OUTER HOUSE, COURT OF SESSION

[2026] CSOH 7

P238/25

OPINION OF LORD BRAID

In the Petition by

JARRYD LUKE DU PLESSIS (AP)

Petitioner

for

Judicial Review of decision by Secretary of State for the Home Department

Petitioner: Forrest; Drummond Miller LLP
Respondent: Dingley; Office of the Advocate General

5 February 2026

Introduction

[1] The petitioner is a national of South Africa. He entered the UK in October 2005, when he was 8 years old. He was granted indefinite leave to remain on arrival, and he has resided here ever since. On 10 May 2024, he was convicted of an assault to severe injury and permanent disfigurement, and on 6 June 2024 he was sentenced to 58 weeks' imprisonment for that offence. On 26 September 2024, the respondent (the Secretary of State for the Home Department) issued a deportation order in respect of the petitioner as a foreign criminal. The petitioner's solicitors subsequently made representations on his behalf, submitting that deportation would breach the petitioner's right to respect for his private and family life in terms of ECHR Article 8. They submitted various documents in support of that argument,

including nine letters of support said to be from family members and friends, including a woman, NEB, whom the petitioner said he planned to marry. None of those letters were dated or signed, and all had identical font type and size, and single line spacing. By letter dated 12 December 2024, the respondent rejected those submissions. (That letter referred to an earlier decision letter of 3 October 2024, which the petitioner claims not to have received. However, he evidently received the deportation order itself since the representations made by his solicitor were in response to that order and were taken into account by the respondent in reaching her decision of 12 December 2024. Accordingly, nothing turns on any letter of 3 October 2024 and I need not mention it again.) In this petition for judicial review, the petitioner challenges that decision on the ground that the respondent erred in law in reaching it; in summary, the petitioner's position is that the decision was irrational. The petition is opposed by the respondent.

The statutory framework

Article 8 and the Nationality Immigration and Asylum Act 2002

[2] As Lord Reed explained in *SC (Jamaica)* v *Secretary of State for the Home Department* [2022] UKSC 15, at paras [42] and [43], Parliament has pre-determined that the deportation of a foreign criminal is in the public interest unless one of the two exceptions in section 117C of the 2002 Act (and in Part 13 of the Immigration Rules) applies, in which event an Article 8 claim will succeed. The sole question put before the court by the petitioner is whether the respondent erred in holding that neither exception applied.

[3] Section 117C of the 2002 Act, insofar as material, provides:

> "**117C Article 8: additional considerations in cases involving foreign criminals**
>
> (1) The deportation of foreign criminals is in the public interest.

(2) The more serious the offence committed by a foreign criminal, the greater is the public interest in deportation of the criminal.
(3) In the case of a foreign criminal ('C') who has not been sentenced to a period of imprisonment of four years or more, the public interest requires C's deportation unless Exception 1 or Exception 2 applies.
(4) Exception 1 applies where—
  (a) C has been lawfully resident in the United Kingdom for most of C's life,
  (b) C is socially and culturally integrated in the United Kingdom, and
  (c) there would be very significant obstacles to C's integration into the country to which C is proposed to be deported.
(5) Exception 2 applies where C has a genuine and subsisting relationship with a qualifying partner … and the effect of C's deportation on the partner or child would be unduly harsh.
…"

[4] Section 117D(2) defines "foreign criminal" as a person:

"(a) who is not a British citizen,
(b) who has been convicted in the United Kingdom of an offence, and
(c) who –
  (i) has been sentenced to a period of imprisonment of at least 12 months…"

The petitioner accepts that he is a foreign criminal as so defined.

The Immigration Rules

[5] Section 1 of Part 13 of the Immigration Rules, insofar as material, provides:

"**Section 1: Grounds for deportation**

13.1.1. A foreign national, who is not an Irish citizen, is liable for deportation where:
  (a) they have been convicted of a criminal offence for which they have received a custodial sentence of at least 12 months …

…

13.1.3. A deportation order will not be made if the foreign national's removal from the UK pursuant to the order would be contrary to the UK's obligations under the Refugee Convention or the Human Rights Convention, and, where deportation would not be contrary to these obligations, the presumption is in favour of deportation."

