

22. Given that exception 1 is self-contained, it would be surprising to find exception 2 structured in a different way. On its face it raises a factual issue seen from the point of view of the partner or child: would the effect of C’s deportation be “unduly harsh”? Although the language is perhaps less precise than that of exception 1, there is nothing to suggest that the word “unduly” is intended as a reference back to the issue of relative seriousness introduced by subsection (2). Like exception 1, and like the test of “reasonableness” under section 117B, exception 2 appears self-contained.”

4.
For the appellant, Ms Patyna submitted that the effect of paragraphs 20 to 22 and, in particular, the first two sentences of paragraph 21, is that in carrying out the exercise required by subsection (6) of determining whether there are “very compelling circumstances, over and above those described in Exceptions 1 and 2”, a court or tribunal must not have regard to the relative seriousness of the offence that the foreign criminal has committed, other than as between the two categories identified in paragraph 20. Section 117C(2) is, in short, “no more than a preamble to the more specific rules”.

5.
Ms Patyna argued that section 117C(6), like section 117C(5), is concerned with the strength of an individual’s private and/or family life claim. She submitted that the reasoning adopted by Lord Carnwath in respect of Exceptions 1 and 2 ought to be applied by analogy to the “very compelling circumstances” test.

6.
Ms Patyna acknowledged that the Supreme Court did not, in fact, have to decide this point in respect of individuals with sentences of at least four years. Nevertheless, had the Court considered that a different proportionality balancing exercise was required in respect of the “very compelling circumstances” test, Ms Patyna said that Lord Carnwath would have said so. It would be inconsistent with the reasoning of Lord Carnwath in respect of Exceptions 1 and 2 to operate a different test in section 117C(6), by graduating the strength of the public interest by reference to the seriousness of

the offence, beyond what was inherent in the distinction drawn by the section itself by reference to length of sentence.

7.
A close analysis of paragraphs 20 to 22, however, does not take Ms Patyna's argument the required distance. The first point to note, as Ms Patyna acknowledges, is that the Supreme Court was not concerned with a "four years or more" case. This explains the reason why Lord Carnwath did not consider it necessary to engage with subsection (6), other than to quote from it, without comment, in the last sentence of paragraph 20 of his judgment.

8.
The second point to make is that, as is apparent from that last sentence, the judgment in KO (Nigeria) does not make reference to the respondent's concession before the Court of Appeal in NA (Pakistan) & Ors v Secretary of State for the Home Department [2016] EWCA Civ 662 that the purpose of section 117C(6) is to ensure that in every "foreign criminal" case, Part 5A of the 2002 Act does not operate in such a way as to cause a violation of Article 8. For this reason, section 117C(6) must be read as applying, not only to "four years or more" cases but also to those other foreign criminals who fall within section 117C. As we have noted in RA (Iraq) (HU/00192/2018), which was heard immediately before the present appeal, nothing in KO (Nigeria) casts doubt upon paragraphs 25 to 27 of the judgment of Jackson LJ in NA (Pakistan) , where he held that the respondent's concession was correctly made and that the ambit of section 117C(6) extends beyond the written words in the section.

9.
We do not know whether NA (Pakistan) was drawn to the attention of the Supreme Court in KO (Nigeria) . The fact that it was not would be unsurprising, given the nature of the "foreign criminal" appeals before the Supreme Court, which did not involve looking beyond Exception 1 and Exception 2 in subsections (4) and (5). It does, however, mean that one should be particularly cautious in attributing any wider significance to paragraphs 20 to 22 of the judgment than is expressly contained in the language of those paragraphs.

10.
Thirdly, in the second sentence of paragraph 21, it can be seen that Lord Carnwath was not, in fact, holding that section 117C(2) must be read "as no more than a preamble to the more specific rules"; merely, that "it could equally be read as" only having such an effect. It is, therefore, incorrect to say KO (Nigeria) compels the finding that section 117C(2) is merely declaratory of the distinction between foreign criminals who have not been sentenced to imprisonment of 4 years or more, and those who have.

11.
In our view, the critical part of the reasoning in paragraph 21 of the judgment is to be found in the third, fourth and fifth sentences. In them, we find that Exception 1 is "precisely defined by reference to three factual issues", none of which "turns on the seriousness of the offence".

