Home Office

Criminality: Article 8 ECHR cases

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About this guidance

This guidance explains how decision makers must consider claims that the deportation of a foreign national would breach Article 8 of the European Convention on Human Rights (the right to respect for private and family life).

Contacts

If you have any questions about the guidance and your line manager or senior caseworker cannot help you or you think that the guidance has factual errors then email the Migrant Criminality Policy team.

If you notice any formatting errors in this guidance (broken links, spelling mistakes and so on) or have any comments about the layout or navigability of the guidance then you can email the Guidance Rules and Forms team.

Publication

Below is information on when this version of the guidance was published:

- version **9.0**
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Changes from last version of this guidance

- Amendments to reflect changes made to Part 13 of the Immigration Rules

- Amendments to reflect the Supreme Court judgment of HA (Iraq), RA (Iraq) and AA (Nigeria) v SSHD [2022] UKSC 22

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Purpose

This section tells decision makers about use of this guidance in considering whether the deportation of a foreign national would breach Article 8.

Use of this guidance

This guidance must be used by decision makers when considering whether the deportation of a foreign national would breach Article 8 of the European Convention on Human Rights (ECHR).

A foreign national can be deported from the UK:

- on the ground it is conducive to the public good (conducive grounds) under:
    - section 3(5)(a) of the Immigration Act 1971 (1971 Act)
    - section 32 of the UK Borders Act 2007 (2007 Act)
    - regulation 27A of the Immigration (European Economic Area) Regulations 2016 (‘EEA Regulations 2016’), as amended and saved by:
        - the Citizens’ Rights (Application Deadline and Temporary Protection) (EU Exit) Regulations 2020 (Grace Period Regulations 2020)
        - the Immigration and Social Security Co-ordination (EU Withdrawal) Act 2020 (Consequential, Saving, Transitional and Transitory Provisions) (EU Exit) Regulations 2020 (Consequential Regulations 2020)

- under section 3(5)(b) of the 1971 Act if they are the family member of a person who has been ordered to be deported or has been deported

- under section 3(6) of the 1971 Act if a court has recommended their deportation following a conviction punishable with imprisonment

- on EU public policy, public security or public health grounds under:
    - regulation 23(6)(b) of the EEA Regulations 2016, as saved
    - regulation 15(1)(b) of the Citizens’ Rights (Frontier Workers) (EU Exit) Regulations 2020 (Frontier Workers Regulations 2020)

Where Article 8 is raised in relation to the deportation of a foreign national, consideration must be given to paragraphs 13.1.1. to 13.3.2. of the Immigration Rules. Where the requirements of paragraph 13.2.3. (private life exception) or 13.2.4. (family life exception) are met or where there are very compelling circumstances over and above those described in paragraphs 13.2.3. to 13.2.6., leave to remain must be granted in accordance with paragraphs 13.3.1. and 13.3.2..

Where the person has applied for leave under the EU Settlement Scheme (EUSS), consideration must instead be given to granting leave under Appendix EU of the Immigration Rules

Guidance on the deportation of foreign nationals where deportation is via the Immigration Act 1971 or the UK Borders Act 2007 or regulation 27A of the EEA Regulations 2016 can be found at:

- Conducive Deportation

Guidance on the deportation of foreign nationals who are liable to deportation under the EEA Regulations 2016 (as saved) can be found at:

- Public policy, public security or public health decisions

The best interests of a child

All deportation decisions must include consideration of the duty in section 55 of the Borders, Citizenship and Immigration Act 2009 to have regard to the need to safeguard and promote the welfare of a child in the UK. This means that consideration of a child's best interests is a primary consideration (but not the only consideration) in deportation decisions affecting them. This guidance and the Immigration Rules form part of the arrangements for ensuring that we give practical effect to these obligations.

You must carefully consider all of the information and evidence provided concerning the best interests of a relevant child (that is a person who is under the age of 18 years, and it is evident from the information provided by the foreign national they will be affected by the decision), when assessing the private and family life exceptions to deportation and whether there are any very compelling circumstances.

The decision letter must demonstrate that all the information and evidence provided in the application concerning the best interests of a relevant child has been considered. You must carefully assess the quality of any evidence provided. Documentary evidence from official or independent sources will be given more weight in the decision-making process than unsubstantiated assertions about a child's best interests.

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Introduction

This section explains how decision makers must consider claims that the deportation of a foreign national would breach Article 8 of the ECHR - the right to respect for private and family life.

Part 13 of the Immigration Rules sets out the Article 8 ECHR exceptions to deportation. Any person being considered for deportation will have their Article 8 claim considered in line with the Part 13 Rules including where deportation is being pursued on the basis of:

- a conviction for an offence committed in the UK
- an overseas conviction
- involvement in a sham marriage
- involvement in serious criminality (which has not resulted in a criminal conviction)

This is not an exhaustive list.

The Article 8 Framework

Sections 117A to 117D in Part 5A of the Nationality, Immigration and Asylum Act 2002 set out the correct approach to considering ECHR Article 8 claims. Part 5A was inserted by section 19 of the Immigration Act 2014 which came into force on 28 July 2014. In Part 5A:

- section 117A sets out how the Article 8 provisions are to be applied
- section 117B sets out Parliament's view of the public interest in Article 8 claims made by any foreign nationals, including foreign criminals
- section 117C sets out Parliament's view of the public interest in Article 8 claims made by foreign criminals liable to deportation
- section 117D sets out the interpretation of sections 117A to 117C

The Article 8 exceptions to deportation on the basis of private and family life were inserted into the Immigration Rules on 28 July 2014.

Changes made to the Immigration Rules on 12 April 2023 clarify that where deportation is being considered and the person has made an Article 8 claim, that claim will be considered in line with Part 13 of the Immigration Rules.

Part 13 of the Immigration Rules sets out the criminality thresholds. An Article 8 claim from a foreign national convicted in the UK or overseas who has received a custodial sentence of at least 12 months; has been convicted of an offence that has caused serious harm or is a persistent offender will succeed if the requirements of an exception to deportation are met or where there are very compelling circumstances over and above those described in the exceptions. The exception to deportation on the basis of private life is set out at paragraph 13.2.3. of the Immigration Rules, and the exception on the basis of family life is at paragraph 13.2.4.

An Article 8 claim from a foreign national who has received a custodial sentence of at least 4 years' imprisonment will only succeed where there are very compelling circumstances over and above the circumstances described in the exceptions to deportation at paragraphs 13.2.3. to 13.2.6.

Where deportation is being considered on the ground it is conducive to the public good or on public policy, public security or public health grounds and the person does not have a custodial sentence of at least 12 months, the Immigration Rules must be used as a guide when considering an Article 8 claim because they reflect Parliament's view of the balance to be struck between a person's right to private and family life and the public interest.

Paragraphs 13.3.1. and 13.3.2. set out the provisions for granting leave to remain where an Article 8 claim succeeds. Temporary permission will be granted under paragraph 13.3.1. for a period not exceeding 30 months and subject to such conditions the Secretary of State considers to be appropriate.

Foreign nationals protected by the Withdrawal Agreement

Some foreign nationals are protected by the EU Withdrawal Agreement, the EEA EFTA Separation Agreement or the Swiss Citizens' Rights Agreement (the Agreements), or by the United Kingdom's domestic implementation of the Agreements, in relation to conduct (including any criminal convictions relating to it) committed before 23:00 GMT on 31 December 2020 and, in such cases, deportation must be considered on grounds of public policy, public security or public health. For conduct committed after that date, the UK's criminality and deportation thresholds apply.

A person is protected by the Agreements (or the UK's domestic implementation of the Agreements), referred to as a 'relevant person' in this guidance, if they:

- have been granted leave under Appendix EU or entry clearance under Appendix EU (Family Permit)
- have submitted an application to the EUSS (and if the application was submitted after the relevant deadline, they had reasonable grounds for doing so) and a decision or appeal is pending on the application
- are a joining family member until the relevant deadline for an application to the EUSS, for example 3 months after their entry to the UK
- are a frontier worker as defined in regulation 3 of the Citizens' Rights (Frontier Workers) (EU Exit) Regulations 2020 (Frontier Workers Regulations 2020)
- are in the UK having arrived with entry clearance granted by virtue of their right to enter the UK as a service provider from Switzerland under Appendix Service Providers from Switzerland to the Immigration Rules

- have or are seeking permission to enter or remain in the UK as a patient for the purpose of completing a course of planned healthcare treatment in the UK which was authorised under the 'S2 arrangements', as provided for at Appendix S2 Healthcare Visitor to the Immigration Rules - this also includes persons or family members accompanying or joining the patient

Conduct committed before 31 December 2020

A relevant person cannot have their rights of residence and entry under the Agreements restricted for conduct which occurred before 23:00 GMT on 31 December 2020 unless that conduct meets the public policy, public security or public health test in accordance with regulation 27 of the EEA Regulations 2016, as saved. Decisions made in accordance with regulation 27 may therefore need to be made directly under the EEA Regulations 2016, as saved or in other circumstances such as in the making of exclusion directions or making decisions in respect of those with temporary protection.

Conduct committed after 31 December 2020

The UK's criminality and deportation thresholds apply to those protected by the Agreements (or the UK's domestic implementation of the Agreements) in respect of any conduct committed after 23:00 GMT 31 December 2020. A relevant person may have criminality or engaged in adverse conduct which occurred both before and after the end of the transition period (both before and after 23:00 GMT on 31 December 2020). See the conducive deportation guidance for more information on conduct spanning the end of the transition period or on applying the conducive test.

Where deportation is being considered, and the person has made an Article 8 claim, that claim will be considered in line with the Part 13 Rules regardless of whether the foreign national is protected by the Agreements or not.

