

CREEPING CONSERVATISM OF UK COURTS IN ARTICLE 8 CASES

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I. Introduction

There has been much debate about the future of the Human Rights Act (HRA) in the United Kingdom. The HRA guarantees the UK population an extensive set of fundamental rights and freedoms by incorporating the European Convention on Human Rights into UK domestic law. Because the European Convention is interpreted as a living document, the HRA enables UK population to have certain rights and freedoms unforeseen at the time the Convention was ratified. Interpretation of these rights has led to further equality for same-sex couples,¹ legal recognition of transsexuals,² fairer IVF law³, the right not to be searched without reasonable suspicion,⁴ better treatment of those with disabilities,⁵ better protections for victims of sexual assault and many other necessary and popularly supported rights.

However, a few controversial cases have threatened the HRA's continued existence because they appear to accord rights over and beyond the typical conception of human rights.⁶ One set of such cases concerns immigrants who are convicted criminals – but whose deportation is blocked by the courts on account of their right to a family life in the UK.

Human rights apply to everybody, even unpopular and sometimes detestable characters. Yet there is always a balance to be struck. This paper is not a discussion of whether that balance has been struck rightly or wrongly in the past, more an examination of the trend of the European and UK recent case law to see whether the trend that was criticised has continued or responded to critique. This is important because in discussing the HRA's future, it is important to consider whether these controversial deportation cases are still being adjudicated in a similar manner. If the judges are changing course and deciding cases more conservatively, this would negate a major criticism of the HRA.

¹ Ghaidan (Appellant) v. Godin-Mendoza (FC) (Respondent) 2003 House of Lords; <http://www.bailii.org/uk/cases/UKHL/2004/30.html>, demonstrating the right for the widow/er to stay in their home indefinitely following the death or their spouse now extends to those in homosexual relationships; Hall & Anor v Bull & Anor, Bristol County Court, [2011] EW Misc 2 (CC), providing damages to a same-sex couple forced to book two rooms at a hotel that rents single rooms to married heterosexual couples.

² Goodwin v. UK, <http://www.bailii.org/eu/cases/ECHR/2002/588.html>

³ Elizabeth Warren -v- Care Fertility (Northampton) Limited and Other, <http://www.judiciary.gov.uk/Resources/JCO/Documents/Judgments/warren-summary.pdf>

⁴ Gillan and Quinton v. The United Kingdom - 4158/05 - Chamber Judgment [2010] ECHR 28 (28 June 2010)

URL: <http://www.bailii.org/eu/cases/ECHR/2010/28.html>

⁵ Bernard, R (on the application of) v London Borough of Enfield [2002] EWHC 2282 (Admin) (25 October 2002)

⁶ <http://www.telegraph.co.uk/news/uknews/immigration/8777642/Nigerian-rapist-fights-to-remain-Eight-year-journey-to-European-Court.html>

This paper will argue that the courts have been responding to public and government opinion on Article 8 cases. More recently, both the European Court of Human Rights (European Court) and domestic tribunals have decided cases more conservatively than they had beforehand, even in cases in which the fact sets are quite similar. This trend will be demonstrated through an intensive examination of Article 8 right to family life case law in both the European Court and in domestic tribunals. In particular, I will examine the case law surrounding the conflict between the UK's public interest in safety by way of deporting foreign criminals and those criminals' right to family and private life in the UK.

The first part of this paper will justify the existence of Article 8's family life provision by discussing cases in which an applicant's right to family life reasonably supersedes the public interest in deportation. The second part will demonstrate a reversal of the trend of allowing immigrants convicted of serious crimes to remain in the UK based on their family ties. This reversal will be demonstrated through both a survey of recent cases (2015) and through a thorough examination of two cases in which the facts were very similar but received opposite decisions at the European Court. The third part will demonstrate that while this issue is faced globally, the UK is progressing toward a comparatively moderate approach.

II. Analysis

1. Reasonable Applications of Article 8's right to family and private life

Article 8:

1. Everyone has the right to respect for his private and family life, his home and his correspondence.
2. There shall be no interference by a public authority with the exercise of this right except such as in accordance with the law and is necessary in a democratic society in the interests of national security, public safety, or the economic well-being of the country, for the prevention of disorder or crime, and for the protection of health or morals, or for the protection of the rights and freedoms of others.