12.
In the case of a foreign criminal sentenced to less than four years "they are enough, if they are met, to remove the public interest in deportation".

13.
Having reached that finding, Lord Carnwath explained in paragraph 22 why, as a matter of statutory construction, Exception 2 ought to be interpreted in the same "self-contained" manner as Exception 1.

14.
Ms Patyna drew attention to the similarity in the structure of section 117C(3) and (6). Both subsections expressly state that the public interest requires deportation “unless” a specified state of affairs is found to exist. It would, she said, be wrong to apply a different approach as between subsections (3) and (6).

15.
The crucial point, however, is that the considerations or tests which follow the word “unless” in those subsections are significantly different. Read in their own terms, Exception 1 and Exception 2 are of such a nature as to exclude further consideration of the public interest. Although, as Lord Carnwath observed, the test of “unduly harsh” is less hard-edged than Exception 1, its focus is on the effect of deportation on the partner or child. Once it is found that the effect reaches a certain threshold, the test is met and the public interest no longer can be said to require deportation.

16.
By contrast, the issue of whether “there are very compelling circumstances, over and above those described in Exceptions 1 and 2” is not in any sense a hard-edged question. On the contrary, it calls for a wide-ranging evaluative exercise. As NA (Pakistan) holds, that exercise is required, in the case of all foreign criminals, in order to ensure that Part 5A of the 2002 Act produces, in each such case, a result that is compatible with the United Kingdom’s obligations under Article 8 of the ECHR.

17.
Viewed in this light, it can readily be seen that the ascertainment of what constitute “very compelling circumstances”, such as to defeat the public interest, requires a case-specific analysis of the nature of the public interest. The strength of the public interest, in any particular case, determines the weight that must then be found to lie on the foreign criminal’s side of the balance in order for the circumstances to be properly categorised as very compelling. It would, frankly, be remarkable if a person sentenced to four years’ imprisonment for fraud had to demonstrate the same circumstances as a person sentenced to life imprisonment for multiple murders.

18.
To say this is not to seek to introduce a “balancing exercise” into Exceptions 1 and 2 and the test of “unduly harsh”. The words “over and above”, as interpreted by Jackson LJ in NA (Pakistan), underscore the difference in the tasks demanded by, on the one hand, section 117C(4) and (5) and, on the other, section 117C(6).

19.
Furthermore, as Mr Pilgerstorfer pointed out, the effect of the judgment in NA (Pakistan) , in bringing all foreign criminals within the ambit of section 117C(6), means that it is difficult to see how the test of very compelling circumstances can operate differently, depending upon whether the foreign criminal has, or has not, been sentenced to imprisonment of at least 4 years. In order for it to do so, yet further words would have to be assumed to be written into the section, over and above those mandated by the Court of Appeal’s judgment.

20.
For these reasons, despite Ms Patyna’s elegant submissions, we find the effect of section 117C is that a court or tribunal, in determining whether there are very compelling circumstances, as required by subsection (6), must take into account the seriousness of the particular offence for which the foreign criminal was convicted, together with any other relevant public interest considerations. Nothing in KO (Nigeria) demands a contrary conclusion.

B. THE APPELLANT AND HIS APPEAL

21.
The appellant is a citizen of the Philippines, born in March 1980. At the age of 6 he arrived in the United Kingdom as a dependant of his mother. He says that he grew up in a wealthy environment in the Philippines but one day the police arrived at his house and put him on a flight to the United Kingdom.

22.
Once in this country, the appellant lived on a council estate in London and began school. His stepfather beat the appellant, when the latter fell behind with his schoolwork. The appellant ran away from home and was eventually placed in care in a boys' home (Dr Barnardo's).

23.
Whilst in the home, the appellant came into contact with ex-child soldiers from Somalia and Liberia. The appellant said that he found himself in a neighbourhood where he was menaced by a Nazi group who kidnapped and tortured him.

24.
Attempts to find the appellant a foster carer came to nothing, as he could not integrate. Instead, the appellant described himself as being groomed for a violent world of organised gangs and he was recruited into a very dangerous and notorious crime syndicate.

25.
Between 1996 and 2007, the appellant had been criminally convicted on fourteen occasions. In 2006, at Winchester Crown Court, he was convicted on five counts, including possessing prohibited ammunition. He was sentenced to 48 months' imprisonment for the ammunition offences and 78 months' imprisonment for possession of a firearm.