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General principles when considering an Article 8 claim

This section tells you about the general principles you must follow when considering an Article 8 claim in a deportation context.

The exceptions to deportation

Paragraphs 13.2.1. to 13.2.6. of the Immigration Rules set out when a foreign national's private and/or family life will outweigh the public interest in deporting them.

In the case of a person who has been sentenced to less than 4 years, deportation will not be appropriate where any of the following apply:

- the person 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 deportation on the partner or child would be unduly harsh
- the person has been lawfully resident in the UK for most of their life, they are socially and culturally integrated in the UK, and there would be very significant obstacles to their integration in the country of return

Where a person sentenced to less than 4 years imprisonment does not satisfy the exceptions to deportation, paragraphs 13.2.1. and 13.2.2. of the Immigration Rules set out that the public interest requires deportation unless there are very compelling circumstances over and above the circumstances described in paragraphs 13.2.3. and 13.2.4.

In the case of a person sentenced to at least 4 years' imprisonment, they will never be eligible to be considered under the exceptions. Instead, paragraph 13.2.2. of the Immigration Rules sets out that a person who has received a custodial sentence of at least 4 years must show very compelling circumstances over and above the exceptions in paragraph 13.2.3. or 13.2.4. for deportation to be a breach of Article 8.

The application of the very compelling circumstances test will continue to apply to a person sentenced to at least 4 years' imprisonment. Therefore, even if deportation was not pursued because there were very compelling circumstances which prevented deportation, if the person reoffends and receives a subsequent sentence of less than 4 years' imprisonment, any Article 8 claim by that person must be considered against the very compelling circumstances test. This is because their deportation will continue to be conducive to the public good and in the public interest for the 4-year sentence as well as any subsequent sentences.

Matters relevant to an assessment of whether an exception might apply could be relevant to an assessment of whether there are very compelling circumstances, over and above the exceptions, that would render deportation disproportionate. This is the case even where an exception cannot apply or where it is determined that an

exception does not apply. In order to succeed in this way a person would need to have a particularly strong case.

Consideration of the public interest test

Parliament has set out its view of the public interest in Article 8 claims from foreign nationals in sections 117B and 117C of the 2002 Act. A foreign national's claimed private and/or family life must be carefully assessed and balanced against Parliament's view of the public interest to determine whether deportation would breach Article 8.

The Immigration Rules reflect the approach to be taken when assessing Article 8 from a person being considered for deportation. Consideration must be given to the public interest in their deportation to determine whether it is outweighed by their private or family life.

The facts of the person's circumstances in the individual case may be so exceptional that the public interest in deportation is reduced and may be taken into consideration in determining the weight of the public interest.

The public interest in the deportation of a foreign criminal is reflected in the fact that the sentence length engages one of the exceptions. No separate balancing of the public interest is necessary, and caseworkers should concentrate their considerations on whether or not the person satisfies one of the exceptions.

When considering the public interest in the deportation of a foreign national using the very compelling circumstances test you must consider **all** of the following:

- the more serious the offence committed by a foreign national, the greater the public interest in deportation
- the more criminal convictions a foreign national has, the greater the public interest in deportation
- it is in the public interest to deport a foreign national even where there is evidence of remorse or rehabilitation or that they present a low risk of reoffending
- the need to deter other non-British nationals from committing crimes – by leading them to understand, whatever the other circumstances, one consequence may well be deportation – is a very important facet of the public interest in deporting a foreign national
- the role of deportation as an expression of society's revulsion at serious crimes, and in building public confidence in the treatment of non-British nationals who have committed serious crimes is a very important facet of the public interest in deporting a foreign national
- where a foreign national has also been convicted of an offence outside the UK, the overseas conviction will usually add to the public interest in deportation - an example of an exception to this general rule might be where there is evidence that prosecution was pursued solely for political reasons
- there are factors which are capable of adding weight to the public interest in deportation, including where a foreign national:

- is considered to have a high risk of reoffending
- does not accept responsibility for their offending or express remorse
- has an adverse immigration history or precarious immigration status
- has a history of immigration-related non-compliance (for example, failing to co-operate fully and in good faith with the travel document process) or frustrating the removal process in other ways
- has previously obtained or attempted to obtain limited or indefinite leave to enter or remain by means of deception
- has used deception in any other circumstances (for example to secure employment, benefits or free NHS healthcare to which they were not entitled)
- has entered the UK in breach of a deportation order

Section 117B(1) of the 2002 Act states that the maintenance of effective immigration controls is in the public interest. The exceptions to deportation at paragraphs 13.2.3. (private life) and 13.2.4. (family life) of the Immigration Rules contain requirements to be met in relation to immigration status. A person's immigration history must also be taken into account when considering whether there are very compelling circumstances.

Sections 117B(2) and 117B(3) of the 2002 Act state that it is in the public interest that those seeking to remain in the UK are able to speak English and are financially independent. In deportation cases this will be relevant when considering whether:

- the effect of deportation will be unduly harsh on a qualifying partner or a qualifying child
- a foreign national is socially and culturally integrated in the UK
- there are very compelling circumstances over and above the circumstances described in the exceptions to deportation such that the public interest is outweighed

As a general principle, where a foreign national cannot demonstrate that they speak English and/or that they are financially independent, they will find it more difficult to show that they are socially and culturally integrated or that there are very compelling circumstances.

Section 117B(4) of the 2002 Act sets out that little weight should be given to a private life or a relationship with a qualifying partner established when the person is in the UK unlawfully. Section 117B(5) sets out that little weight should be given to a private life established at a time when the person's immigration status is precarious. A person is in the UK unlawfully if they require leave to enter or remain in the UK but does not have it.

For the purposes of this guidance, a person's immigration status is precarious if they are in the UK with limited leave to enter or remain, or they have settled status which was obtained fraudulently, or they have committed a criminal offence which they should have been aware would make them liable to removal or deportation. These provisions are taken into account in the exceptions to deportation at paragraphs 13.2.3. and 13.2.4. and must be taken into account when considering whether there are very compelling circumstances.

Where a foreign national is in the UK unlawfully, or no longer meets the conditions of the leave they were granted and one of the following applies, the claim to respect for private or family life will be weaker and so will be less capable of outweighing the public interest in deportation:

- they have formed a private life or a relationship with a qualifying partner while in the UK unlawfully
- they have formed a private life while their immigration status was precarious

Qualifying partners and children

A 'qualifying child' means a person who is under the age of 18 and who either:

- is a British citizen
- has lived in the UK for a continuous period of 7 years or more

A 'qualifying partner' means a partner who either:

- is a British citizen
- is settled in the UK (which means having indefinite leave to enter or remain in the UK, or being ordinarily resident in the UK)

Where a foreign national claims to have a partner and/or a child in the UK who does not meet the definition of a qualifying partner or a qualifying child then the family life exception to deportation at paragraph 13.2.4. of the Immigration Rules cannot apply even if the foreign national has not been sentenced to a period of imprisonment of 4 years or more.

In such a case, paragraph 13.2.1. sets out that the Article 8 claim will only succeed where there are very compelling circumstances. This is because a claim on the basis of family life with a non-qualifying partner or a non-qualifying child will usually be weaker, so something more, that must be very compelling, will be required in order to be capable of outweighing the public interest.

Unduly harsh

The expression 'unduly harsh' introduces a higher threshold than that of "reasonableness" under section 117B(6) of the 2002 Act, taking account of the public interest in the deportation of foreign criminals. The word 'unduly' implies an element of comparison. It assumes that there is a 'due' level of 'harshness', that is a level which may be acceptable or justifiable in the relevant context. 'Unduly' implies something going beyond that level and that this enhanced degree of harshness is sufficient to outweigh the public interest in the deportation of foreign nationals.

The courts have found that the test for unduly harsh is a high one to surmount and provided the following guidance on the interpretation of unduly harsh:

'unduly harsh does not equate with uncomfortable, inconvenient, undesirable or merely difficult. Rather, it is a considerably more elevated threshold. Harsh in this context, denotes something severe, or bleak, and is the antithesis of pleasant or comfortable. Furthermore, the addition of unduly raises an already elevated standard still higher'. Further information can be found in the case law section below.

Considering whether the deportation of a parent is unduly harsh must be considered in the relevant context set by section 117C(1) of the 2002 Act and that the deportation of a foreign national is in the public interest. It is necessary to evaluate, on the evidence provided in the application, the effects that deportation of the parent may have on the individual child or children concerned and whether in the circumstances the consequences of deportation would be unduly harsh. Each case must be considered on its individual merits and no two cases are likely to be the same. The following circumstances may affect the degree of harshness to be found in a particular case:

- the child's age
- whether the parent facing deportation lives with them (noting that a divorced or separated father may still have a genuine and subsisting relationship with a child who lives with the mother)
- the degree of the child's emotional dependence on the parent
- the financial consequences of the parent's deportation
- the availability of emotional and financial support from the remaining parent and other family members
- the practicability of maintaining a relationship with the deported parent
- the individual characteristics of the child

This is not intended to be a comprehensive or defining list of circumstances. None of these circumstances should be taken as having a greater weight in determining the degree of harshness than any of the others.

However, you must consider these aspects of a case when considering whether or not deportation is unduly harsh in a particular case. The domestic courts have determined that other than the length of sentence triggering the appropriate test, that the severity of the offending must not be weighed into consideration of whether deportation would be unduly harsh.

It will usually be more difficult to meet the family life exception to deportation under paragraph 13.2.4. (b), if the relationship was formed while the foreign national was in the UK unlawfully because their family life will be less capable of outweighing the public interest than if they were in the UK with lawful, settled immigration status.