[6] Section 2 of that Part, insofar as material, provides:

"**Section 2: Article 8 ECHR exceptions to deportation**

13.2.1. Where a foreign national has been convicted in the UK or overseas and 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, the public interest requires the foreign national's deportation unless:

(a) the private life exception in paragraph 13.2.3, or the family life exception in paragraph 13.2.4, is met; or

(b) there are very compelling circumstances such that removal would be contrary to the Human Rights Act 1998.

…

13.2.3. The Article 8 private life exception is met where:

(a) the foreign national has been lawfully resident in the UK for most of their life;

and

(b) they are socially and culturally integrated in the UK; and

(c) there would be very significant obstacles to their integration into the country to which they are to be deported.

13.2.4. The Article 8 family life exception is met where the foreign national has:

…

(b) a partner relationship that meets all the requirements of paragraph 13.2.6.

…

13.2.6. The foreign national has a partner relationship and all of the following apply:

(a) the foreign national's relationship with the partner is genuine and subsisting;

(b) the partner is either a British citizen or is settled in the UK; and

(c) the partner is resident in the UK; and

(d) the relationship did not begin when the foreign national to be deported was in the UK unlawfully or when their immigration status was precarious; and

(e) it would be unduly harsh for that partner to live in the country to which the foreign national is to be deported; and

(f) it would be unduly harsh for that partner to stay in the UK without the foreign national who is to be deported."

The respondent's letter of 12 December 2024

[7] In her letter of 12 December 2024, the respondent considered the petitioner's claim to be allowed to remain. She noted, in paragraph 21, under reference to Part 13 of the Immigration Rules, that the petitioner's deportation was conducive to the public good and in the public interest because he had been convicted of an offence for which he had been sentenced to a period of imprisonment of less than 4 years but at least 12 months; and, in paragraph 22, that the public interest therefore required his deportation unless an exception applied. She then went on to consider the exceptions relied upon. Dealing first with Exception 2, she noted the submissions made on behalf of the petitioner, namely, that he had been in a committed relationship with NEB, for 12 years; that she was a British citizen; that they planned to marry as soon as the petitioner was released from prison; that she had been a pillar of support for the petitioner and his family throughout his ordeal; and that this long-term relationship with a British citizen further strengthened his ties to the UK and provided additional grounds for compassionate leave. She then referred to the documentation lodged in support of that claim, namely: (i) an unsigned and undated letter from NEB, together with a copy of her driving licence, in which she stated that she had known the petitioner for 15 years and been in a relationship for 12 years and, in general terms, confirmed the petitioner's position and that they planned to get married; and (ii) an unsigned and undated letter from the petitioner's mother in which she, too, confirmed that the petitioner and NEB had been in a relationship for 12 years and that they planned to marry.

[8] The material parts of the respondent's decision in relation to Exception 2 then appear at paragraphs 32 and 33 of the letter of 12 December 2024, as follows:

> "32. Whilst it is accepted that you have lodged a copy of [NEB's] driving licence, it is noted that both the letter of support from your mother and also the letter of support from [NEB] are neither signed nor dated. As such, the Home Office is unwilling and unable to place any weight on these documents in support of your submissions. It is considered that these statements purporting to be from your mother and [NEB] are likely to have been written at your behest and as such are subjective. It is not accepted that these documents substantiate your claim to have a genuine and subsisting relationship with [NEB].
>
> 33. In the absence of any evidence, it is considered that you have failed to demonstrate that you have a genuine and subsisting relationship with [NEB], and as such it is not accepted that you meet the requirements of the exception to deportation on the basis of family life with a partner."

[9] Having concluded that Exception 2 did not apply, the respondent then moved on to consider Exception 1, correctly observing that all three limbs of that exception must be met in order for the petitioner's private life to outweigh the public interest in his deportation. As regards the first limb, the respondent accepted that the petitioner had been lawfully resident in the UK for most of his life.

