

Deportation of settled migrants: appraisal of some deportation decisions of settled Nigerian migrant from the United Kingdom

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Abstract

Migrants are deported for several reasons, including removal for public interest, and national security. Deportation should be a last resort for settled regular migrants. The conundrum of deportation of settled migrants encompasses unsettling the migrant and difficulty of re-integrating in the country of origin. This work is a critical appraisal of some decisions concerning the deportation of settled Nigerian migrants from the United Kingdom (UK). The study adopted the doctrinal research approach to review three deportation cases affecting settled Nigerian migrants in the UK, *Balogun v. UK*; *KO (Nigeria) v. Secretary of State Home Department* and *Unuane v. UK* who were removed from the UK as foreign criminals for public interest. This article recommends an objective test for assessing the proportionality of deportation decisions rather than a subjective case-by-case evaluation for a better outcome for affected persons, and qualifying family members among others.

Keywords: deportation, settled migrants, Nigerians, United Kingdom

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1 Introduction

Deportation is a control measure adopted by sovereign states to regulate the stay of foreigners within their territories. States have the right to make laws stipulating conditions for the admission and stay of aliens in their territory. Deportation is defined as; ‘the forced, involuntary removal of individuals from the territory on which they are located, and on which they are often residing.’¹ When a person admitted into a country violates the conditions of stay in the country, the state may choose to exercise its rights and powers, under enabling laws to deport such a person,² following the due process of the law, including stating the reasons for deportation to the person affected, and allowing the person to make representations as to why the person should not be removed from the host country.³ The laws regulating the stay of the migrant in the host country must be clear, and the process of the law should not be used to legitimize the removal of unwanted migrants.⁴ Deportation is not a means of getting rid of unwanted migrants based on prejudice or some other considerations outside the law, using the law as a cover, and justification for such acts.

Some of the conditions for the forceful removal of migrants from the host country include when the migrant is a threat to national security or public safety. Instances of removal on such grounds include when the migrant is involved in criminal activities of a serious nature. Issues of national security include the involvement of the migrant in acts of terrorism, including aiding and abetting such acts,⁵ or any act that tends to undermine the security of the host country.⁶ National security is not restricted to the acts mentioned above. It has been given a broad definition, and it has been defined as the capacity to

¹ Patti Tamara Lenard, ‘Deportation and the Excluded Undeportable,’ *Democracy and Exclusion* (New York, 2023).

² Ibid

³ *Sulaiman Oladokun v John R. Ryan* 06 CV 2330 (KMW).

⁴ Aashti Bhartiya, ‘Fictions of Law: The Trial of Sulaiman Oladokun, or Reading Kafka in an Immigration Court,’ in Nicholas De Genova and Nathalie Peutz (eds), *The Deportation Regime: Sovereignty, Space, and the Freedom of Movement* (Duke University Press, 2010) 329-350.

⁵ Helbling M and Meierrieks D., ‘Terrorism and Migration: An Overview.’ (2022) 52 *British Journal of Political Science* 977. doi:10.1017/S00071234200005876.

⁶ Emmanuel C Alita et al, ‘Impact of Terrorism on Nigeria’s National Security in Digital Era,’ (2015) 15 *Afr J Pol & Admin Stud* 329.

Deportation of settled migrants

control those domestic and foreign conditions that the public opinion of a given community believes necessary to enjoy its self-determination or autonomy, prosperity, and well-being.⁷

Public safety on the other hand was defined as; ‘the public safeguarding people from crimes, disaster, and other potential dangers and threats.’⁸ Therefore, if a foreigner is involved in any form of criminal activity that impacts the safety of the citizens of the host country, it would be a duty on the part of the host country to remove such a person from its territory. Public safety is not restricted to criminal activities or acts of terrorism; it has diverse ramifications. Disease control and the prevention of the spread of a pandemic is an example of a public safety issue that does not border on crime or criminality,⁹ In this work, the focus is on the expulsion of ‘foreign criminals,’ which was the fulcrum of the decisions of the reviewed cases in this work.