Section 117B(2) of the 2002 Act states that it is in the public interest that those who seek to remain in the UK are able to speak English. There is no prescribed standard of English which must be met here and no prescribed evidence which must be submitted. You must consider all available information, though less weight will be given to claims unsubstantiated by original, independent and verifiable documentary evidence. Indications that a foreign national can speak English may include evidence:

- of citizenship (such as a passport) of a country where English is the (or a) main or official language
- of an academic qualification that was taught in English
- of passing an English language test
- that they have been interviewed (for example in connection with an asylum claim), or given evidence at an appeal hearing in English

Section 117B(3) of the 2002 Act states that it is in the public interest that those who seek to remain in the UK are financially independent. If a foreign national cannot demonstrate that they are financially independent, it will be more difficult for them to show that the effect of deportation on their qualifying partner or qualifying child will be unduly harsh. Financial independence here means not being a burden on the taxpayer. It includes not accessing income-related benefits or tax credits, on the basis of the foreign national's income or savings or those of their partner, but not those of a third party. There is no prescribed financial threshold which must be met and no prescribed evidence which must be submitted. You must consider all available information, though less weight will be given to claims unsubstantiated by original, independent and verifiable documentary evidence, for example from an employer or regulated financial institution.

Case law

Hesham Ali (Iraq)

In [Hesham Ali (Iraq) v SSHD [2016] UKSC 60] the Supreme Court effectively approved the provisions in the Immigration Rules concerning the approach to be taken to the consideration of Article 8 in the context of the deportation of foreign nationals. The court agreed that those rules are consistent with the requirements of Article 8.

The court concluded that the rules do not constitute a 'complete code' in deportation cases, insofar as they cannot be said to be binding on judges in tribunals. It is for the appellate judge to determine, on the facts of the case, whether deportation in a particular case would be disproportionate. However, the Supreme Court made clear that the rules must remain central to that assessment.

Statutory effect to the assessment of the 'public interest question' in this context, is now provided for in sections 117B and 117C of the 2002 Act (as amended by the Immigration Act 2014). These provisions were not considered in Hesham Ali.

When considering the public interest in deportation, Lord Wilson considered Lord Kerr's view (given in the latter's dissenting judgment) that if an individual is unlikely to commit a further crime or be involved in further disorder, then their expulsion cannot be said to be rationally connected to the legitimate aim of the prevention of disorder or crime. Lord Wilson found this analysis too narrow, concluding that the deterrent effect on foreign citizens of understanding that a serious offence is likely to lead to deportation may be a more powerful aid to the prevention of crime than the removal of one foreign national judged as likely to re-offend.

This judgment also suggested that future judgments in Article 8 cases could be structured using a "balance sheet" approach whereby, having ascertained the facts, the judge would set out each of the "pros" and "cons" and then set out reasoned conclusions as to whether the countervailing factors outweigh the importance attached to the public interest in the deportation of foreign offenders.

The court concluded that the weight to be attached to the public interest in the deportation of a foreign national is such that only an Article 8 claim that is: "**very strong indeed – very compelling**" will be capable of outweighing it (see, for example, paragraph 50 of the judgment).

KO (Nigeria) & others

In KO (Nigeria) and others v Secretary of State for the Home Department [2018] UKSC 53 the Supreme Court considered the interpretation of section 117C(5) of the 2002 Act where the deportee has a genuine and subsisting relationship with a qualifying child, and when considering whether the effect of deportation on the child would be unduly harsh.

The Supreme Court held that consideration of unduly harsh needs to be made in the context that it has been established that deportation of the parent(s) is in the public interest. Having considered the nature of offending in establishing that deportation was in the public interest the seriousness and nature of the offending should not be taken into account in assessing whether deportation would be 'unduly harsh'.

The Supreme Court also confirmed that the 'unduly harsh' test is a high one, going beyond what would necessarily be involved for any child faced with the deportation of a parent (but see HA (Iraq) & RA (Iraq) below). If the consequence of the deportation of a parent would be to separate the child and the parent or mean the child would leave the UK with the parent, that in itself does not make deportation 'unduly harsh'.

MK

In MK (section 55 – Tribunal options) Sierra Leone [2015] UKUT 00223 (IAC), the Secretary of State sought to deport MK to Sierra Leone and the Upper Tribunal considered the impact of his deportation on his two children and determined the case on what was in the best interests of the children. In particular, the Upper Tribunal looked at whether the impact on the children would be unduly harsh.

The children were aged seven years and the Upper Tribunal found that they were at a critical stage of their development. MK was a father figure in the life of his biological daughter and the Tribunal readily inferred that there was emotional dependency bilaterally along with clear financial dependency to a not insubstantial degree. There was no evidence of any other father figure in this child's life and MK was found to have evidently been ever present since her birth. The Upper Tribunal determined that children do not have the resilience, maturity or fortitude of adults and the abrupt removal of MK from his biological daughter's life would not merely damage this child. It would, rather, cause a gaping chasm in her life to her serious

detriment. The Tribunal considered that the impact on MK's stepson would be at least as serious and found that the effect of MK's deportation on both children would be unduly harsh. The Tribunal said that it had no hesitation in concluding that it would be unduly harsh for either of the two seven-year-old British citizen children to be abruptly uprooted from their UK life setting and lifestyle and exiled to a struggling, impoverished and plague stricken west African state. No reasonable or right-thinking person would consider this anything less than cruel.

The Upper Tribunal in MK found that determining the effect on the children required an evaluative assessment on the part of the Tribunal, to be contrasted with a fact-finding exercise.

HA (Iraq) & RA (Iraq) & AA (Nigeria)

In HA (Iraq) & RA (Iraq) & AA (Nigeria) [2022] UKSC 22, the Supreme Court considered the application of the "unduly harsh" test. The Court unanimously dismissed the three appeals by the Home Office in these cases against the decisions of the Court of Appeal and in doing so gave clear guidance for decision-makers and inferior courts and tribunals which reduces the effects of the Court of Appeal's judgment in HA (Iraq) and RA (Iraq). The Supreme Court emphasised in its judgment that the threshold of 'unduly harsh' is a high threshold and that decision-makers and inferior courts and tribunals should follow the guidance given in the case of MK and affirmed in KO (Nigeria) v SSHD [2018], making clear how elevated that threshold is. The relevant test in MK is: "unduly harsh does not equate with uncomfortable, inconvenient, undesirable or merely difficult. Rather, it poses a considerably more elevated threshold. Harsh, in this context, denotes something severe, or bleak. It is the antithesis of pleasant or comfortable. Furthermore, the addition of the adverb unduly raises an already elevated standard still higher". MK further emphasised that it is for the foreign criminal to put forward the evidence that deportation would be unduly harsh or that there are very compelling circumstances.

The basic principles laid down by the Supreme Court are the need for a nuanced consideration in each case of the relevant factors and for that exercise to be properly completed at the fact-finding stage. The Court rejected the concept of a notional comparator of 'any child' that meant a degree of harshness going beyond that which would necessarily be experienced by any child faced with the deportation of a parent. Rather, the Court should make an informed assessment of the effect of deportation on the child or partner in question and evaluate whether the level of harshness reaches the elevated threshold connoted by "unduly harsh". The elevated threshold of harshness will be greater than that which is justifiable in the context of the public interest in the deportation of foreign criminals. The Court also found that rehabilitation may be relevant to the "very compelling circumstances" test but where the only evidence of rehabilitation is the absence of further offending, that evidence is likely to be given little or no weight by the tribunal.

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Family life with a child

This section tells decision makers how to consider family life with a child in the context of deportation.

The exception to deportation on the basis of family life with a child is set out at paragraph 13.2.4. of the Immigration Rules. It can only be determinative in the case of a foreign national who has not been sentenced to a period of imprisonment of 4 years or more. Foreign nationals who have been sentenced to a period of imprisonment of 4 years or more or who have sentences of less than 4 years but do not meet the tests in the exceptions must demonstrate there are very compelling circumstances over and above the circumstances described in paragraph 13.2.4.

You must consider whether, had either of the exceptions applied, the tests would have been met and, if so, whether those same circumstances were so exceptionally strong in themselves, or when taken with other factors over and above those circumstances that they amount to very compelling circumstances that would cause deportation to be disproportionate.

The exception will be met where:

- the person has a genuine and subsisting parental relationship with a child under the age of 18 years who is in the UK, and one of the following applies:
  - the child is a British citizen, and it would be unduly harsh for the child to live in the country to which the person is to be deported and it would be unduly harsh for the child to remain in the UK without the person who is to be deported
  - the child has lived in the UK continuously for at least the 7 years immediately preceding the date of the immigration decision and it would be unduly harsh for the child to live in the country to which the person is to be deported and it would be unduly harsh for the child to remain in the UK without the person who is to be deported

Qualifying child

The onus is on the foreign national to provide credible evidence that a child is under 18, is a British citizen or has lived continuously in the UK for at least the 7 years immediately preceding the date of the immigration decision, meaning the decision to deport. Less weight will usually be given to claims unsubstantiated by original, independent and verifiable documentary evidence.

Any claim that a non-British citizen child has lived continuously in the UK for at least the 7 years preceding the decision to deport should be supported by appropriate original documentary evidence. It does not matter whether the child had leave to enter or remain during the 7 years. Short periods outside the country (such as for holidays or family visits) do not count as a break in continuous residence. However, where a child has spent more than 6 months out of the UK at any one time this will normally count as a break in continuous residence unless any exceptional factors apply.