Applications of Article 8 in which the right to family life is uncontroversial:

Here, the claimant, R, was born in South Africa and joined his mother and younger brother in the UK at age nine in 2003, the same year when his brother was granted indefinite leave to remain.⁷ It is unclear why R did not also receive indefinite leave to remain at any point.⁸ In 2006, R was placed in foster care.⁹ At age 17, R was

⁷ R. (on the application of SA) v SSHD, [2015] EWHC 1611 (Admin)/201 WL 3479977, June 8, 2015 §§ 1-2.

⁸ Id. at § 4 ("However, for some reason (a reference is made in the documents to [R's mother] not having the funds to meet the costs of the application), the application was not proceeded with or in any event was unsuccessful. The precise circumstances are unclear."); § 9 (the court notes that while the claimant was granted limited leave to remain until his 18th birthday, November 2012, "it appears likely by that stage that his long term future could properly have been said to be in the UK.")

⁹ Id. at § 5.

arrested for possessing cannabis (R pleaded guilty) and for participating in an affray (the charges were dismissed).¹⁰ R applied for citizenship on the 26th November 2012, the day before his 18th birthday, but failed to disclose his cannabis possession conviction because, according to the Deputy High Court Judge, he genuinely assumed that as the charges were dismissed for the affray, they were also dismissed for the possession.¹¹

The judge ruled that refusing R's citizenship application interfered with both his family life and private life in the UK: he had close ties with his mother and brother, whose future remained in the UK, and he had resided in the UK since age nine.¹² Thus, he was granted the right to remain in the UK

The right to remain in the UK based on one's family life is also often granted in cases in which the applicant's sole crime was either entering the country illegally or overstaying his or her visa, but has developed a substantial family life in the UK or has lived here for a number of years.¹³

2. Controversial family life cases in the UK

a. Surveys of cases, historical and recent

i. Historical cases and media coverage

Controversial family life cases have received extensive coverage in the news media, which publicise their perception of these cases to a wide-reaching audience. See:

- David Barrett, "Revealed: courts let dangerous foreign criminals stay in Britain," *The Telegraph*, 10 October 2009.¹⁴
- Jack Doyle, "One foreign criminal a day wins right to stay in Britain," *The Daily Mail*, 16 August 2010.¹⁵
- Peter Hutchison, "Foreign criminals who stayed in Britain," *The Telegraph*, 10 November 2010.¹⁶
- David Barrett, "102 foreign criminals and illegal immigrants we can't deport," *The Telegraph*, 11 June 2011.¹⁷

¹⁰ Id. at § 10.

¹¹ Id. at §§ 12-13, 16.

¹² Id. at § 77.

¹³ <http://www.telegraph.co.uk/news/uknews/law-and-order/8290263/Record-number-of-illegal-immigrants-win-right-to-stay-in-UK.html>; <http://www.express.co.uk/news/uk/572036/immigration-Britain-family-Nigeria-Home-Office-migration>

¹⁴ <http://www.telegraph.co.uk/news/uknews/law-and-order/8570639/102-foreign-criminals-and-illegal-immigrants-we-cant-deport.html>

¹⁵ <http://www.dailymail.co.uk/news/article-1303376/One-foreign-criminal-day-wins-right-stay-Britain.html>

¹⁶ <http://www.telegraph.co.uk/news/uknews/law-and-order/8121479/Foreign-criminals-who-stayed-in-Britain.html>

¹⁷ <http://www.telegraph.co.uk/news/uknews/law-and-order/8570639/102-foreign-criminals-and-illegal-immigrants-we-cant-deport.html>

- James Slack, “Human right to sponge off UK: 3,200 criminals, failed asylum seekers and benefit tourists can't be kicked out because of right to family life,” *The Daily Mail*, 17 June 2011.¹⁸
- Tom Whitehead, “Nigerian rapist: criminals who evade deportation,” *The Telegraph*, 21 September 2011.¹⁹

The following list demonstrates particular well-known examples of these controversial cases:

- Mohammed Ibrahim, a rejected Iraqi asylum seeker, received the right to remain in the UK after committing numerous driving infractions, including running over a 12-year old girl and leaving her to die while he fled the scene. His leave to remain was granted on the basis of his relationship with his British partner, two stepchildren, and two biological children. Despite this grant, Ibrahim did not demonstrate that he and his partner were married or even lived together.²⁰
- Mohammed Kendah: A serial sex offender who attacked at least 11 women in five years initially won the right to stay in the UK based on his relationship with his parents and because he arrived in the UK at age six. His case received extensive press coverage and he has since been deported to Sierra Leone.²¹

ii. Recent cases

This subsection provides a survey of 2015 cases in which the UK High Court determined that the appellant's deportation was in accordance with Article 8, even though the appellant had a child or children living in the UK.²²

In *Pogorzelski v Poland*, Poland sought extradition of the 38 year old appellant for theft of a phone, later a laptop, and ultimately intentionally assisting another in selling a stolen phone and laptop.²³ The appellant reoffended during his suspended sentence for the first of the above offences in Poland and was awaiting a trial when he moved to the UK in 2008.²⁴

Pogorzelski's appeal against his extradition relied on Article 8's right to family life, because he fathered two children in the UK, now ages six and four, and has a British partner.²⁵ The judge ruled that, although having a father in jail is difficult for the children, it will be difficult regardless of whether he will be jailed in the UK or in

¹⁸ <http://www.dailymail.co.uk/news/article-2004501/3-200-foreign-criminals-kicked-right-family-life.html>

¹⁹ <http://www.telegraph.co.uk/news/uknews/immigration/8777637/Nigerian-rapist-criminals-who-evade-deportation.html>

²⁰ <http://www.bailii.org/uk/cases/UKUT/IAC/2010/B1.html>;
<http://www.telegraph.co.uk/news/uknews/crime/8485717/End-the-Human-Rights-farce-Amy-died-He-got-a-slapped-wrist.html>

²¹ <http://www.telegraph.co.uk/news/uknews/law-and-order/6292515/Victims-anger-at-sex-attacker-we-cant-deport.html>, <http://www.bbc.co.uk/news/uk-england-london-17056458>

²² Having a child remain in the UK previously often enabled the court to find in the appellant's favour in deportation cases.

²³ *Grzegorz Pogorzelski v. Regional Court in Warsaw, Poland*, High Court of Justice Queen's Bench Division Administrative Court April 24, 2015 2015 WL 1839008 §§ 5-7.

²⁴ *Pogorzelski* §§ 4, 6, 8-9.

²⁵ *Pogorzelski* § 16.

Poland (even if it is more difficult in Poland); therefore the balance weighs in favour of extradition and extradition accordingly is not incompatible with his Convention rights.

In *Mady v. Poland*, in which Poland sought the appellant's extradition for a 2009 assault and appropriation of property, the High Court, acknowledging that extradition will always bear heavily on family members, ruled that the public interest in upholding extradition obligations outweighs the appellant's right to family life.²⁶ In *H v. United States of America*, the United States sought extradition of the appellant for manufacturing, importing, and distributing steroids and human growth hormones, as well as money laundering and offences relating to the proceeds of this criminal conduct.²⁷ The appellant was born and raised in Ireland and has an eight year old daughter.²⁸ She is the sole carer for her daughter, who has separation anxiety.²⁹ The court noted the gravity of this crime and the fact that the appellant's family members are willing to care for her daughter, and determined that the public interest in her extradition outweighs her right to family life.³⁰

b. Cases of A.A. & Balogun at the European Court

In this section I will discuss the cases of A.A. and *Balogun*, which were tried one year apart at the European Court by five of the seven same judges. Both applicants are unmarried Nigerian young adults without dependants living in the UK at the time of their crimes. Applicant A.A. was convicted of participating in a gang rape of a 13 year old, while applicant Balogun was convicted of drug possession with intent to distribute. While A.A. arrived in the UK at age 13, Balogun arrived at age three. While the court determined A.A.'s close relationship with his mother constituted a sufficient family life to outweigh the state's interest in his deportation, the court was not persuaded that Balogun's substantial private life in the UK outweighed the state's interest.