The reviewed cases involved people who were deported or sought to be deported upon conviction for involvement in criminal activities. A conviction for a criminal act is not enough to deport a settled migrant, certain factors must be considered to justify deportation including the seriousness of the offence, the possibility of the person repeating the offence, or committing another offence, and the impact of the deportation on other guaranteed rights of the migrant.¹⁰ The above issues were considerations in the cases reviewed in this article. The aim of this article is a critical review of these decisions, analysing the justice and fairness of the decisions,

⁷ Charles S Maier, ‘Peace and Security for the 1990s,’ *Unpublished paper for the MacArthur Fellowship Program, Social Science Research Council* (12 June 1990), quoted in Romm (1993) 5 <https://en.wikipedia.org/wiki/National_security#cite_note-MacArthur_Fellowship_Program_1990_p.5-6> accessed 21 January 2025.

⁸ Goodwin University, ‘What is Public Safety and Where Do You Fit in?’ <<https://www.goodwin.edu/enews/what-is-public-safety-and-where-do-you-fit-in/>> accessed 12 October 2024.

⁹ B Gushulak et al, ‘Migrants and Emerging Public Health Issues in a Globalized World: Threats, Risks and Challenges, an Evidence-based Framework,’ (2009) 2 *Emerg Health Threats J.*

¹⁰ Gillian Brock, ‘Travel Bans, Climate Change, Refugees and Human Rights: A Response to My Critics,’ (2021) 14 *Ethics & Global Pol* 110.

the process of the decision-making, and examining other options that may be explored as alternatives to the deportation of settled migrants from the host country.

2 Conceptual clarifications: who is a settled migrant

Before summarising the facts of the cases, it is important to understand or define who a settled migrant is. The post-World War II approach toward migrant settlement was the assimilation approach, which expected migrants to assimilate into their host communities without significantly altering them.¹¹ The idea was for the migrant to 'dissolve' into the host country and become 'invisible'.¹² The preceding idea of migrant settlement runs contrary to modern accepted tenets of the socio-cultural rights of the migrants, and it is not the ideal concept of assimilation, in the context of integration of the migrant into the host country.¹³ In reality, the settlement of migrants in the host country creates diversity in the community and transforms the national identity of the host country.¹⁴

Although there may be difficulty in defining the term 'settled migrant', depending on the paradigm from which the concept is viewed, there are some key factors that have been used in determining or measuring the settlement of a migrant in the host country, and these include; the policies of the host country for migrant settlement, the presence of social network in the host country for the migrant, economic participation and circumstances of migration.¹⁵ From the preceding parameters for measuring migrant settlement in the host country, a definition or description

¹¹ Michael Fletcher, 'Migrant Settlement: A Review of the Literature and its Relevance to New Zealand,' *New Zealand Immigration Center* (Sept. 1999), <<https://www.mbie.govt.nz/dmsdocument/2675-migrant-settlement-review-literature-relevance-sept-1999-pdf>> accessed 22 January 2025.

¹² *ibid*

¹³ Tineke Fokkema and Heins de Haas, 'Pre-and Post-Migration Determinants of Socio-Cultural Integration of African Migrants in Italy and Spain,' <<https://heindehaas.org/wp-content/uploads/2015/05/de-haas-and-fokemma-2011-determinants-of-socio-cultural-integration.pdf>> accessed 22 January 2025.

¹⁴ Stephen Castles, *Globalization and Migration: Some Pressing Contradictions* (Blackwell Publishers, 1998).

¹⁵ Alice Bloch, 'Theories of Migrant Settlement,' in *The Migration and Settlement of Refugees in Britain* (Palgrave Macmillan, 2002).

can be given to the term 'settled migrant'. A settled migrant is a person who has left the country of origin or habitual residence on a permanent basis to the host country, and has fulfilled the conditions for stay in the host country, or was not removed in spite of not fulfilling the requirements of the law, has integrated and establish social ties, which may include participating in economic activities in the host country.