[10] As regards the second limb, however, the respondent did not accept that the petitioner was socially and culturally integrated in the UK noting, at paragraph 36, that:

> "You were granted Indefinite Leave to Remain in the United Kingdom on 2 October 2005 on your arrival in the United Kingdom. Whilst in receipt of this status you will have benefitted in many ways, for example, by receiving healthcare, at the expense of the United Kingdom taxpayer, at the same time, you were committing criminal offences, demonstrating that you have a complete disregard for the laws and privileges of living in the UK.
>
> Furthermore, your indefinite Leave to Remain status (and the benefits it has afforded you) does not provide immunity for you and therefore cannot displace the public interest in your deportation."

It is correct that, as the respondent had noted, in addition to the offence for which he was imprisoned and which led to his becoming a foreign criminal, the petitioner had previously committed other offences. These were referred to by the respondent at paragraph 52 of her

letter, where the petitioner's offending was noted to have been committed over the period from 2014 to 2024 and to have increased in severity.

[11] The respondent then referred to the unsigned and undated statement from the petitioner's mother, in which she had stated that the petitioner was a well-integrated member of the local community, having attended school there and having been in employment since he left school, listing the jobs he had done. He had built a strong rapport with his fellow colleagues and managers from his various positions. This, it had been submitted by the petitioner's solicitors, demonstrated his integration into British society. The respondent next referred to the petitioner's CV and professional profile in which he had referred to his employment positions and to the fact that he undertaken military training in the British Armed Forces for 6 months, before being forced to leave due to an injury. The respondent accepted that the petitioner had been in the armed forces for a short period, and that he had obtained a number of qualifications whilst in the UK. The respondent's conclusion on this limb of Exception 1 is then found in paragraphs 41 to 44 of the letter of 12 December 2024:

> "41. It is noted you arrived in the UK on 3 October 2005, when you were 8 years of age, and as such it is accepted that you will have been educated in the United Kingdom through school. However, mere presence in the United Kingdom and education is not enough to show social and cultural integration. Under the criteria set out in section 117B(2) of the 2002 Nationality Immigration and Asylum Act (*sic*). It is not disputed that you can speak English which is some evidence of integration. These factors must however, be balanced against the evidence of non-integration. Section 117B(3) of the Nationality Immigration and Asylum Act 2002 states that 'it is in the public interest that persons who remain in the UK are financially independent'. With the further submissions of 21 October 2024, you have lodged a letter of support dated Letter of support (*sic*) from David Kennedy, Contract Manager Caledonian Maintenance Services Limited dated 21 October 2024, where it is observed from the details you have provided in the CV which accompanied your submissions of 14 October 2024, you undertook 'seasonal work'. Mr Kennedy has stated that he has worked with you on 2 occasions for a total of 6 months, before you moved on to a better paid job.

> 42. It is acknowledged, that whilst you have lodged a CV in which you have detailed your employment history, with the exception of documentation in respect of your position in the Armed forces, which was lodged with your previous representations of 30 July 2024, and which was addressed in the Notice of Decision of 3 October 2024, and the letter from Mr Kennedy, which refers to just 6 month (*sic*) of employment, no evidence has been submitted to demonstrate that you have any independent means of support and would not be reliant on either public funds or support from friends and family. Whilst it is accepted that you have resided legally in the United Kingdom for a period of 18 years, as outlined above, your mere presence in the United Kingdom is not in itself evidence of integration …
>
> 43. Furthermore, you have received a criminal conviction for assault to severe injury permanent disfigurement (*sic*). Your sentence was deferred, and on 6 June 2024, you were sentenced to 58 weeks imprisonment. This conduct is not considered to be that of a person considered to be socially and culturally integrated into the UK.
>
> 44. In light of all of the aforementioned information it is not accepted that you are socially and culturally integrated into the United Kingdom."