The European Court considers a variety of factors in assessing the proportionality of the deportation.³¹ First, it considers the age at which the crimes were committed and the nature of those crimes. Second, it considers the length of the applicant's residency in the UK. Third, it considers the applicant's nationality and the situation in the country to which he or she would be deported, including any family or other personal relationships maintained in that country. Fourth, it considers the applicant's relationships with family members in the UK. With regard to an adult applicant and his or her parents, the court considers whether there are any aspects of mutual dependence above and beyond typical relationships between adult parents and

²⁶ *Robert Mady v. Government of Poland*, CO/12693/2013, High Court of Justice Queen's Bench Division Administrative Court, 20 May 2015; The appellant also has two stepchildren with whom he is close, but his 14 year old step-daughter has returned to Poland and his mentally handicapped 23 year old stepson is also no longer in his care.

²⁷ *H v. United States of America*, Case No: CO/2206/2014, High Court of Justice Queen's Bench Division Administrative Court, 28 April 2015 § 3.

²⁸ *H v. United States of America* §§ 7, 11.

²⁹ *H v. United States of America* §§ 13, 49.

³⁰ *H v. United States of America* §§ 50-52.

³¹ A.A. § 56, citing *Uner* § 57-85.

children. Finally, the court considers the applicant's private life in the UK, including his or her education and other social ties and connections.

i. The crime

1. *Age at which the crime was committed*

A.A. was 15 when he participated in the gang rape of a 13 year old.³² While the court noted that age in itself does not preclude deportation, it also highlighted that the applicant rehabilitated himself over the course of seven years and had a low risk of reoffending.³³ While the offences that gave rise to Balogun's deportation proceedings occurred when he was an adult (and is, in fact, the key reason why the judges determined that deportation was proportional), the court also considered his previous convictions in its proportionality assessment, although some of these convictions occurred while he was a minor.^{34 35} Similar to A.A., Balogun rehabilitated himself while in prison and had not reoffended during the two years between his release from prison and the commencement of deportation proceedings.³⁶

2. *Nature of the crime*

In determining proportionality of a deportation, the court considers the severity of the offence(s) that gave rise to the deportation proceedings.³⁷ One of the metrics used to determine severity is length of the applicant's prison sentence. With regard to Balgoun, the court determined that the possession of Class A drugs with intent to supply was a serious offense because it gave rise to a three year sentence. By this logic, the gang rape of a 13 year old is an even more serious offence because A.A. was sentenced to four years in prison.³⁸

ii. Length of time in the UK

In determining the strength of the applicant's private life in the UK, the court considers the applicant's length of time in the UK. Regarding A.A., the court was heavily influenced by the fact that A.A. was only 13 when he arrived in the UK and noted that the 11 years A.A. spent here encompassed nearly half his life.³⁹ However,

³² A.A. § 7.

³³ A.A. §§ 55, 62, 68.

³⁴ Balogun § 49, Judge De Gaetano's concurring opinion in *Balogun* emphasises that the age at which the offence leading to the deportation proceedings was committed was the key difference between the outcome in *Balogun* and A.A. §§ 1, 3.

³⁵ Balogun §§ 7, 49; the *Balogun* dissent (p. 20) calculated the time difference between when the offenses occurred and when he was ultimately convicted of them, determining it would be mathematically impossible for Balogun to have committed some of the offenses after turning 18, even though that was the age at which he was convicted.

³⁶ *Balogun* p. 20, dissent.

³⁷ *Balogun* § 49.

³⁸ A.A. §§ 14, 60.

³⁹ A.A. § 14; The A.A. court relies extensively on *Boujlifa v. France*, in which the applicant's has lived in France since age five was a factor weighing heavily in favour of allowing him to there, in determining that A.A.'s having arrived in the UK at age 13 should be a basis on which he is allowed to remain. *Boujlifa* was not mentioned in *Balogun*.

how important this factor weighs is brought into focus by the fact that Balogun was brought to the UK at age three and deported at 26.

iii. Nigeria

Ties to Nigeria:

Additionally, in assessing proportionality, the court considers the difficulty of the applicant's return to his or her country of origin. One factor that can help facilitate such a return is if the applicant has any existing ties to his or her original country, such as family members. However, neither A.A. nor Balogun had contact with their parent remaining in Nigeria. A.A.'s father left his mother when he was five, but he maintained contact with his maternal grandfather, who has a home and would welcome him.⁴⁰

Balogun has neither seen nor spoken to his mother since his arrival in the UK at age three; he does not know where she lives.⁴¹ With regard to A.A., the court accepted that, because of the lack of contact between AA and his father, A.A. has limited ties to Nigeria.⁴² By contrast, with regard to Balogun, the court believed that this tie could be strengthened if Balogun were to choose to do so.⁴³ While the court found that the applicant did not have substantial ties to Nigeria, this lack of ties was not significant enough to outweigh his deportation.⁴⁴

iv. Family life in the UK

The European Court case law regarding which relationships constitute a family life for the purposes of Article 8 for young adults without dependents is rather questionable. Case law explains that the adult applicant must demonstrate additional elements of dependence with his or her parents. In practice, defining the level of dependence is left in a grey area. For example, having adult parents in the UK, even if they are ill and require care (similar to having dependent children that require care), is not sufficient.⁴⁵ However, the adult applicant can successfully demonstrate the required additional elements of dependence if he or she lives with his or her parents.⁴⁶

Because A.A. was a young adult who regarded his mother's address as his permanent residence and has no dependents of his own, this relationship constituted an acceptable form of family life that can outweigh the state's interest in his deportation.⁴⁷ The court also considered A.A.'s relationships with his sisters and

⁴⁰ A.A. § 6, 20.

⁴¹ *Balogun* § 51; Balogun's father is deceased.

⁴² A.A. § 64.

⁴³ *Balogun* § 51.

⁴⁴ *Balogun* § 51.

⁴⁵ A.A. § 47, citing *A.W. Khan v. the United Kingdom*, no. 47486/06, § 32, 12 January 2010.

⁴⁶ A.A. § 48, citing *Bousarra v. France*, no. 25672/07, §§ 38-39, 23 September 2010, "noting that the applicant (in *Bousarra*) was single and had no children and recalling that in the case of young adults who had not yet founded their own families, their ties with their parents and other close family members could constitute 'family life,'" and citing *Onur v. the United Kingdom*, no. 27319/07 §§ 43-45, 17 February 2009, which held that Onur did not "demonstrate the additional element of dependence normally required to establish "family life" between adult parents and adult children."

⁴⁷ A.A §§ 18, 49.

uncle, also present in the UK. By contrast, while Balogun arrived in the UK with his aunt at age three, at the time of his trial he lived alone in council accommodation.⁴⁸ Despite having a sibling in the UK and two aunts, one of whom he regards as a maternal figure, the court determined that he did not have the requisite family life.⁴⁹ Although the court determined that by living alone, Balogun demonstrated his independence and capability to adapt to new situations, A.A. previously lived with friends while attending university and also completed a master's degree.^{50 51}

v. Private life in the UK

The A.A. court noted that because Article 8 “protects the right to establish and develop relationships with other human beings,” the right to private life encompasses the “totality of social ties between settled migrants and the community in which they are living.”⁵² The *Balogun* court never mentions this aspect of Article 8.

1. *A.A.'s private life*

A.A. completed the majority of his high school education in the UK.⁵³ After his release in 2004, A.A. enrolled in college in 2005 and obtained an undergraduate degree in 2008 while living with friends.⁵⁴ He completed a master's degree in 2009 and has worked for a local authority since 2010.⁵⁵

2. *Balogun's private life*

The entirety of Balogun's education has taken place in the UK.⁵⁶ Additionally, part of Balogun's teenage years were spent in state run foster care.⁵⁷ Balogun has maintained numerous substantial relationships in the UK given his length of residence here.⁵⁸ His most significant non-familial relationship is with his girlfriend, a British citizen, who he has dated since 2005.⁵⁹ He has also completed his education and has worked in the UK.⁶⁰

Conclusion:

Despite the numerous similarities between these cases, the court noted that because some of Balogun's offences occurred while he was already 18, his deportation would not be disproportionate, even though his offences were less severe than AA's and even though his private life was more substantial.⁶¹ It appears

⁴⁸ *Balogun* § 7.