26.
In July 2007, at Lewes Crown Court, the appellant was convicted of conspiracy to commit aggravated burglary and conspiracy to commit burglary. He was sentenced to life imprisonment, with a minimum term of ten years to be served before being considered for release.

27.
From the remarks of the Sentencing Judge, we find that the burglaries took place at a residential address that was home to an adult couple and two 7 year old children. The first burglary took place in the morning, when the family was away from home. The total value of property stolen was £12,000.

28.
The second burglary took place two days later, when the adult female and her daughter were at home. The burglary was aggravated by the use of weapons, included a loaded gun, machetes and mallets. The mother and daughter were kidnapped outside the house and taken back there, to be subjected to a "terrifying ordeal". A taxi driver who happened to arrive during the burglary was also seized and threats were made to his life. Similar threats were also made to the mother and daughter.

29.
The Sentencing Judge described these as "crimes of exceptional seriousness". The judge said that it was "not possible to judge the causes of the simple wickedness which was responsible for these offences". Whatever motive each of the defendants had, each actively participated to a greater or a lesser extent. The appellant, during the second burglary,

“called yourself, and were referred by the others, as number 1. That was indeed your role. You are violent man who was recruited … to lead these operations. … it was you who was armed … with a revolver, which I am satisfied was loaded, and also a machete. You gave instructions to your fellow burglars. You …. caused maximum terror … In my judgment you are a totally cold-blooded, ruthless and highly dangerous man. You are rightly assessed as being a high risk of re-offending and a high risk of serious harm … I have no doubt in finding that there is a significant risk to members of the public occasioned by you of further specific offences. I am equally satisfied that the seriousness of this offence is sufficient to justify the imposition of a life sentence. …”

30.
Faced with deportation, the appellant contended that his removal from the United Kingdom would breach its obligations under the Refugee Convention and the ECHR. The respondent refused those claims and the appellant appealed to the First-tier Tribunal.

31.
In a decision which followed a hearing at Taylor House on 16 August 2018, the First-tier Tribunal dismissed the appellant’s appeal. The judge noted that, whilst in prison, the appellant had undertaken various rehabilitative programmes. This led the appellant to begin “to deconstruct his own identity”, with the result that he “has now found God and he is his witness”.

32.
Amongst the courses completed was one on “victim empathy” but the appellant had more generally “completed every single course to aid his rehabilitation”. The appellant said that there had been “no rehabilitation process at Barnardo’s Children’s Home”, where he went at the age of 12. To survive in such a care system, and with child soldiers who had killed people, the appellant had “to do what you have to defend yourself”.

33.
The First-tier Tribunal Judge rejected the appellant’s protection appeal. He did not consider that the appellant would be at real risk of serious harm, as a result of his criminal past, if returned to the Philippines.

34.
The judge then considered whether Exception 1 in section 117C(4) applied in the appellant’s case. Although the appellant had spent “considerable time since his arrival in the United Kingdom” in prison or in care homes, the judge accepted that the appellant had to a degree become “socially and culturally integrated into the United Kingdom. His first language is English. He grew up in the United Kingdom”.

35.
In considering whether there would be “very significant obstacles” to the appellant’s “integration into” the Philippines, the judge noted that the appellant had arrived at the age of 5 and had not since returned to the Philippines. He would not have retained any meaningful social ties there. However, he was an adult who had acquired on the evidence before the judge, many “useful skills, including achieving significant success in all ten GCSE examinations during his time in prison. The skills would assist in his integration”.

36.
The judge noted that the appellant had been on medication for a significant period during his incarceration. Records indicated a “suggested diagnosis of PTSD. More significantly, the Parole

Offender Manager has confirmed that [this] appellant has been diagnosed with compulsive disorder and his medication which he has been taking regularly for a significant period, is designed to minimise his anxiety". In fact, the judge appears to have accepted that the appellant "has also been diagnosed with PTSD which relates to his experiences of violence, torture and trauma", consisting not only of actions to which he had been subject but also those "he has been involved in personally inflicting".

37.
Although the judge considered that the appellant would be able to access appropriate medication for his condition in the Philippines, there remained "the undeniable fact that the support system to which he has become accustomed in the United Kingdom is assisting him to cope with his condition and his rehabilitation would be significantly interrupted by his deportation". That support system "could not easily be replicated in the Philippines".