There is no prescribed evidence which must be submitted, but the evidence submitted should normally cover each year of the claimed length of residence to demonstrate continuous residence. This could include independent evidence that the child has been attending school for a certain number of years. Evidence that a child is in the UK at the time of the Article 8 claim might include evidence of a recent medical appointment or school attendance.

Genuine and subsisting parental relationship

Having family life with a child does not necessarily mean the foreign national has a genuine and subsisting parental relationship with the child (or 'parental relationship' for short). A parental relationship is a particular type of family life. It is possible to have family life with a child without having a parental relationship with the child.

The following is a non-exhaustive list of relevant factors when assessing whether a foreign national has a genuine and subsisting parental relationship with a child. Relevant considerations include:

- whether the person meets the definition of 'parent' given at paragraph 6.2 of the Immigration Rules
- whether the person has legal parental responsibility for the child (note that where children are born in the UK, fathers do not always automatically have legal parental responsibility)
- whether the person is the child's primary carer (a primary carer is someone who has primary responsibility for a child's care or shares equally the responsibility for a child's care with one other person) – note that not being a primary carer is not, of itself, evidence of the absence of a parental relationship
- what part the person plays in making decisions regarding the child (for example choice of school or where the child lives)
- what involvement the person has in the child's day-to-day life
- who cared for the child while the person was in prison and what role that carer now plays in the child's life
- whether there is credible evidence that the person is genuinely willing and able to care for the child
- where the person lives in relation to the child
- how regularly the person and the child see one another
- whether there are any relevant court orders governing access to the child and if so, when they were sought – consideration must be given to the timing of any application for access or residence, and whether it was made with the intention of strengthening the person's claim to remain in the UK. It should be noted that any evidence supplied by the Family Court must only be used in evidence at an immigration appeal with the Family Court's written permission
- whether any evidence has been provided in support of the claimed parental relationship, for example views of the child, other family members, social workers or other relevant professionals
- the extent to which the person makes an active contribution to the child's life – this may include financial, emotional and other forms of support to ensure the child's well-being

When considering the extent of a foreign national's involvement in a child's life, factors which might prompt closer scrutiny include where:

- there is little or no contact with the child or contact is irregular
- any contact is only recent in nature
- support is only financial in nature, there is no contact or emotional or welfare support
- the child is largely independent of the person liable to deportation

The quality of any evidence provided in deciding whether a foreign national has a parental relationship with a child must be carefully assessed and where appropriate challenged. Original documentary evidence, particularly independent and verifiable evidence, will be given more weight in the decision-making process than unsubstantiated assertions.

As a general principle, a foreign national will usually have a genuine and subsisting parental relationship with a child if they are someone to whom the interpretation of 'a parent' at paragraph 6.2 of the Immigration Rules applies and there is credible evidence of significant involvement in the child's life.

A child may have 1 or 2 people in parental roles, but it would not ordinarily be accepted that there can be 3 or more people with parental roles in a child's life, unless there is a court ruling that more than 2 people share legal parental responsibility for the child. Where a child has 1 or 2 step-parents, they may all have a family relationship with the child, but they cannot all be said to have a parental relationship.

The evidence provided must be considered to determine who has a parental relationship with the child, and who has a non-parental family relationship with the child, unless there is a court ruling that 3 or more people share legal parental responsibility. The onus is on the foreign national to substantiate a claim that they have a parental relationship with a child.

If there is independent documentary evidence of a court ruling that more than 2 people have legal parental responsibility for the child, including the foreign national, you must consider whether the foreign national makes a real, practical contribution to the child's life that cannot be made by anyone else, including whether they make important decisions about the child's life. If so, then it is likely the foreign national will be said to have a parental relationship with the child.

Where a child is being looked after through other arrangements (for example, with local authority or wider community support), the foreign national may still be able to show that they have a genuine and subsiding parental relationship with the child. For instance, the child may remain financially dependent on the foreign national, they may see each other often, or if the child is in care, there may be formal access arrangements that support the existence of the relationship. Care should be taken to understand the extent of any formal care arrangements and it will normally be appropriate to clarify this with the relevant local authority Children's Services before making a decision. If the child does not have valid leave to remain, then the child, the

child's legal representatives or social services must be notified so that they can decide whether to make an application for leave to remain or make alternative arrangements for the child.

Consideration of a child's best interests

The requirements in paragraph 13.2.5. reflect the duty in section 55 of the Borders, Citizenship and Immigration Act 2009 to have regard to the need to safeguard and promote the welfare of children who are in the UK, by which we mean their best interests. In the context of paragraph 13.2.5. you must consider whether the effect on the child of deporting the foreign national will be unduly harsh.

The onus is on the foreign national to substantiate their Article 8 claim, so an assessment of a child's best interests must be based on the evidence submitted by the foreign national and any other evidence which is in the Home Office file.

You must have regard to the best interests of the child as a primary consideration (but not the only consideration). Primary does not mean that the best interests of the child have to be considered first, before other factors. What matters is that there is a full consideration of the child's best interests and that this is properly explained in the decision letter.

It will normally be in the child's best interests to be cared for by both parents, but careful consideration must be given to any evidence from experts such as social services that suggests this may not be the case.

The following is a non-exhaustive list of relevant factors when assessing what is in a child's best interests:

- the child's age and nationality
- the child's immigration history, for example how long they have lived in the UK, whether they have lived in any other countries, whether they were born a British citizen, or naturalised or registered as such
- whether the foreign national has submitted evidence demonstrating that the child does not hold the nationality of the country to which the person is to be deported or that the child could not qualify for it if an application were made
- who the child's primary carer is
- whether it is in the child's best interests to remain in the care of the parent liable to deportation, the other parent, both or neither, and why
- where the other parent lives
- if the other parent is in the UK, whether they are British or have leave to enter or remain in their own right or is exempt from immigration control
- whether the other parent could choose to go to the country of return with the parent liable to deportation and the child
- whether it is in the child's best interests to accompany their parent to the country of return, and why
- whether it is in the child's best interests to remain in the UK, and why

Any claim that it is in the child's best interests to remain in the UK must be carefully and thoroughly assessed on the basis of all relevant information and evidence. This may include reports from children's services or family court judgments which may make findings as to what is in a child's best interests.

It will not necessarily be in the child's best interests to remain in the UK solely due to having British citizenship or having lived in the UK for at least 7 years. These are both very important factors but will not necessarily be the determinative factors in an individual case. For example, the requirement that a non-British citizen child has lived in the UK for a continuous period of at least 7 years recognises that over time children start to put down roots and integrate into life in the UK. You must assess the quality of any evidence provided to determine the extent of the child's private life in the UK.

You must not assume that living in the UK is inherently 'better' than living in any other country or that British citizenship is to be accorded more importance than citizenship of another country.

The assessment must be made on the basis of all relevant factors including the child's particular circumstances. For example, whether relocation would maintain the family unit, and cultural ties.

You must take into account any order made by the family court when assessing a child's best interests, but this is not determinative of the deportation decision. Family orders, such as contact, care, ward of the court and residence orders, do not limit the exercise of the Secretary of State's powers with respect to immigration control. However, any order of this type is a relevant and important consideration to take into account in assessing the best interests of the child.

Would the effect of deportation on the child be unduly harsh?

When considering whether the effect on a child of deporting a foreign national is unduly harsh, consideration needs to be made in the context where the person is required to leave, and it may be reasonable to expect the child to either leave the UK or be separated from one parent. The outcome of the consideration may be undesirable but that does not make it unduly harsh.

The natural consequences of deportation can involve difficult decisions for families; the child either relocating to a country where the quality of life is less favourable than in the UK or that deportation splits families, but those factors are not necessarily determinative of whether deportation would be unduly harsh.

Although deportation of the foreign national is in the public interest, your consideration must not, in isolation, balance the relative type or severity of offending in determining whether the effect of deportation would be unduly harsh on the child.

See sections on public interest and unduly harsh for further guidance.

Would it be unduly harsh for the child to live in the country to which the foreign national is to be deported?

Although a child's nationality and length of residence in the UK are both important factors to be considered, it is not inherently unduly harsh to expect a child who is a British citizen and/or has lived in the UK for at least 7 years to leave the UK. That is why the rules expressly provide for a child's nationality and length of residence to be considered separately from the unduly harsh question. It will depend on the circumstances of the case.

Many people around the world reasonably and legitimately take their children to live in another country either temporarily or permanently and where this complies with the law, the state does not interfere with those decisions. It is the responsibility of the foreign national to consider the impact on their family of the consequences of their criminal activity.

In the same vein, although children are innocent of any wrongdoing, sometimes they will be affected by the consequences of a foreign national's offending. In a deportation context, that can mean the child will go and live in another country, usually because the parents decide that the child should go with the person (and perhaps the other parent) to that country, or in a smaller number of cases because the child cannot remain in the UK without the presence of the parent liable to deportation.

Just as there is no automatic bar to sentencing a parent to a period of imprisonment despite the adverse impact on a child (and imprisoning a parent does not mean the child is being punished), there is no automatic bar to deporting a parent and the consequences of deportation are not a punishment for the child. However, Parliament accepts that where a foreign national has not been sentenced to a period of imprisonment of 4 years or more and the effect of deportation on a child would be unduly harsh, the child's best interests outweigh the public interest in deporting the parent.