⁴⁹ *Balogun* §§10, 39, 51.

⁵⁰ *Balogun* § 7; According to the court, living alone demonstrates the applicant's independence and capability to adapt to new situations.

⁵¹ A.A. §§ 18, 24.

⁵² A.A. § 49

⁵³ A.A. § 64

⁵⁴ A.A. §§ 18, 62.

⁵⁵ A.A. § 24.

⁵⁶ *Balogun* § 52.

⁵⁷ *Id.*

⁵⁸ *Balogun* § 39.

⁵⁹ *Id.*

⁶⁰ *Balogun* § 51.

⁶¹ *Balogun* § 53.

that the Balogun court presses the age issue because it is the only way it can distinguish Balogun from A.A. On every other factor, A.A.'s precedent suggests that Balogun ought to be allowed to remain in the U.K. despite his crimes. However, if the court is moving in a more conservative direction, it must find ways in which it can distinguish prior liberally decided cases, including A.A.

3. American comparison⁶²

Unlike the UK and the European Court, the United States distinguishes between permanent residents and non-permanent and/or illegal residents in its deportation proceedings. In the US, it is legally acceptable to deport a person whose sole offence was entering the country illegally, even if that person has since developed a substantial family and/or private life in the US, as long as that person's deportation would not result in exceptional or extremely unusual hardship to that person's American citizen family members. Case law demonstrates that the exceptional or extremely unusual hardship standard is very high threshold to meet.

Even though President Obama's more immigration friendly policies prioritise only the deportation of national security threats, gang members, convicted felons and recent border crossers, the laws have not been changed.⁶³ Therefore, those with a substantial family life who have not committed crimes since entering or overstaying their visa can still be deported. Those who have committed crimes can be deported without exception.^{64 65 66}

In the United States, a non-permanent resident's removal may only be cancelled or his or her immigration status may only be adjusted to that of a permanent resident if the non-permanent resident:

- a) has been physically present in the United States for a continuous period of not less than ten years immediately preceding the date of such application

⁶² While the cases I have examined in the UK and the European Court have involved deportation of immigrants legally present in the contracting state, the European Court does not principally distinguish between those present in the contracting state legally or illegally. In the US however, there are different tests for permanent residents and illegally present aliens. Only the test for cancelling the removal of illegally present aliens considers the impact on one's US citizen immediate family members; I will therefore only examine these US cases. See [http://www.echr.coe.int/LibraryDocs/DG2/HRFILES/DG2-EN-HRFILES-08\(2007\).pdf](http://www.echr.coe.int/LibraryDocs/DG2/HRFILES/DG2-EN-HRFILES-08(2007).pdf) p. 64 "Article 8 has shown itself by far to be the most relevant to aliens..." and p. 65 on how Article 8 imposes obligation on states to allow spouses to join; 8 U.S.C. § 1229b(a) [permanent resident removal test]; 8 U.S.C. § 1229b(b)(1) [non-permanent resident cancellation of removal test, which also includes those who arrived in the United States illegally].

⁶³ <http://www.nytimes.com/2015/07/23/us/politics/most-undocumented-immigrants-will-stay-under-obamas-new-policies-report-says.html>.

⁶⁴ 8 U.S.C. § 1227(a)(2) (list of deportable offences).

⁶⁵ 8 U.S.C. § 1229b(b)(1) (test for granting a cancellation of removal).

⁶⁶ Only cases that were appealed are in the public record; information about cases in Immigration Court is only released to the respondent or the respondent's attorney (<http://www.justice.gov/eoir/varick-street-immigration-court>); In order to file a freedom of information request about a person other than one's self or a person represented by the filer, the filer must explain how the public interest outweighs the privacy interest of the subject of the record (<http://www.justice.gov/eoir/foia-facts>).

- b) has been a person of good moral character during such period
- c) has not been convicted of an offence
- d) establishes that removal would result in exceptional and extremely unusual hardship to the alien's spouse, parent, or child, who is a citizen of the United States or an alien lawfully admitted for permanent residence.