[12] The respondent then went on to consider the third limb of Exception 1, whether there would be any significant obstacles to the petitioner's integration to South Africa, concluding (in paragraph 45) that there were none. This was because the petitioner:

> "… arrived in the United Kingdom on 3 October 2005, with your mother … who is also a South African national, who you appear to have lived with prior to your incarceration. It is evident from the documentation received with the NTL application that you have attended school in the United Kingdom and obtained a number of qualifications whilst in the country. As such it is considered that you could utilise these skills to obtain employment and support yourself on your return to South Africa. In the absence of any evidence to the contrary, it is considered likely that you will have retained familiarity with the social and cultural dynamics of the country. As outlined above, you speak English, the official language of South Africa, and as such you would not experience any linguistic difficulties on your return to the country. There are no grounds to suggest that you could not return and adapt to life in your home country. It is not accepted that you would now be estranged from your country of origin as to render your familiarity with that country irretrievable or that you would be unable to re-establish your private life there."

[13] Thus the respondent also concluded that Exception 1 did not apply. Having so concluded, she then went on to consider, in terms of the rules, whether there were very compelling circumstances why the petitioner should not be deported. Having reiterated the circumstances, including the petitioner's previous convictions, the offence of which he had

been convicted, and the fact that none of the supporting letters had been dated or signed, the respondent concluded that there were no such circumstances. That aspect of her decision is not challenged.

Submissions

Petitioner

[14] Counsel for the petitioner submitted that the respondent had erred in law in considering each exception. Insofar as Exception 2 was concerned, the first error was in failing to attach any weight to the letters of support. While the onus was on an applicant to show that a document on which he sought to rely could be relied upon, the decision-maker should look at all the evidence in the round before deciding whether a document was one on which reliance should properly be placed: *Tanveer Ahmed* v *Secretary of State for the Home Department* [2002] Imm AR 318, paragraph 38. This the respondent had failed to do. The reason the respondent had given was that none of the letters was signed or dated but it did not follow that no weight at all should have been given to them. In contrast to *Tanveer Ahmed*, where the documents had been from a questionable source, the letters relied on by the petitioner were from a source which was quite clear. The second error was that the respondent had failed to consider the effect on NEB of the petitioner's deportation. Even though that had not strictly arisen for decision, it should nonetheless have been considered on an *esto* basis.

[15] As regards Exception 1, the respondent had taken inappropriate factors into account. Whether a foreign criminal was socially and culturally integrated in the UK was to be determined in accordance with common sense: *SC (Jamaica)* v *Secretary of State for the Home*

Department [2022] UKSC 15, at para [51]; and the appropriate factors to take into account were summarised in that paragraph as being:

> "upbringing, education, employment history, history of criminal offending and imprisonment, relationships with family and friends, lifestyle and any other relevant factors".

As a matter of common sense, the factors relied upon by the petitioner suggested that he was socially and culturally integrated, and the respondent's decision to the contrary was irrational. While a decision could be said to be irrational only if it was one that no reasonable decision-maker could have reached (eg *RQK* v *Secretary of State for the Home Department* [2011] CSOH 199, Lord Stewart at para [16]), it was irrational to say, as the respondent had, that although the petitioner had had the benefit of living in the UK, nonetheless he was not integrated, because he had offended. There were many people in the UK who would claim to be socially and culturally integrated who were in prison and who had committed worse offences than had the petitioner. The respondent was entitled to take that into account but it was not a sufficient reason to find that there had not been cultural and social integration. She had not explained why it outweighed the other factors. The respondent had erred by not applying a common-sense approach.

[16] As for the decision that the very significant obstacle test was not met, the question was whether, on a broad evaluative approach, the person could integrate into another country: *Kamara* v *Secretary of State for the Home Department* [2016] 4 WLR 152, para [14]. The petitioner had left South Africa when he was 8 years old. The country, its habits, way of life, people etc were all unknown to him. The simple fact that he had not lived in that country for approximately 18 or 19 years meant that from a common-sense perspective there would be very significant obstacles to integrating into that country. The respondent had not carried out a broad evaluative assessment.