The following is a non-exhaustive list of relevant factors to consider when assessing whether it would be unduly harsh for a child to live in the country to which the foreign national will be deported:

- the age and nationality of the child
- whether the child could obtain citizenship or a visa to reside in the country of return
- whether the child would be able to adapt to life in the country of return or whether there would be obstacles to their integration there, and if so, the nature and extent of those obstacles
- whether the child could be raised by both parents in the country of return (including, if the other parent lives in the UK, whether it is open to them to choose to go with the parent liable to deportation and the child to the country of return)
- the prevailing conditions in the country of return and whether they are such that it would be unduly harsh for the child to live there. You must assess claims on

the basis of country conditions with reference to the country guidance used in asylum cases
- whether the child has formed any family or private life in the UK outside of the home and the strength of those ties

Families or children may highlight the differences in quality of education, health and wider public services and economic or social opportunities between the UK and the country of return and argue that these work against the best interests of the child. Such differences would not normally, of themselves, mean it is unduly harsh for the child to live in the country of return, particularly if one or both parents or wider family have the means or resources to support the child on return or the skills, education and training to provide for their family on return, or if facilitated return scheme (FRS) support is available.

Consideration must also be given to the extent of a child's private life in the UK, taking into account factors such as the child's age, length of residence, dependence on wider family in the UK and any other ties to the community, to determine whether it would be unduly harsh to expect the child to live in a country other than the UK. In many cases it will not be unduly harsh, because, as explained above, many parents reasonably and legitimately take their children to live in other countries even though it will cause a degree of disruption, but you must make an assessment based on the individual facts of the case.

Would it be unduly harsh for the child to remain in the UK without their parent?

To answer this question, it is first necessary to establish whether the child would be able to remain in the UK when the foreign national is deported.

The following is a non-exhaustive list of relevant factors to consider in order to determine whether a child could remain in the UK in the care of another person or whether the child would have no choice but to leave the UK with their parent:

- the child has a legal guardian, a family member who has a legal obligation to care for the child (for example, responsibility or a residence order) or an existing relationship with a family member
- someone other than the person liable to deportation is the child's primary or joint-primary carer and whether that person normally has day-to-day care and wider welfare and developmental responsibility for the child
- the person who cared for the child while the foreign national was in prison would be able to care for the child when their parent is deported
- it is reasonable to expect the other person to fulfil the role of primary carer (for example: whether they have fulfilled that role in the past, whether they can care for the child, whether they care for any other children or have done so before); this does not, of itself, mean that the person is willing or able to take on the child's ongoing care
- there are any factors which undermine the ability of that person to act as the primary carer of the child or would suggest they are unsuitable (for example, criminal convictions, concerns expressed by social services)

Whether another person would have to make a choice about working full-time or part-time or not at all and might need to arrange suitable childcare is not likely to be a determinative factor in their ability to care for the child, particularly in the case of someone with a legal responsibility towards the child, and particularly where family life was formed in full knowledge that the foreign national may not be able to remain in the UK (because their immigration status was unlawful or precarious, or because they were liable to deportation).

It is not appropriate to conclude that a child can remain in the UK in the care of another person who is themselves liable to removal or deportation. If there is someone who would be able to care for the child in the UK but for having no immigration status, then that person's status should be resolved before it can be determined whether it would be unduly harsh for the child to remain in the UK without the foreign national. You must check whether the person has an outstanding application for leave to remain in their own right. If they do, you must liaise with the other casework unit to ensure that the application is decided before the foreign national's claim is considered. If the person is granted leave to remain then this will factor into the consideration of the unduly harsh question.

If the only way a child could remain in the UK if a foreign national is deported would be in the care of social services or foster care that is not already in place (excluding care provided by a family member or a private fostering arrangement), it will usually be unduly harsh for the child to remain in the UK without the person who is to be deported, unless there is evidence that the child's best interests would be better served in such care than in the care of the foreign national. However, you must consider the age of the child and how long they are likely to remain in care.

If it is established that the child is able to remain in the UK when the foreign national is deported, the following is a non-exhaustive list of relevant factors to consider when assessing whether it would be unduly harsh for the child to continue living in the UK without the presence of the foreign national:

- whether there are any reasons (related to the person's offending history, or other reasons) why it would be in the child's best interests to be separated from their parent
- the age of the child
- how in practice the child would be affected by their parent's absence
- whether there is credible evidence that the person's presence is needed to prevent the child's health or development being significantly impaired, or their care being other than safe and effective
- the extent of any practical difficulties the remaining parent or guardian would face in caring for the child alone (if they are not already effectively caring for the child alone)
- whether there is credible evidence that the child would lose all contact with the foreign national, for example because telephone and internet contact would not be possible and there would be no possibility of visits either to the country of return or a third country:

- if so, whether this is unduly harsh will depend on the nature of the relationship the foreign national has with the child, and the impact on the child of the loss of contact

Where a child's parents or guardians have a choice about whether the child leaves or remains in the UK, it will not be appropriate for the decision to deport to prescribe any particular outcome for the child. It is the responsibility of the family to decide for themselves whether the child will accompany the foreign national overseas or whether to make suitable arrangements for the child to remain in the UK based on where they think the child's best interests lie.

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Family life with a partner

This section tells decision makers how to consider family life with a partner in the context of deportation.

The exception to deportation on the basis of family life with a partner is set out at paragraph 13.2.4. of the Immigration Rules. It can only be determinative in the case of a foreign national who has been sentenced to a period of imprisonment of less than 4 years. Foreign nationals who have been sentenced to a period of imprisonment of 4 years or more or who have sentences of less than 4 years but do not meet the tests in the exceptions must demonstrate there are very compelling circumstances over and above the circumstances described in paragraphs 13.2.4. to 13.2.6.

The exception will be met where:

- the foreign national has a genuine and subsisting relationship with a partner who is in the UK and is a British citizen or settled in the UK, and all of the following apply:
  - it would be unduly harsh for that partner to live in the country to which the foreign national is to be deported, because of compelling circumstances over and above those described in paragraph EX.2. of Appendix FM
  - it would be unduly harsh for that partner to remain in the UK without the foreign national who is to be deported
  - the relationship was formed at a time when the foreign national was in the UK lawfully and their immigration status was not precarious

Qualifying partner

The onus is on the foreign national to provide credible evidence that their claimed partner is in the UK and is either a British citizen or settled in the UK. Less weight will usually be given to claims unsubstantiated by original, independent and verifiable documentary evidence.

'Settled in the UK' means being ordinarily resident without being subject under the immigration laws to any restriction on the period for which they may remain. This means indefinite leave to enter or remain in the UK.

Genuine and subsisting relationship

Assertions of a relationship with a partner must not be accepted without confirmation from the partner, in writing and with a verifiable signature, though this in itself will not necessarily be sufficient to accept the relationship is genuine and subsisting.

For guidance on assessing whether a partner relationship is genuine and subsisting, please refer to Family life and exceptional circumstances.

Would the effect of deportation on the partner be unduly harsh?

When considering whether the effect of deporting a foreign national would be unduly harsh on a partner, the strength of the family life claim must be considered against the context of the public interest in deportation.

In determining whether the effect of deportation of the foreign national would be unduly harsh on the partner, consideration must not take account of the type or relative severity of the foreign national's offending (although the nature and severity of the offence will be relevant should you also have to consider whether there are very compelling circumstances that would cause deportation to be disproportionate).

For more information, see sections on public interest and unduly harsh.

Was the relationship formed at a time when the foreign national was in the UK lawfully and their immigration status was not precarious?

This rule is partially underpinned by section 117B(4) of the 2002 Act which provides that little weight should be given to a relationship formed with a qualifying partner that is established by a person at a time when the person is in the UK unlawfully. For the purposes of paragraph 13.2.6., a foreign national was in the UK unlawfully if they required leave to enter or remain but did not have it.

The Immigration Rules also require that a relationship not be formed at a time when the foreign national has precarious immigration status because a claim to respect for a family life formed when there was no guarantee that family life could continue indefinitely in the UK, or when there was no guarantee that if the person was convicted of an offence while they had limited leave they would qualify for further leave, will be less capable of outweighing the public interest.

For the purposes of this guidance, a person's immigration status is precarious if they are in the UK with limited leave to enter or remain, or they have settled status which was obtained fraudulently, or they have committed a criminal offence which they should have been aware would make them liable to removal or deportation.

If a relationship was formed when a foreign national had limited leave to enter or remain or was exempt from control for a limited period, then their immigration status was precarious. This is because they will, or should, have been aware that one of the following would apply:

- they will not be able to qualify for indefinite leave to remain, because, for example, they are in the UK with limited leave that does not provide a route to settlement
- they may not qualify for indefinite leave to remain if there is a change in their circumstances, for example if they commit a criminal offence

- that a temporary exemption from immigration control does not provide a legitimate expectation that they will be able to remain permanently in the UK

To meet this part of the exception, the onus is on the foreign national to provide evidence that the relationship with their partner was formed when they were in the UK with indefinite leave to enter or remain and before the criminality which they should have been aware would make them liable to removal or deportation.

If a foreign national formed a relationship with a partner at a time when they had indefinite leave to enter or remain which was obtained by means of deception, then that will provide a basis for saying that their immigration status does not benefit them under this provision because they should have been aware that they were not entitled to that status and the need to maintain effective immigration controls outweighs their immigration status.

Would it be unduly harsh for the partner to live in the country to which the foreign national is to be deported?

It will only be unduly harsh for a partner to live in the country to which the foreign national is to be deported if there is evidence of compelling circumstances **over and above** the very serious hardship described in paragraph EX.2. of Appendix FM to the Immigration Rules.

> EX.2. For the purposes of paragraph EX.1.(b) 'insurmountable obstacles' means the very significant difficulties which would be faced by the applicant or their partner in continuing their family life together outside the UK and which could not be overcome or would entail very serious hardship for the applicant or their partner.

When you consider whether it would be unduly harsh for a partner to live in the country to which the foreign national is to be deported you are looking for something over and above very significant difficulties which would entail very serious hardship for the foreign national's partner. This means that something which is considered to be an insurmountable obstacle for a partner of a non-criminal may not be sufficient to meet the unduly harsh threshold.