Therefore, even when an applicant's sole offence was entering and staying in the country illegally, the applicant can legally be deported despite having a substantial family life. The burden of proof for family life is not that the family life outweighs the public interest in the applicant's deportation, but that such deportation would cause the family "exceptional and extremely unusual hardship." Although this is a discretionary standard, it has even recently been extremely difficult to meet.

For example, in a 2010 case the Third Circuit dismissed the appeal of an Indian citizen who sought discretionary cancellation of removal.⁶⁷ She entered the United States illegally in 1992 and had since married an American citizen, with whom she has an 11-year old son.⁶⁸ While the appellant claimed that her "removal would cause her husband and her son, both United States citizens, 'exceptional and extremely unusual hardship,'" the Immigration Judge determined that although the family would face hardship in moving to India, it was neither exceptional nor extremely unusual.⁶⁹

In June 2015, the Third Circuit dismissed the appeal of a Mexican citizen, who applied for discretionary cancellation of removal on the grounds that his deportation would cause his five US citizen children to suffer.⁷⁰ The Immigration Judge denied his application on the grounds that their mother could care for the children in the event of the applicant's deportation.⁷¹ The Second, Fifth, and Sixth Circuits have dismissed similar cases between June and July 2015.⁷²

III. Conclusion

While the UK has, up until recently, represented one end of an extreme take on the right to family life in deportation proceedings, the US has similarly represented the other extreme. Neither situation was ideal: In the UK, convicted killers and gang rapists were allowed to stay based on the relationship with either their children or their parents. In the US, an unauthorised immigrant may have lived in the US for a

⁶⁷ *Patel v. Attorney General of U.S.*, 619 F.3d 230, 231 (3d Cir. 2010).

⁶⁸ *Patel v. Attorney General of U.S.*, 619 F.3d 230, 231 (3d Cir. 2010).

⁶⁹ *Patel*, 619 F.3d at 231-32.

⁷⁰ *Quijada-Morales v. Attorney Gen. U.S.*, No. 14-3264, 2015 WL 3757057, at *1 (3d Cir. June 17, 2015).

⁷¹ *Id.*

⁷² *Cruz-Vizcarra v. Lynch*, No. 14-60324, 2015 WL 4231684, at *3 (5th Cir. July 14, 2015) (holding that the court lacked jurisdiction regarding a Mexican man facing deportation who had a six-year old US citizen son);

Arguello v. Lynch, No. 14-216-AG, 2015 WL 3556631, at *1 (2d Cir. June 9, 2015) (holding that the court lacked jurisdiction regarding an Ecuadorian woman living in the US for 15 years and having two US citizen children, one of whom is an 11-year old with developmental disabilities);

Rodriguez v. Lynch, No. 14-3658, 2015 WL 3540954, at *4 (6th Cir. June 8, 2015) (holding that the court lacked jurisdiction regarding a 38-year old Mexican man who has lived in the US since 1998 and has three children, one of whom has a speech impediment and ADHD).

decade and had children and still be deported despite having committed no other crime besides entering the country illegally.

A more balanced approach in both countries is already in progress. In the UK, as explained in Part I, criminals who originally won the right to remain based on family life grounds and received extensive media coverage were deported upon the Home Office's appeal. At the European Court, as explained in Part II, the factors weighed most heavily in the court's deportation proportionality assessments have changed in recent years, such that cases in which the applicants have similar backgrounds have resulted in opposite conclusions.

In the US, as explained in Part III, the Obama administration's November 2014 guidelines for the Department of Homeland Security prioritise deporting the 13 percent of unauthorized immigrants in America who have previous convictions rather than the 27 percent of unauthorized immigrants who were enforcement priorities under the 2010-11 guidelines.⁷³ This means that 1.6 million more unauthorised immigrants will not be targeted by the Department of Homeland Security for deportation, and can instead grant them deportation relief.⁷⁴

⁷³ Marc R. Rosenblum, "Understanding the Potential Impact of Executive Action of Immigration Enforcement," *Migration Policy Institute*, July 2015, p. 1.

⁷⁴ Marc R. Rosenblum, "Understanding the Potential Impact of Executive Action of Immigration Enforcement," *Migration Policy Institute*, July 2015, p. 1.