Respondent

[17] Counsel for the respondent submitted that it was important to bear in mind the underlying rationale of section 117C and Part 13 of the rules, which was that it was in the public interest to remove foreign criminals. It was not for the court to substitute its own decision on the merits (*RQK* v *Secretary of State for the Home Department*, above, Lord Stewart at para [17]; *Regina* v *Ministry of Defence* [1996] QB 517, Sir Thomas Bingham MR at page 554 E to F). The public interest in the deportation of foreign criminals lessened the degree of intrusion which the courts should exercise.

[18] As regards the grounds of challenge, it was simply incorrect that the respondent had given no, or inadequate, reasons as to why she had concluded that the petitioner was not socially and culturally integrated. She had clearly found that the petitioner had not integrated properly as he did not respect the laws of the UK. Integration involved observing a country's laws; even if he had at one time been socially integrated, social integration could be undone by subsequent behaviour: *Binbuga* v *Secretary of State for the Home Department* [2019] EWCA Civ 551 at paras [57] to [59]; *AM (Somalia)* v *The Secretary of State for the Home Department* [2019] EWCA Civ 774 at para [93]; *cf CI (Nigeria)* v *The Secretary of State for the Home Department* [2019] EWCA Civ 2027 at para [77].

[19] As regards obstacles to integration, the correct approach was set out in *NC* v *Secretary of State for the Home Department* [2023] EWCA Civ 1379 at para [25]. The decision-maker must reach a broad evaluative judgment (*Kamara*, above); that judgment must focus on the obstacles to integration and their significance to the applicant; and the test was not subjective, in the sense of being limited to the appellant's own perception of the obstacles to integration but extended to all aspects of the appellant's likely situation on

return including objective evidence, and required consideration of any reasonable step that could be taken to avoid or mitigate the obstacles. In the present case, much of the evidence placed before the decision-maker was of a subjective nature. It was for the petitioner to say what would be an obstacle, not for the respondent to conjure up what might be difficult. All of the factors prayed in aid by the petitioner had been taken into account. It was not for the respondent to ask for more information; rather, the burden of proof had been on the petitioner. It might have been different had an expert report been placed before the respondent, but that was not done.

[20] Turning to Exception 2, the respondent had been entitled to attach no weight to the letters because they were undated and unsigned. It was not possible to discern from the letters themselves that they could have been written only by the purported authors. The fact they were undated was significant in relation to whether any relationship which might have existed at one time was still continuing. The burden of proof had been on the petitioner to demonstrate that the letters were reliable. There was other evidence which he might have, but had not, submitted to demonstrate a relationship, such as photographs of the couple together or joint bank account statements. There had been no requirement to consider the second limb of the test if the first limb was not met.

Decision

[21] The principal ground of challenge is that the respondent's decision that neither exception applied was irrational. The test when considering a rationality challenge was set out by Sir Thomas Bingham MR in *Regina* v *Ministry of Defence* [1996] QB 517, at page 554 E to F, as follows:

> "The court may not interfere with the exercise of an administrative discretion on substantive grounds save where the court is satisfied that the decision is unreasonable in the sense that it is beyond the range of responses open to a reasonable decision-maker. But in judging whether the decision-maker has exceeded this margin of appreciation the human rights context is important. The more substantial the interference with human rights, the more the court will require by way of justification before it is satisfied that the decision is reasonable in the sense outlined above."

At page 556 B to C, he went on to say:

> "The greater the policy content of a decision, and the more remote the subject matter of a decision from ordinary judicial experience, the more hesitant the court must necessarily be in holding a decision to be irrational. That is good law and, like most good law, common sense. Where decisions of a policy-laden, esoteric or security-based nature are in issue even greater caution than normal must be shown in applying the test, but the test itself is sufficiently flexible to cover all situations."