In determining whether the unduly harsh threshold is met, you must consider the difficulties which the partner would face and whether they entail something that could not (or could not be expected to) be overcome, other than with a very severe degree of hardship for the partner. It is only the impact on a foreign national's partner which must be considered, not the impact on the foreign national.

Lack of knowledge of a language spoken in the country in which the foreign national and their partner would be required to live would not reach the unduly harsh threshold. It is reasonable to conclude that the couple must have been communicating whilst in the UK. Therefore, it is reasonable for that to continue outside the UK, whether the partner chooses to learn the (or a) language spoken in the country to which the foreign national is to be deported.

Being separated from extended family members would also be unlikely to reach the unduly harsh threshold, such as might happen where a partner's parents and siblings live here, unless there were very compelling factors in the case.

The factors which might be relevant to the consideration of whether it would be unduly harsh for a partner to live in the country to which the foreign national is to be deported include but are not limited to:

- the ability of the partner to lawfully enter and stay in the country to which the foreign national is to be deported - the onus is on the foreign national to show that this is not possible in order for the unduly harsh threshold to be met; a mere preference to live in the UK would not meet the threshold
- cultural barriers - this might be relevant in situations where the partner would be so disadvantaged that they could not be expected to go and live in that country - it must be a barrier which either cannot be overcome or would present very severe hardship such that it would be unduly harsh
- the impact of a mental or physical disability - whether a partner has a mental or physical disability, a move to another country may involve a period of hardship as the person adjusts to new surroundings (just as there may have been when a foreign national first came to live in the UK)
    - but a mental or physical disability could be such that in some cases it could lead to very severe hardship such that it would be unduly harsh

Would it be unduly harsh for the partner to remain in the UK without the foreign national?

When assessing whether it would be unduly harsh for a partner who could not accompany the foreign national to the country of return to be separated from the foreign national, consideration must be given to the practical impact of separation on the partner and whether that impact is unduly harsh. The onus is on the foreign national to submit evidence demonstrating that the effect would be unduly harsh, not on the Secretary of State to demonstrate that it would not be. Less weight will be given to claims unsubstantiated by original, independent and verifiable documentary evidence.

An example of what might be considered unduly harsh, depending on the facts in an individual case, would be where there is credible evidence that the foreign national's presence is essential to prevent the partner's health from being severely impaired because it would not be possible to receive adequate care from other family members, medical professionals, social services.

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Private life

This section tells decision makers about the exception to deportation on the basis of private life.

The exception to deportation on the basis of private life is set out at paragraph 13.2.3. of the Immigration Rules. It can only be determinative in the case of a foreign national who has been sentenced to a period of imprisonment of less than 4 years. Foreign nationals who have been sentenced to a period of imprisonment of 4 years or more or who have sentences of less than 4 years but do not meet the tests in the exceptions must demonstrate there are very compelling circumstances over and above the circumstances described in paragraph 13.2.3.

The exception will be met where:

- the person has been lawfully resident in the UK for most of their life
- they are socially and culturally integrated in the UK
- there would be very significant obstacles to their integration into the country to which it is proposed they be deported

All 3 parts of the exception must be met, otherwise the public interest in deportation will outweigh the foreign national's right to respect for their private life in the UK.

Has the foreign national been lawfully resident in the UK for most of their life?

In assessing a foreign national's residence in the UK, 'most of their life' means more than half of their life. Lawful residence means where the person had limited or indefinite leave to enter or remain or was in the UK while exempt from immigration control. In Akinyemi [2019] EWCA Civ 2098 the Court of Appeal found that a person born in the UK who had remained ever since and who had not regularised their immigration status could not be said to have resided unlawfully for the purposes of the consideration of Article 8.

The onus is on the foreign national to substantiate any claim that they have been lawfully resident in the UK for most of their life. Claims of periods of residence, including unlawful residence, will only be accepted where they are supported by original, documentary evidence from independent sources. There is no prescribed evidence which must be submitted, but the evidence submitted should cover the whole period of claimed residence. The standard of proof for evidence submitted in support of a claim that the person has been lawfully resident is the balance of probabilities (or, in other words, whether you are satisfied that it is more likely than not that the person has been resident for the claimed period based on the evidence you have seen).

Is the foreign national socially and culturally integrated in the UK?

Positive and negative factors will need to be balanced against each other to form an overall assessment of whether a foreign national is socially and culturally integrated in the UK.

Section 117B(2) of the 2002 Act states that it is in the public interest that people who seek to remain in the UK are able to speak English. If a foreign national cannot speak English, this will indicate that they are not integrated in the UK because they are unable to communicate with the majority of the population. If a foreign national can speak English, this alone will not be sufficient to demonstrate integration, but it will count in the foreign national's favour when balancing all the evidence for and against integration.

There is no prescribed standard of English which must be met here and no prescribed evidence which must be submitted. You must consider all available information, though less weight will be given to claims unsubstantiated by original, independent and verifiable documentary evidence. Indications that a foreign national can speak English may include evidence:

- of citizenship (such as a passport) of a country where English is the (or a) main or official language
- of an academic qualification that was taught in English
- of passing an English language test
- that they have been interviewed (for example in connection with an asylum claim) or given evidence at an appeal hearing in English

Section 117B(3) of the 2002 Act states that it is in the public interest that people who seek to remain in the UK are financially independent. If a foreign national cannot demonstrate that they are financially independent, this will indicate that they are not integrated in the UK because they may be reliant on public funds, wider family members or charities rather than contributing to the economic wellbeing of the country. If a foreign national can demonstrate that they are financially independent, this alone will not be sufficient to demonstrate integration, but it will count in the foreign national's favour when balancing all the evidence for and against integration.

Financial independence here means not being a burden on the taxpayer. It includes not accessing income-related benefits or tax credits, on the basis of the foreign national's income or savings or those of their partner, but not those of a third party. There is no prescribed financial threshold which must be met and no prescribed evidence which must be submitted. You must consider all available information, though less weight will be given to claims unsubstantiated by original, independent and verifiable documentary evidence, for example from an employer or regulated financial institution.

Immigration status is likely to be important. A foreign national who has been in the UK with limited leave to enter or remain is less likely to be integrated because of the

temporary nature of their immigration status. A foreign national who is in the UK unlawfully will have even less of a claim to be integrated.

Criminal offending will also often be an indication of a lack of integration. Criminal offending alone does not necessarily mean a person is not socially and culturally integrated into the UK. The nature and/or frequency of offending, such as anti-social behaviour against a local community or offending that may have caused a serious and/or long-term impact on a victim or victims (such as sexual assault or burglary) may be further evidence of non-integration. Whether criminal offending can be interpreted to mean an offender is not socially and culturally integrated needs to be made on a case-by-case basis. If the foreign national has been resident in the UK from a very early age it is unlikely that offending alone would mean a person is not socially and culturally integrated.

To outweigh any evidence of a lack of integration, the foreign national will need to demonstrate strong evidence of integration. Mere presence in the UK is not an indication of integration. Positive contributions to society may be evidence of integration, for example an exceptional contribution to a local community or to wider society, which has not been undertaken at a time that suggests an attempt to avoid deportation. If such a claim is made, you should expect to see credible evidence of significant voluntary work of real practical benefit.

It will usually be more difficult for a foreign national who has been sentenced more than once to a period of imprisonment of at least 12 months but less than 4 years to demonstrate that they are socially and culturally integrated, because they will have spent more time excluded from society, than for a foreign national who has been convicted of a single offence.

Less weight will usually be given to claims unsubstantiated by original, independent and verifiable documentary evidence.

Would there be very significant obstacles to the foreign national’s integration into the country to which they are proposed to be deported?

When assessing whether there would be ‘very significant obstacles to the foreign national’s integration into the country to which they are proposed to be deported’, the starting point is to assume that the foreign national will be able to integrate into their country of return, unless they can demonstrate why that is not the case. The onus is on the foreign national to show that there would be very significant obstacles to that integration, not on the Secretary of State to show that there are not.

You should expect to see original, independent and verifiable documentary evidence of any claims made in this regard and must place less weight on assertions which are unsubstantiated. Where it is not reasonable to expect corroborating evidence to be provided, you must consider the credibility of the foreign national’s claims.

A very significant obstacle to integration means something which would prevent or severely inhibit the foreign national from integrating into the country to which they are

to be deported. You are looking for more than obstacles. You are looking to see whether there would be 'very significant' obstacles, which is a high threshold. Very significant obstacles will exist where the foreign national demonstrates that they would be unable to establish a private life in the country of return, or where the genuine attempt to form a private life in the country of return would entail very severe hardship for the foreign national.

You must consider all the reasons put forward by the foreign national as to why there would be obstacles to their integration into the country of return. These reasons must be considered individually and cumulatively to assess whether there would be very significant obstacles to integration. You must consider whether the foreign national has the ability to form an adequate private life by the standards of the country of return – not by UK standards. You will need to consider whether the foreign national will be able to establish a private life in respect of all its essential elements, even if, for example, their job, or their ability to find work or network of friends and relationships are differently constituted in the country of return.

The fact the foreign national may find life difficult or challenging in the country to which they are to be deported does not mean that they have established very significant obstacles to integration there. You must consider all relevant factors in the foreign national's background, and the conditions they are likely to face in the country of return to decide whether it is accepted that there would be very significant obstacles to integration.