38.
In conclusion, the First-tier Tribunal Judge found that the appellant "would in my opinion face very significant obstacles to his integration" in the Philippines.

39.
Thus, the judge found that Exception 1 applied in the case of the appellant. However, since the appellant had been sentenced to imprisonment of four years or more, the judge observed that the public interest still required the appellant's deportation, unless there were very compelling circumstances, over and above those described in Exceptions 1 and 2.

40.
With this in mind, the judge took account of the rehabilitative measures that the appellant had engaged in whilst in prison and the high level of insight that the appellant had achieved. The judge also took account of the appellant's "strong family life in the UK", which contrasted with the lack of such ties in the Philippines. The judge also recalled his earlier findings regarding the appellant's mental health issues.

41.
The judge did not accept the submission of the respondent's representative at the hearing that, in blaming his past, the appellant was failing to accept responsibility for his actions. The judge considered that it "says much for the appellant and it is highly commendable that he has shown the resilience to deconstruct his past and to take meaningful steps within the prison system to address his past". The judge noted the appellant's prison record as being "exemplary save for a number of relatively minor adjudications".

42.
Although all these considerations, weighing in favour of the appellant, were "most weighty indeed", the judge considered that "the public interest in this case is of paramount importance". The judge dismissed the appellant's appeal.

C. SETTING ASIDE AND RE-MAKING

43.
On 4 December 2018, Upper Tribunal Judge Coker found an error of law in the First-tier Tribunal Judge's decision and set that decision aside. In categorising the public interest in deportation as "paramount", the judge had erred and, in the light of that error, the judge's conclusion that there

were not “very compelling circumstances” in the appellant’s case could not be sustained on the basis upon which it was made.

44.
In re-making the decision in this case, we have had regard to all the evidence before us. That evidence is, in fact, the same as was before the First-tier Tribunal. Notwithstanding the setting aside of that Tribunal’s decision, we consider the judge accurately described the evidence, which is why we have extensively cited from the decision.

45.
We also agree with and adopt the conclusion of the judge that Exception 1, as set out in section 117C(4), is satisfied in this case. Mr Pilgerstorfer did not seek to argue to the contrary.

46.
Since the protection aspect of the claim is not pursued, the issue accordingly comes down to whether there are very exceptional circumstances, over and above Exception 1, which outweigh the public interest in the deportation of the appellant (section 117C(6)).

47.
In addressing that question, we apply the law, as we describe it above. In determining the weight of the public interest, we have regard to what is said in section 117C(2); namely, that the more serious the offence, the greater is the public interests in deportation.

48.
There can be no doubt that the offences that occasioned the sentence of life imprisonment, with a minimum of ten years, were of extremely great seriousness. That is manifest from the sentencing remarks of the judge. The public interest in the deportation of this particular foreign criminal is, accordingly, extremely high and the test of “very compelling circumstances” falls to be determined on that basis.

(a) Public deterrence

49.
One particular aspect of the public interests was the subject of submissions by Ms Patyna and Mr Pilgerstorfer. It concerns the passage in the judgment of Lord Wilson in Hesham Ali v Secretary of State for the Home Department [2016] UKSC 60 in which he agreed with Lord Kerr’s dissenting judgment, to the extent that Lord Wilson resiled from what he had said in OH (Serbia) v Secretary of State for the Home Department [2008] EWCA Civ 694, that the public interest in deportation includes the “expression of societal revulsion”.

50.
Importantly, Hesham Ali contains no analysis of Part 5A of the 2002 Act, since the cases with which the Supreme Court were concerned pre-dated the introduction of that Part. We consider that, by making the seriousness of the offence the touchstone for determining the strength of the public interest in deportation, Parliament, in enacting section 117C(2), must have intended courts and tribunals to have regard to more than the mere question of whether the particular foreign criminal, if allowed to remain in the United Kingdom, would pose a risk to United Kingdom society.

51.
In any event, it is clear from paragraphs 69 and 70 of the judgments in Hesham Ali that Lord Wilson did not intend to resile from the view that the general deterrent effect upon foreign citizens “of

understanding that a serious offence will normally precipitate their deportation [might] be a more powerful aid to the prevention of crime than the removal from the UK of one foreign criminal judged as likely to re-offend" (paragraph 69). As is evident from paragraph 70, in accepting Lord Kerr's criticism of what Lord Wilson had said in OH (Serbia) , Lord Wilson was doing no more than accepting that his categorisation of the matter "as an expression of society's revulsion at serious crimes" was "on reflection, too emotive a concept to figure in this analysis". There is also the point that the majority of the Justices who took part in Hesham Ali had nothing to say on these issues.