3 Summary of decisions under consideration

The cases reviewed in this work are the cases of *Balogun v. United Kingdom*; *KO (Nigeria) v. Secretary of State* and *Unuane v. United Kingdom*. They all bordered on the deportation of settled Nigerian migrants from the United Kingdom. The cases considered concern settled migrants, who fit into the definition proffered in this article. It must be stated that there are migrants that are considered settled, with either a regular or irregular migration status.¹⁶

The case of *Moshood Abiola Balogun v. the United Kingdom*¹⁷, involved a migrant, who was born in 1986, and migrated to the United Kingdom with his aunt at the age of 3, but the United Kingdom Home Department only became aware of his presence in the Country on 21st December 1994 when an unsuccessful application for indefinite leave to stay was made on his behalf by his aunt. A second application for indefinite leave to stay was successfully made on his behalf on 24th January 2003, by the Southwark Social Services when he was thrown out by his aunt and her boyfriend. Indefinite leave to stay was granted him on the 1st December 2003. He was convicted of possession of Class A drugs in 2007 and sentenced to 3 years in prison. He was subsequently notified of the intention to deport him on 18th October 2007. He appealed the decision on the ground of protection of his private and family life, and fundamental freedoms under Articles 8 and 34 of the European Convention on Human Rights. Despite the Court's finding that after his jail term, the applicant had no record committing any further crimes, he was

¹⁶ Simon Y Svirnovskiy, 'Finding a Right to Remain: Immigration, Deportation and Due Process' (2017) 12 *North Western J L & Soc Pol'cy* 32.

¹⁷ *Balogun v UK*, App no 60286/09) European Court of Human Rights.

deported from the United Kingdom. This is coupled with the fact that the only connection he has with Nigeria is his mother whom he does not know, compared to established family and social connections in the United Kingdom including a sustained relationship with his girlfriend.

The facts in *KO (Nigeria) v. Secretary of State Home Department*,¹⁸ the applicant sought protection of his rights under Article 8 of the European Convention on Human Rights. The applicant identified as KO, is a Nigerian who entered the United Kingdom unlawfully in 1986, he stayed there with his stepdaughter, born in December 1997 who had obtained indefinite leave to remain in the United Kingdom, his wife, and four children who were born between August 2005 and August 2013, citizens of the United Kingdom. KO was convicted of conspiracy, and sentenced to 20 months in prison. The Court had to determine the effects of his deportation on his children, whether his deportation would be 'unduly harsh' on the children, and if it would be in the 'best interest' of the children. The Court noted that KO's role within the household made it possible for his wife to work and that deporting him to Nigeria, while his family remains in the United Kingdom would mean separating the family forever, the European Court of Human Rights upheld the decision to deport him.

*Unuane v. United Kingdom*¹⁹ is similar to KO's case. A deportation order was made against a Nigerian, and the best interest of his children was under consideration in an appeal to set aside the deportation decision. The summarized facts of the case are that the appellant was convicted of falsification of immigration documents, likewise, his Nigerian partner, and he was sentenced to five years and six months imprisonment. Consequently, he was deported, but his partner was allowed to stay with the children in the United Kingdom. The decision was set aside on appeal in the best interest of the children. Article 8 of the ECHR was applied in reaching that decision, just like in KO and Balogun's case. Surprisingly, he was not a first offender, but upon consideration that the offence did not involve violence or drugs he was allowed to stay in the best interest

¹⁸ *KO (Nigeria) v Secretary of State for the Home Department (SSHD)* [2016] EWCA civ 617.

¹⁹ *Unuane v UK*, App no 80343/17) ECtHR 24 November 2020.

of the children, considering that his older son would need heart surgery shortly, and the children would need their father.

4 Analysis of decisions

This section is devoted to analysing the decisions in the cases under relevant sub-heads. Although there are similarities in all the cases, they also have points of distinction. The similarities and distinctions will be identified and analysed under appropriate headings, with the aim of proffering constructive recommendations that will aid future decisions of a similar nature.

4.1 Deportation to a 'home' country and ties to the host countries

All of the cases in this article involve the deportation of settled Nigerian migrants, all of them had established family ties in the United Kingdom. In Balogun's case, it was shown that he had no connection in Nigeria except his mother whom he did not know. It would be correct to say that in the case of Balogun, he might only know about his mother, and did not have ties with her. Ties to the country of origin of a migrant are categorized into generations, with the first migrants in the migrant's lineage representing the first generation.²⁰ The categorization of migrants in generations is used in determining their ties to the country of origin, and people born in the country of origin are said to have ties to the country by virtue of birth.²¹ Based on the facts in the case of Balogun, he came to the United Kingdom with his aunt at the tender age of three, consequently, he only had established ties and relationships in the United Kingdom. The question in that regard is whether he could be said to have ties with his home country, a known connection or memory at that tender age.