You will need to consider the specific obstacles raised by the foreign national. You will also need to set these against other factors in order to make an assessment in the individual case. Relevant considerations include whether the foreign national:

- has familiarity with the language and culture in the country to which they are to be deported
- has lived in the country to which they are to be deported, how long for, and how old they were when they left or last visited
- has family or friends in the country to which they will be deported to whom they should be able to turn for support to help them integrate into society on return or family in the UK, the foreign national can rely on for support during their transition into the life in that country
- has hosted visits in the UK by family and friends from the country of return, or whether the foreign national has visited family or friends there
- has ties which could be strengthened on return even if they are not very strong ties at the date of decision
- received education or worked in the country to which they will be deported, or whether they have received education or developed skills in the UK which they could use to integrate into society on return
- has previously demonstrated an ability to integrate in a new place, for example if they came to the UK as an adult.

Medical factors which may not meet the very high threshold required for Article 3 protection may be put forward as grounds to show that treatment on return would give rise to very significant obstacles to their integration. For example, where a

mental illness might lead to them being ostracised by society or prevent them from supporting themselves financially.

The degree of private life a foreign national has established in the UK is not relevant to the consideration of whether there are very serious obstacles to integration into the country to which they are to be deported.

Guidance on some examples of common claims is provided below.

Claims that a foreign national has no friends or family members in the country of return

Where there are no family, friends or social networks in the country of return that is not in itself a very significant obstacle to integration. Many people successfully migrate to countries where they have no ties. If there are particular circumstances in the foreign national's case which mean they would need assistance to integrate it will also be relevant to consider whether there are any organisations in the country of return which may be able to assist with integration.

Claims that a foreign national has never lived in the country of return or only spent early years there

If a foreign national has never lived in the country of return, this will not necessarily mean that there are very significant obstacles preventing them from integrating, particularly if they can speak a language of that country, for example if the country of return is one where English is spoken or if a language of the country was spoken at home when they were growing up. For these purposes, fluency is not required – conversational level language skills or a basic level of language which could be improved on return would be sufficient. The cultural norms of the country and how easy it is for the person to adapt to them will also be relevant.

Claims that a foreign national cannot speak any language spoken in the country of return

Where credible evidence exists that a foreign national cannot speak any language spoken in the country of return, this will not normally be considered a very significant obstacle to integration unless they can also show that they would be unable to learn a language spoken there, for example because of a severe mental or physical disability, or unless they would not be able, after a period of adjustment, to establish a private life in that country, even within a diaspora community.

Claims that a foreign national would have no employment prospects on return

Lack of employment prospects is very unlikely to be a very significant obstacle to integration. In assessing a claim that an absence of employment prospects would prevent a foreign national from integrating into the country of return, their circumstances on return should be compared to the conditions that prevail in that

country and to the circumstances of the general population, not to their circumstances in the UK.

Less weight will be given to generalised claims about country conditions that have not been particularised to take account of the foreign national's individual circumstances.

It may also be a relevant consideration if the foreign national has lived in the UK with permission to work but has not held or sought lawful employment, or if they have only worked sporadically. A foreign national cannot claim there are very significant obstacles preventing integration into the country of return on the basis of ways in which they have failed to integrate into the UK.

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Very compelling circumstances

This section sets out how to consider very compelling circumstances over and above those set out in paragraphs 13.2.3. and 13.2.4.

Overview

Paragraph 13.2.2. of the Immigration Rules sets out that in the case of:

- a foreign national who has been sentenced to a period of imprisonment of at least 4 years
- a foreign national who otherwise does not meet the exceptions to deportation

the public interest requires deportation unless there are very compelling circumstances over and above the circumstances described in paragraphs 13.2.3. to 13.2.6.

A sentence of 4 years' imprisonment or more means the person is a serious criminal and 'very compelling circumstances' is an extremely high threshold. As a general principle, the greater the public interest in deporting the foreign national, the more compelling the foreign national's circumstances must be in order to outweigh it.

When assessing whether there are very compelling circumstances, the circumstances relevant to an exception at paragraphs 13.2.3. to 13.2.6. may also be taken into account where it is accepted they have established a particularly strong case.

Where a foreign national cannot speak English or is not financially independent (for example through lawful employment), it will be even more difficult for them to show that there are very compelling circumstances such that they should not be deported.

See the section on the public interest and the section on unduly harsh for guidance on how to consider whether a foreign national is able to speak English or is financially independent.

A foreign national sentenced to at least 4 years' imprisonment must be able to show that there are very compelling circumstances over and above the circumstances described in the exceptions to deportation. This is because Parliament has expressly excluded those sentenced to at least 4 years' imprisonment from the exceptions to deportation. Missing out on the exceptions by a small margin, or a series of near misses taken cumulatively, will not itself be compelling enough to outweigh the public interest in deportation.

Family life claims on the basis of a genuine and subsisting relationship with a non-qualifying partner (such as where the partner is a refugee or has humanitarian protection or other leave to enter or remain) and on the basis of a genuine and subsisting parental relationship with a non-qualifying child (for example where the child is not a British citizen and has lived in the UK for less than the 7 years

preceding the date of the immigration decision) will only succeed where there are very compelling circumstances.

You must use Immigration Rules Appendix FM: family members and the relevant caseworker guidance when assessing whether a claimed family relationships is genuine and subsisting.

When considering whether there are very compelling circumstances you must undertake an evaluative assessment of all the facts presented in the claim and consider whether they outweigh the public interest in deportation. You may find it useful to use the balance-sheet approach approved in the case of Hesham Ali (Hesham Ali (Iraq) v SSHD [2016] UKSC 60) by noting all the factors for or against deportation and making clear, with reasons, the relative weight afforded to each and concluding whether deportation would be proportionate in the circumstances.

Relevant factors

The particular circumstances of each case must be considered in the light of all the information and evidence provided. In determining whether there are very compelling circumstances, you must consider **all** relevant factors raised by the foreign national. The best interests of any child in the UK who will be affected by the decision must be a primary consideration and must be not only compelling, but very compelling, to outweigh the public interest.

Examples of relevant factors include:

The best interests of a relevant child. For further guidance see section on consideration of a child's best interests. The case of CJ (family proceedings and deportation) South Africa [2022] UKUT 00336 (IAC) relates to Article 8 claims and proceedings in the Family Court. The Family Court deals with disputes that involve parents and concern their children, for example, in divorces or separations, who the children should live with, who they should see, where they should go to school or if they can move to live abroad with one of their parents. It also deals with when local authorities take action to remove children from their parents' care because they are being hurt in some way.

The determination in CJ found that, as in other cases such as MS (Ivory Coast), MH and RS, the general approach relating to the need for an appellant to be permitted to remain in the UK in order to prosecute family proceedings remains applicable. However, a tribunal should not purport to allow the appeal to a "limited extent" nor give a direction that a period of discretionary leave should be granted to the appellant in accordance with paragraph 44(ii) of RS. The only option now open to the tribunal on an appeal under Part 5 of the 2002 Act is to allow or dismiss the appeal. The power to give a direction for the purpose of giving effect to its decision previously contained in section 87 of the 2002 Act was repealed by the Immigration Act 2014 on 20 October 2014.

In an appeal against the refusal of a human rights claim, where a tribunal concludes that the appellant has an Article 8 ECHR right to remain at least until the conclusion of family proceedings concerning the appellant's children, that is likely to merit a

finding that there are “very compelling circumstances over and above the exceptions to deportation in section 117C(6) of the 2002 Act, and the appeal should usually be allowed in express reliance on that subsection.

In such circumstances, you must only grant a period of leave sufficient to enable the family proceedings to be determined.

The nationalities and immigration status of the foreign national and their family members. You must take into account into account the circumstances for the foreign national and each family member and the proportion of time they have been in the UK legally.

You must also decide whether family life can continue outside the UK, in doing so you must consider:

- the ability of the members of the family unit to lawfully enter and stay in the country to which the person is to be deported
- whether there are any cultural barriers that cannot be overcome or would present very severe hardship
- if the partner or child are refugees from the country of return or from a third country, do they continue to require international protection?

The onus is on the foreign national to show that it is not feasible for the family to enter or stay in another country. You must not assume that leaving the UK would necessarily be a bad outcome for the family members.

For further guidance see section would it be unduly harsh for the partner to live in the country which the foreign national is to be deported.

The nature and strength of the family relationships involved, including such matters as:

- the evidence that the couple have a genuine family life together, including the length of the marriage or cohabitation of partners who are not married or in a civil partnership
- how frequently the foreign national currently has direct contact with their child if they do not live with them

You must take account of whether and how that family relationship has survived a period of imprisonment of the person to be deported and whether that demonstrates that a relationship can be maintained at a distance.

The likely impact on the partner or child if the foreign national is deported. The impact on each family member must be considered, as well as on the family unit as a whole. You must consider the impact if the family member or the family unit accompanies the person being deported and if they were separated. You must not assume that the family will not be able to accompany the person being deported.

The impact of a mental or physical disability or of a serious illness which requires ongoing medical treatment. You must consider any independent medical

evidence which establishes that a physical or mental disability, or a serious illness, requires ongoing medical treatment and whether a lack of adequate health care in the country where the foreign national is to be deported could lead to very severe hardship. You must not assume that a perceived lack of adequate care in the overseas country means that the person requiring ongoing treatment will have access to that treatment in the UK. Evidence that treatment is being received or that treatment has been prescribed but not yet begun or that a prognosis requiring treatment has been made must be provided. You must not assume that such treatment is not available in the country to which the person is being deported; evidence that this is the case must be provided.