[22] Counsel for the respondent submitted that the public interest in the deportation of foreign criminals lessened the degree of intrusion which the courts should exercise, but I do not agree that the decision in the present case is "policy-laden" or "security-based". It might equally have been argued that, given the human rights context of the decision, more in the way of justification was required. However, I do not think either argument is correct, where the policy decision - that in general it is in the public interest that foreign criminals be deported - has already been taken by Parliament, and where the respondent merely had to determine what was, in essence, a question of fact, namely, whether either of the two exceptions in the Act and in the rules applied. Accordingly, I propose to assess the rationality of the respondent's decision as I would any other decision, and apply neither a more, nor less, rigorous approach than "normal". What is in any event clear is that what the court must never do, regardless of the degree of justification required, is simply substitute its own decision for that of the decision-maker, and that some degree of latitude must be afforded: *RQK* v *Secretary of State for the Home Department*, above, Lord Stewart at para [17].

[23] With those observations in mind, the inherent difficulty in the petitioner's submissions is that he is, in substance inviting me to disagree with the decision reached by applying my own common sense and by attaching different weight to various factors than did the respondent; in other words, to substitute my own decision. That, I cannot do.

[24] Turning to the specific challenges made, first in relation to Exception 2, it was entirely a matter for the respondent what weight to attach to the unsigned statements purportedly from the petitioner's partner and mother submitted in support of the petitioner's claim that he was in a genuine and subsisting relationship with NEB. Reliance was placed by the petitioner upon *Tanveer Ahmed* v *Secretary of State for the Home Department* (above), in which it was said that the decision-maker should look at all the evidence in the round before deciding whether a document was one on which reliance should properly be placed. The documents in that case were of a different character than the documents here, which were statements from third parties rather than what might be described as documentary productions, as in *Tanveer Ahmed*, and the problem for the petitioner is that, absent those statements and his own statement, there was no other evidence in the round to be considered. Doubtless if other evidence had been produced, such as bank statements or photographs, then it would have been possible to look at everything in the round and then form a view as to whether the statements reflected the genuine evidence of the persons said to be the authors of them. As it is, I consider that a decision-maker is fully entitled to attach no weight whatsoever to an unsigned undated statement, the more so when all the statements in question have an identical appearance. Put another way, without at least a signature, there is nothing to indicate that the statement has been seen, let along approved, by its purported maker. The respondent's decision to attach no weight to the letters in question can therefore not be said to be irrational, nor does it involve any other error on the

respondent's part. Indeed, having concluded that the provenance of the letters had not been established, it might have been seen as illogical for the respondent then to have attached some weight to their contents. Be that as it may, having placed no weight on the letters, as she was entitled to do, the respondent was then entitled also to reach the view that the petitioner had failed to establish that he had a genuine and subsisting relationship.

[25] The other error said to have been made by the respondent in relation to Exception 2 was her failure to consider whether it would be unduly harsh for NEB to live in the country to which the petitioner was to be deported, South Africa. However, since the respondent had not found that NEB was the petitioner's partner, it was not an error of law for her not to go on to consider, on an *esto* basis, what the effect on her would have been of living in South Africa. The decision that the exception was not made out would inevitably have been the same, whatever the conclusion might have been on that branch of the test.

[26] Turning to Exception 1, as the petitioner accepted, he had to satisfy the respondent in relation to all three limbs of that exception for it to be made out. There was no dispute that the first limb was established, the petitioner having been lawfully resident in the UK for most of his life. As regards the second limb - whether he was socially and culturally integrated in the UK - the first point to make is that it follows from the fact that this is a discrete requirement, distinct from the first limb, that residence in the UK for most of a person's life, in itself, is not sufficient to demonstrate social and cultural integration. As Lord Reed said in *SC (Jamaica)* v *Secretary of State for the Home Department*, above, at para [51], a range of factors require to be taken into account including upbringing, education, employment history, history of criminal offending, relationships with family and friends and lifestyle. On the specific question of criminal behaviour, the following was said by

Hamblen JL in *Binbuga* v *Secretary of State for the Home Department*, above, at paras [57] to [59]:

> "57. Similarly, cultural integration refers to the acceptance and assumption by the foreign criminal of the culture of the UK, its core values, ideas, customs and social behaviour. This includes acceptance of the principle of the rule of law. Membership of a pro-criminal gang shows a lack of such acceptance. It demonstrates disdain for the rule of law and indeed undermines it.
>
> 58. Social and cultural integration in the UK connotes integration as a law-abiding citizen. That is why it is recognised that breaking the law may involve discontinuity in integration. As was found in the *Bossade* case at [55]:
>
> > '… his history of offending (repeated robbery) betokens a serious discontinuity in his integration in the UK especially because it shows blatant disregard for fellow citizens. … We also agree with Mr Jarvis that even when not in prison the claimant's lifestyle over the period when he was committing offences was manifestly anti-social… We have to decide whether he is socially and culturally integrated in the UK in the present. He is now 29. Whilst his recent acceptance of the reprehensible nature of his criminal conduct is an important factor, we consider the negative factors we have just mentioned indicate that his history of criminal offending broke the continuity of his social and cultural integration in the UK and he has not regained it. This means that currently he has not shown he is socially and culturally integrated.'
>
> 59. Being part of a pro-criminal gang similarly shows 'blatant disregard for fellow citizens' and is 'manifestly anti-social.'"

[27] Comments to similar effect were made in *AM (Somalia)* v *The Secretary of State for the Home Department*, above, at para [93]:

> "In these circumstances the FTT was entitled to find that the appellant was not socially and culturally integrated in the United Kingdom. That was so not merely because of his conviction for a serious offence and the time which he had spent in prison as a result, but also because of the long period of anti-social criminal behaviour leading up to that conviction, the complete absence of any family life in this country for what was at the time of the hearing before the First Tier Tribunal the last 14 years, and the absence of any evidence of social or other connections here other than the mere fact of his lawful presence in this country. This was no doubt an unhappy life, particularly as there are some indications that AM wanted to reform, but it cannot be described as a life of social or cultural integration in this country."

[28] Notwithstanding what was said in *Binbuga*, above, about discontinuity in integration, what the decision-maker must not do is to treat offending and imprisonment as having severed social and cultural ties with the UK through its very nature and then require the applicant to demonstrate that integrative links had been re-formed: rather, the question is whether at the time of the decision, having regard to all relevant factors including criminal offending and imprisonment, the applicant is socially and culturally integrated in the UK: *CI (Nigeria)* v *The Secretary of State for the Home Department*, above, at [77] (a decision of the English Court of Appeal).

[29] Other passages in *CI (Nigeria)*, although not referred to by counsel in submissions, are worthy of note. At para [78] Leggatt LJ said this:

> "The phrase 'socially and culturally integrated in the UK' is a composite one, used to denote the totality of human relationships and aspects of social identity which are protected by the right to respect for private life. While criminal offending may be a result or cause of a lack or breakdown of ties to family, friends and the wider community, whether it has led or contributed to a state of affairs where the offender is not socially and culturally integrated in the UK is a question of fact, which is not answered by reflecting on the description of criminal conduct as 'anti-social' [as the Upper Tribunal judge had done]".

And, at paras [79] and [80]:

> "Focusing in the way the Upper Tribunal judge did on the duration and seriousness of the appellant's criminal offending and the length of his prison sentences also seems to me potentially to involve double counting. Those matters clearly affect the strength of the public interest in deportation. The greater the extent of the person's criminality and the harm done to other members of society by their offending behaviour, the stronger the case for requiring a 'foreign criminal' to leave the UK. This public interest is also reflected in the classification of foreign criminals according to the length of the period of imprisonment to which they have been sentenced, with different rules applicable to 'medium' and 'serious' offenders. The reason for considering whether the person is socially and culturally integrated in the UK, however, is not to assess the strength of the public interest in deportation: it is to assess whether deportation would involve an interference with the person's private life of such gravity that this outweighs the public interest in deporting them on account of the seriousness of their offending. It is therefore wrong to treat the individual's criminal offending as relevant to the test of integration, not because of

> what it shows about the solidity of his social and cultural ties to the UK, but because it strengthens the case on the other side of the scales in favour of deportation.
>
> 80. The judge's many references to integration being 'broken' by anti-social behaviour give the impression that he saw the relevant question as being whether, through the nature and seriousness of his offending, a 'foreign criminal' has broken the social contract which entitles him to the protection of the state. That, however, is not the relevant test, which should be concerned solely with the person's social and cultural affiliations and identity."