The concept of family ties is beyond mere family relationships. A person may have family relationships but have no ties or connections with them. Studies around kinship and ties have moved from the traditional perspective of origin to a new paradigm of kinship as

²⁰ Huang Wei-Jue et al, 'Attachment to the Home Country or Town? Examining Diaspora Tourism Across Migrant Generations,' (2018) 68 *Tourism Mgmt* 52.

²¹ *ibid.*

doing, in terms of practices and processes of becoming.²² Social or family ties in our discussion relate to the social-cultural and economic connections with either the host country or the country of origin, with specific reference to actual relationships maintained in a country to show belonging or dependence. Therefore, Balogun's deportation to Nigeria appears to be made without thorough consideration, and balancing the ties he had in the United Kingdom against his family connections in Nigeria. All the people deported in the reviewed cases were deported under Section 117C of the United Kingdom Immigration and Asylum Act 2002, and they all relied on the provision of Article 8 of the European Convention of Human Rights on appeal to challenge their deportation. The provisions of the laws are discussed under the preceding sub-heading.

The social context of integration in the host country by a migrant is a reality that could be disconnected from the political context of integration, or the legal requirements a person must fulfil to become a legal member of the host country.²³ The dissonance between social integration on the one hand, and political and legal integration on the other hand can lead to injustice in determining deportation cases, which compounds the already existing conundrum of issues relating to migrant protection under international law. It has been argued, that deporting a person to a home country without ties, is akin to forcible displacement.²⁴ Reflecting on it, forced displacement was defined by Dickey as; '... the coerced movement of people from

4.2 Deportation of foreign criminals

A foreign criminal is defined under Section 117C of the UK Immigration and Asylum Act, 2002 as a person who is not a British citizen, is convicted in the UK of an offence, and is sentenced to a period of imprisonment of at least 12 months, or convicted for an offence causing serious harm, or who is a persistent offender.²⁵ In

²² Andrikopoulos Apostolos and Jan William Duyvendank, 'Migration, Mobility and the Dynamics of Kinship: New Barriers and Assemblages,' (2021) 21 *Ethnography* 299.

²³ Laubenthal, Barbara, 'Introduction: Assimilation, Integration or Transnationalism? An Overview of Theories of Migrant Incorporation,' (2023) 61 *Int'l Migration* 84.

²⁴ Dickey Rebecca, 'The Evolution of Forced Displacement in International Criminal Law,' (2019) 58 *PKI Global Just J* <<https://globaljustice.queenslaw.ca/news/the-evolution-of-forced-displacement-in-international-criminal-law>> accessed 22 January 2025.

²⁵ Nationality, Immigration and Asylum Act 2002 s 117D.

Deportation of settled migrants

addition to the above definition, in deportation cases, a person convicted for an offence in the UK and sentenced upon conviction to imprisonment for a period of 12 months but less than 4 years is considered a medium offender, while a person convicted and sentenced to 4 years imprisonment and above is a serious offender,²⁶ Likewise, a persistent offender or a person convicted for an offence involving violence or causing serious harm, in which case, one must show compelling reasons not to be deported from the United Kingdom.²⁷

One issue that runs through all the reviewed cases; they were all expelled because they were foreign criminals. The trend of deportation of settled migrants on the grounds of criminality is reported with concern that such policies are applied to settled migrants, even those who immigrated a long time ago, and no longer consider themselves migrants, implying that they see themselves as a part of the host country by integration. It was expressed as follows by Jürgen et cetera:²⁸

there has been a new wave of expulsion specifically targeting elements of the migrant population perceived as an inherent threat to public security, mainly in the context of counter-terrorism measures or in response to public demands to be tough on criminal foreigners. Particularly alarming in this context is the fact that policies of expulsion are applied to settled migrants—that is persons who immigrated long ago and may not even identify themselves as migrants.

There is a pattern of application of such expulsion measures on selected groups based on the profiling of certain people or groups as ‘inherently dangerous.’ Jürgen and others captured the above

²⁶ *ibid*

²⁷ Spencer Michael, ‘When Does a Crime Cause Serious Harm? Court of Appeal Considers the Application of Article 8 to Foreign Offenders,’ *Electronic Immigration Network* (June 2020), <<https://www.ein.org.uk/blog/when-does-crime-cause-serious-harm-court-appeal-considers-application-article-8-foreign>> accessed 28 January, 2025.