The seriousness of the difficulties (if any) the foreign national's partner and/or child would be likely to face in the country to which the foreign national is to be deported. You must consider:

- whether the family would face very serious hardship in a particular country
- whether the child would be able to adapt to life in the country of return
- the prevailing conditions in the country of return

You must take account of whether the family members will be able to find work in the relevant country or be otherwise supported. This may not necessarily be the same work that they may have been doing while in the UK but should be sufficient to provide them with a form of income. The age and life experience of the child and the length of time they have been in the UK will help form a judgement as to difficulties the child might face in adapting to another country. If they have not long arrived in the UK or have not long begun to socialise outside of the family unit, as evidenced by, for example, engagement with school or clubs and societies and whether they have friendship groups, means they may not have had the opportunity to form lasting attachments with persons outside of the family unit. It may then be assumed they will more easily adapt to new circumstances.

You must not make assumptions about the impact on the family unit of the prevailing conditions in the country of return and the impact this would have on any average family or family members. Your consideration must be specific to the actual family and family members affected. Although conditions in some countries might be less than ideal, you should consider the impact on the relevant family. They might have demonstrated previous resilience in the face of difficult circumstances in this country. They may have access to financial support or to support from other family members and friends who will lessen the impact of difficult conditions. You must also consider how these prevailing conditions will directly affect this family. While other countries may not have access to some or many of the benefits available in the UK, you must not assume that this means that conditions in the country of return are so bad as to constitute very serious hardship rather than a different way of living a meaningful life.

The length of time the foreign national has lived in the UK and the strength of their social, cultural and family ties to the UK. The amount of time a person has spent in the UK is not, of itself, sufficient to contribute to very compelling circumstances. What counts is the extent of their experience and immersion into daily life in the UK. Were they educated here? Have they worked here? Has their world view been shaped to a large extent by their experiences in the UK such that it

would be difficult for them to adapt to life in a new country which did not share those world views? How strong are their ties to other family members? It is not sufficient for there to be a wider family group living in the UK. A person will need to demonstrate a degree of dependency for these ties to be considered strong. Do they rely on other family members for support and how extensive is this support and consequential reliance? Could they find similar support from other sources (including extended family members) if they left the UK?

The strength of the foreign national's ties to the country to which they will be deported and their ability to integrate into society there. You must take into account that any move to another country will involve a period of transition and that a person may not immediately and easily adjust to a new life. It is reasonable to expect a person who is being returned to a country they have previously lived in to have the life skills and experiences in that country to be able to adapt and to cope with normal problems that may arise. The circumstances under which a person would reasonably be considered to be unable to adapt to life in a new country will need to be very unusual. The impact on the individual of removal to another country must be more significant than just the upheaval of being removed. It must be evidenced that the person would be unable to cope with such a removal, that they would be unable to meaningfully function in the new environment and would be unable to adapt.

The nature of any support family in the country of return can provide. Unless a person claims to have no surviving family members living in the country of return you must assume that family members will be able to provide support. That support may be significant or may be at a very rudimentary level but if it is there then it is something to be taken into account.

The nature of any support family in the UK can give to help provide temporary or long-term support after deportation. As stated above, it is reasonable to assume that any family members in the UK will be able to provide some form of support to the person being returned and any accompanying family members. Any claims that this is not the case will need to be supported by evidence.

Cumulative factors for example where the foreign national has family members in the UK, but their family life does not provide a basis for stay and have a significant private life in the UK. Although, under the rules, family life and private life are considered separately, when considering whether there are very compelling circumstances, both private and family life must be taken into account.

When considering factors which may increase or decrease the public interest in deportation, you must consider:

- the nature and seriousness of the offending
- the length of time that has passed since the offence was committed and the conduct of the foreign national throughout that period
- the impact on the victim or victims of the crime (especially in cases where you are considering whether the offending has caused serious harm)

A sentence imposed by a court may well reflect various considerations other than the seriousness of the offence. Where, however, a tribunal has no information about an

offence other than the sentence imposed, that will be the surest guide to the seriousness of the offence. Even if it has the remarks of the sentencing judge, in general it would only be appropriate to depart from the sentence as the touchstone of seriousness if the remarks clearly explained whether and how the sentence had been influenced by factors unrelated to the seriousness of the offence including any comments about aggravating and mitigating factors. In relation to credit for a guilty plea, that will or should be clear. If so, then, in principle, that is a matter which can and should be taken into account in assessing the seriousness of the offence.

For further guidance see the section on public interest.

In relation to the rehabilitation of offenders, the courts have affirmed that rehabilitation will rarely carry significant weight when balanced against the public interest in deportation but that it is a relevant factor to consider.

Delays in decision-making

A foreign national may claim that where there has been a delay in decision-making (for example between the end of the custodial sentence and the decision to deport, or the date of any representations and the date of decision), the public interest in their deportation is reduced or their private and/or family life has strengthened in the intervening period, such that deportation would be disproportionate.

Delay must always be considered and explained in the assessment of very compelling circumstances even if the foreign national has not relied on it at this stage.

Delay caused by a foreign national or those acting on their behalf will be given no weight in the foreign national’s favour in an Article 8 assessment. Delay caused by the Home Office will be given less weight if the foreign national was, at the time of the delay, in the UK unlawfully. The consequence of Home Office delay when the foreign national was in the UK lawfully is likely to depend on the reasons for, and consequences of, the delay on the foreign national’s family and private life (see, for example, EB (Kosovo) v Secretary of State for the Home Department [2008] UKHL 41).

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Article 8: grant leave

This section tells you what leave to grant when an Article 8 claim against removal is successful.

Paragraphs 13.3.1. and 13.3.2. of the Immigration Rules set out that where an Article 8 exception is satisfied and is intended to read as including where very compelling circumstances otherwise outweigh the public interest in deportation, temporary permission must be granted for a period not exceeding 30 months, subject to such conditions as the Secretary of State considers appropriate. The same principle applies to cases dealt with outside the rules (for example, to do with sham marriage or serious criminality which has not resulted in a criminal conviction

Whilst the Secretary of State retains discretion as to the conditions of such permission, it will normally be appropriate to grant such leave using code 1 (permission to work, permission to study but **no** recourse to public funds), rather than code 1A (permission to work, permission to study and recourse to public funds). Further information on conditions can be found below and is in line with policy on A8 grants in non-deportation cases.

Further grants of leave may be made unless there is a material change in circumstances such that an Article 8 barrier no longer subsists.

Imposing conditions on a grant of temporary permission under paragraph 13.3.1.

Access to public funds

You must impose a condition prohibiting access to public funds unless evidence has been provided to confirm that:

- the foreign national is destitute or at risk of imminent destitution
- there are reasons relating to the welfare of a relevant child which preclude prohibiting access - the best interests of a relevant child must be treated as a primary consideration
- the foreign national is facing exceptional financial circumstances relating to their income or expenditure

A ‘relevant child’ is a person who is under the age of 18 years and, where it is clear from the information provided, a person who will be affected by the decision.

For detailed guidance on assessing whether to grant access to public funds see: Access to public funds within family, private life and Hong Kong BN(O) routes (internal link).

Work or occupation

Where permission to stay is granted on the basis of paragraph 13.3.1 it will not normally be necessary to impose a restriction relating to work or occupation.

Study

Subject to the Academic Technology Approval Scheme (ATAS) condition below, where permission is granted on the basis of paragraph 13.3.1 it will not normally be necessary to impose a condition restricting the person's studies in the UK.

If the person intends to study a discipline listed in the Immigration Rules: Appendix ATAS and they are not a national of an exempt country, they must obtain an Academic Technology Approval Scheme (ATAS) clearance certificate from the Counter-Proliferation and Arms Control Centre of the Foreign, Commonwealth and Development Office in relation to this course before beginning their study.

The above paragraphs describe the general approach to be applied to the imposition of conditions on a grant of permission under paragraph 13.3.1. to foreign nationals who are liable to deportation but who have made a successful Article 8 claim against removal. Additional conditions may, nevertheless, be imposed under paragraph 13.3.2 on a case-by-case basis. Where additional conditions are imposed on a grant of permission under paragraph 13.3.1. caseworkers must record the rationale for imposing each condition that is considered appropriate and obtain approval from their senior caseworker for each condition to be imposed.

Other considerations

Where, after a deportation order having been made and come into force, a foreign national's extant limited or indefinite leave to enter or remain has been cancelled, and there is an Article 8 barrier to deportation, there is no provision for the foreign national's previous leave to be re-instated. Instead, they must be given temporary permission for a period of up to 30 months subject to such conditions as the Secretary of State considers appropriate.

A deportation order made in accordance with the UK Borders Act 2007 cancels leave in the following circumstances:

- if there is no in-country right of appeal arising from the decision to make the order
- where there is an in-country right of appeal when the time-limit for appealing the decision has expired without an in-time appeal being lodged
- where an in-time appeal is lodged, when the appeal is withdrawn or is finally determined and is dismissed

Where an in-time appeal against the decision is finally allowed, a deportation order made in accordance with the UK Borders Act 2007 is treated as not cancelling leave.

If a foreign national has indefinite leave to enter or remain but it is decided that deportation would breach Article 8, either by the Secretary of State or at appeal, before a deportation order has been made against the foreign national in the case of

conducive deportation cases or before it has come into force in the case of automatic deportation cases, consideration must be given to revoking the foreign national's indefinite leave under section 76 of the Nationality, Immigration and Asylum Act 2002. This is because the foreign national is liable to deportation but there is a legal barrier (Article 8) to deportation. For further guidance, see the instruction revocation of indefinite leave. It will only be in exceptional compassionate circumstances that indefinite leave to remain (ILR) is not revoked.

Further leave

Where a foreign national has previously been granted limited leave on the basis of Article 8, they will be granted further leave unless circumstances have changed such that they no longer meet the Article 8 provisions, even if their first period of leave was granted before those provisions came into force, or before the previous private and family life rules were introduced on 9 July 2012.

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