[30] The respondent's reasoning in relation to social and cultural integration appears at paragraphs 41 to 44 of her letter, set out in paragraph 10 above. Although it is not immediately obvious to me that financial independence, *per se*, is a factor which is relevant to the test in question, counsel for the petitioner did not submit that the respondent was in error in having taken it into account. Paragraph 43, read in isolation, might tend to suggest that the respondent had fallen into the error identified in *CI (Nigeria)* by treating the petitioner's criminal offending of itself as having the effect that the petitioner could not be socially and culturally integrated. However, no argument was advanced to that effect, and in any event, read as a whole, and given the reference to "all of the aforementioned information", the respondent appears to have approached the question in the correct manner by taking all of the information into account; and ultimately I have come to the view that, particularly having regard to the paucity of reliable supporting information produced by the petitioner, the respondent was entitled to reach the decision she did, and that although perhaps at the outer margins, it was not beyond the range of decisions open to her.

[31] Turning to the third limb of the exception, whether there would be very significant obstacles to the petitioner's integration into South Africa, it was common ground before me that a broad evaluative judgment must be reached by the decision-maker. As Sales LJ said in *Kamara* v *Secretary of State for the Home Department*, above, at para [14]:

> "In my view, the concept of a foreign criminal's 'integration' into the country to which it is proposed that he be deported, as set out in section 117C(4)(c) and paragraph 399A, is a broad one. It is not confined to the mere ability to find a job or to sustain life while living in the other country. It is not appropriate to treat the statutory language as subject to some gloss and it will usually be sufficient for a court or tribunal simply to direct itself in the terms that Parliament has chosen to use. The idea of 'integration' calls for a broad evaluative judgment to be made as to whether the individual will be enough of an insider in terms of understanding how life in the society in that other country is carried on and a capacity to participate in it, so as to have a reasonable opportunity to be accepted there, to be able to operate on a day-to-day basis in that society and to build up within a reasonable time a variety of human relationships to give substance to the individual's private or family life."

[32] In *NC* v *Secretary of State for the Home Department*, above, the Court of Appeal added (at para [25]) that the broad evaluative judgment must focus on the obstacles to integration and their significance to the applicant; and that the test is not subjective, in the sense of being limited to the appellant's own perception of the obstacles to reintegration, but extends to all aspects of the appellant's likely situation on return including objective evidence, and requires consideration of any reasonable step that could be taken to avoid or mitigate the obstacles.

[33] Two further points about this limb of the exception are worth emphasising. First, the onus was on the petitioner to show that there were very significant obstacles to his integration in South Africa; and second (as the Upper Tribunal had observed in *Kamara*), the use of the word "very" shows that the threshold is a high one.

[34] Judging the respondent's reasoning through that prism, it is impossible to detect any error. Her reasoning, set out at para [12] above, though brief, did demonstrate that she had exercised a broad evaluative judgment. She was entitled to conclude that the petitioner could utilise his skills to obtain employment and support himself on his return to South Africa (which would ameliorate any difficulties which he might otherwise face). The petitioner had produced no evidence to demonstrate that he had not retained familiarity

with the social and cultural dynamics of South Africa. The respondent correctly observed that the petitioner spoke English, the official language of South Africa and would experience no linguistic differences upon return. Her decision that the petitioner would not face very significant obstacles can, on no view, be categorised as irrational. The petitioner's position amounted to no more than his subjective assessment of how he would fare upon return to South Africa.

[35] For all of the foregoing reasons, the petitioner has failed to establish that the respondent's reasoning in relation to either limb of Exception 1 was irrational such as to render the decision of 12 December 2024 unlawful. His challenge to that decision therefore fails.

Disposal

[36] I will repel the petitioner's plea-in-law, sustain the respondent's third plea-in-law (erroneously numbered 11) and refuse the petition. Counsel for the respondent did not seek expenses in the event of success and accordingly I will find no expenses due to or by either party.