²⁸ Bast Jürgen et cetera ‘Preserving Social and Family Ties’ (2022), <www.researchgate.net> accessed 22 January 2025.

profiling as follows: 'Such security-driven policies target specific groups of the migrant population that have been identified in public discourse as inherently 'dangerous' '.²⁹ An example of expulsion of members of a profiled group is targeting Muslim communities, viewed as rising Islamophobic tides.³⁰ Such generalization, and profiling of people groups as inherently dangerous, or inherently criminal is not only an unfair and prejudicial treatment of the groups involved but violates the fundamental tenets of human rights, like equality and non-discrimination.³¹ The underlying notion by the decision-makers that members of these groups are 'inherently dangerous' would appear to influence their evaluation of the issues, whether from an administrative or judicial point of view.

For a group of persons to be described as having an inherent feature, it implies that such trait is normally found among such people group. The dictionary meaning of the word inherent is given as; '...existing in someone or something as a permanent and inseparable element, quality or attribute. It is involved in the constitution or essential character of something, and is intrinsic or belonging by nature or habit.'³² Such nuanced prejudices that come into play in making policies and judicial decisions will, if not addressed lead to political, administrative, and if care is not taken judicial persecution of the specified 'vulnerable groups'. Such prejudices ought to be addressed in the context of just and equitable processes, and administration of the law.

Nigeria has had the unfortunate saga of internal crisis owing to several factors, including violence perpetrated by Islamic extremist groups, from the Boko Haram era to the Islamic State of West African Province (ISWAP).³³ This situation coupled with a tacit perception of Nigerians as 'inherently corrupt,' and prone to criminal activities

²⁹ ibid

³⁰ ibid

³¹ Singh Deshraj 'Promoting Equality, Non-Discrimination, and Human Rights: A Comprehensive Stud (2023) 8 *International Journal of Novel Research and Development* 765.

³² <<https://www.dictionary.com/browse/inherent>>accessed on 22 June 2025.

³³ European Union Agency for Asylum, 'Boko Haram, Including JAS, ISWAP, and Ansaru,' *Common Analysis* (October 2021), <<https://euaa.europa.eu/country-guidance-nigeria-2021/131-boko-haram-including-jas-iswap-and-ansaru>> accessed 24 January 2025.

impacts Nigerian migrants.³⁴ Such subliminal profiling can impact judicial decisions made concerning Nigerian migrants, resulting in unduly harsh, or unbalanced application of the principles of law, similar to that associated with Islamophobia. The treatment meted out to Nigerian irregular migrants as foreign criminals have received much scholarly attention,³⁵ but there is a need to consider the treatment of regular Nigerian migrants that get involved in crime, and the proportionality of the reaction of the host country as manifested in deportation decisions. This will be discussed further in the context of the application of the provision of Article 8 of the European Convention on Human Rights under the next sub-head.

4.3 Application of article 8 of the European convention on human rights and deportation of foreign criminals

In all the cases reviewed, the Appellants relied on Article 8 of the European Convention on Human Rights for their appeal before the European Court of Human Rights (ECtHR), but despite the similarities in the cases, the ECtHR decided to uphold the deportation decision except in the case of *Unuane v. United Kingdom*. The application of the provision of Article 8 ECHR is examined in this section because it is a provision that is frequently relied upon by migrants in deportation cases. Article 8 provides for the protection of the right to private and family life, and to properly appreciate the application of the provision in deportation cases, it is necessary to reproduce the provision. Article 8 ECHR provides as follows:³⁶

1. Everyone has the right to respect 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 is in accordance with the law and is necessary in a democratic society in the interest of national security, public safety, or economic well-being of the country, for the prevention of disorder or crime, for the

³⁴ Hope, Kemp Ronald, 'Institution and Culture of Corruption in Nigeria', (2018) 70 *Crime Law and Social Change* 503.

³⁵ Plambeck, Sine, 'Between "Victims" and "Criminals": Rescue, Deportation, and Everyday Violence Among Nigerian Migrants', (2014) 21 *Soc Pol* 1.