52.
In conclusion, therefore, there is nothing in Hesham Al i that requires a court or tribunal to eschew the principle of general deterrence, as an element of the public interest, in determining a deportation appeal by reference to section 117C(6).

(b) Striking the balance

53.
We therefore turn to the factors weighing on the appellant's side of the balance, in order to determine whether he can satisfy the test in section 117C(6). As did the First-tier Tribunal Judge, we give very significant weight to the fact that the appellant came to the United Kingdom as a young child. He has plainly been in the United Kingdom for most of his life. We therefore take into account the principles in Maslov v Austria (1638/03) [2009] INLR 47.

54.
Although, as we have said, we find that Exception 1 applies, the appellant has become socially and culturally integrated in the United Kingdom only to a somewhat modest degree. A good deal of his time in this country has been spent in prison. A significant period of his adolescence and young adulthood was spent in the company of those who cannot be said, in any rational sense, to be representative of the society and culture of the United Kingdom, as conceived by Parliament in enacting section 117C(4)(b).

55.
Although the appellant would face very significant obstacles to integration in the Philippines, if he were returned there, the overall picture is not such as to amount to very compelling circumstances, over and above these obstacles. No challenge has been made to the First-tier Tribunal Judge's conclusion that the appellant would be able to obtain medical assistance in the Philippines. Whilst he would lack the important support mechanisms mentioned by the judge, the appellant's own evidence asserts that he has already achieved insight, together with a religious conversion. Although the appellant's achievements in this regard would be put under strain by the disruption of being removed to the Philippines, we do not consider the evidence shows that they would be expunged.

56.
We also take account of the fact that the appellant has obtained qualifications which would be likely to stand him in good or at least reasonable stead, following deportation.

57.
Ms Patyna accepted that, although rehabilitation, following serious criminal offences, will not ordinarily count as a significant factor weighing in favour of an appellant facing deportation as a foreign criminal, this was, nevertheless, such a case. We have carefully considered this aspect. We note, in particular, the insight achieved by the appellant as a result of the help he received whilst in

HMP Grendon Underwood. We also have regard to the fact that the appellant's rehabilitation falls to be seen in the light of his intensely problematic early years.

58.
The stark fact remains, however, that the appellant was sentenced to life imprisonment, with a minimum term of 10 years, for crimes of quite exceptional seriousness. The public interest in deportation demands very great weight.

59.
Viewed in this light, the appellant's rehabilitation, whilst of course commendable (particularly having regard to his early life), does not deserve the attribution of the amount of weight that is necessary to take his case to the point of success, weighed in the round with other features in his favour, including those mentioned in relation to Exception 1.

60.
We have taken account of the interests of family members, including the appellant's mother, weighing them in round with the matters we have described. There is no indication that the mother requires the appellant's physical presence in order to be able satisfactorily to live her own life. Indeed, she plainly has to go for considerable periods of time without being able to see the appellant on anything approaching a frequent basis.

61.
In conclusion, we find that, on the totality of the evidence and submissions, there are no very compelling circumstances which outweigh the extremely strong public interest in deportation of the appellant. That interest includes deterrence and (having regard to the seriousness of the offences leading to the life sentence) the need to maintain public confidence in the system of immigration control.

62.
All members of the panel have contributed to its decision and reasons.

Decision

The making of the decision by the First-tier Tribunal involved the making of an error of law. We set that decision aside and re-make the decision in the appeal by dismissing it.

Signed Dated: 4 March 2019

The Hon. Mr Justice Lane

President of the Upper Tribunal

Immigration and Asylum Chamber

Anonymity

We have made an order under r.14(1) of the Tribunal Procedure (Upper Tribunal) Rules 2008 prohibiting the disclosure or publication of any matter likely to lead members of the public to identify the original appellant. No report of these proceedings shall directly or indirectly identify him. This order applies to both the appellant and to the respondent and all other persons. Failure to comply with this order could lead to contempt of court proceedings.