³⁶ European Convention on Human Rights 1950 art 8.

protection of health or morals, or for the protection of the rights and freedoms of others.

This provision is relied upon in deportation cases to prevent disruption of the family unit as a direct consequence of a deportation decision. The Government of the United Kingdom has a guidance document to assist decision makers including the Court on the application of Article 8. The UK Government Guidance provides conditions for the deportation of foreigners to include the following instances:

- i. When the deportation would be conducive for the public good.
- ii. If they are the family members of a person who has been ordered to be deported or deported.
- iii. If the court has recommended his deportation following a conviction punishable with imprisonment.
- iv. On the ground of public health, public security, and public policy.³⁷

It is imperative to note that the Guidance document was last updated on the 9th of May 2024 at the time of writing this article, after all the cases reviewed in this work were decided. The amendment was made to reflect certain decisions, including the case of HA (Iraq), RA (Iraq), and AA (Nigeria) v. SSHD.³⁸ The exceptions that can be relied on by a foreign criminal seeking to be deported under Section 117 of the UK Immigration and Asylum Act, were in issue in the above case, and the exceptions are categorized into 3 as provided for under the section as follows:

- i. In the case of a person convicted for an offence with a conviction of between 12 months and less than 4 years (a medium offender), the person must show that the deportation is disproportionate, predicated on existing social and cultural ties in the UK, and substantial obstacles

³⁷The UK Government Guidance Document on Article 8 ECHR, updated 9 May 2024. <<https://www.gov.uk/government/publications/criminality-guidance-in-article-8-echr-cases/criminality-article-8-echr-cases-accessible>> accessed 24 January 2025.

³⁸ [2022] UKSD 22.

Deportation of settled migrants

- to be encountered in integrating into the country where the person is sought to be deported.³⁹
- ii. In the case of a medium offender, the person must show that he or she has a relationship with a qualifying partner or child in the UK, and deportation will cause undue harshness to the qualifying child, children, or partner.⁴⁰
- iii. In the case of a serious offender, a person convicted and sentenced to a minimum term of 4 years, the person must be able to show compelling circumstances, which must be over and above the conditions set out for the above two exceptions.⁴¹

In analysing the decisions reviewed in this article, it must be stated that in the case of *Balogun*, the Appellant sought to rely on the disproportionateness of the deportation order in view of the ties he had in the UK and the obstacles or challenges that he would encounter, integrating in Nigeria, a country he barely knows.⁴² In *KO*'s case, he placed reliance on the second exception which borders on the principle of undue harshness of his deportation on his wife and children.⁴³ Whereas, in *Unuane*'s case he placed reliance on the undue harshness of the deportation order on his family, and he was bound to show compelling circumstances in view of the fact that he was convicted for an offence with imprisonment of 4 years and more.⁴⁴ Surprisingly, only *Unuane*'s appeal was successful, and part of the reason given by the ECtHR is that his offence did not include violence or drug, coupled with the medical condition of his child who would be requiring surgery in the near future.⁴⁵

³⁹ Reiss Joel. 'Deportation: Supreme Court Revisits Unduly Harsh and Very Compelling Circumstances Tests,' *Electronic Immigration Network* (3 August 2022), <<https://www.ein.org.uk/blog/deportation-supreme-court-revisits-unduly-harsh-and-very-compelling-circumstances-tests>> accessed on the 25 January 2025.

⁴⁰ UK Nationality, Immigration, and Asylum Act 2002 s 117D.

⁴¹ *ibid* s 117C.

⁴² *Balogun v UK* (n 17).

⁴³ *KO (Nigeria) v SSHD* (n 18) para 23.

⁴⁴ *Unuane v UK* (n 19).

⁴⁵ European Data Base of Asylum Laws (EDAL) 'Unuane v' United Kingdom: ECtHR' EDAL [2020], <<https://www.asylumlawdatabase.eu/en/content/unuane-v-united-kingdom-ecthr-finds-violation-article-8-case-deportation-following->

Considering the offences that each Appellant was convicted and sentenced for, Balogun was convicted for possession of Class A drugs and sentenced to 3 years imprisonment, KO was convicted for conspiracy to defraud and sentenced to 20 months imprisonment, and Unuane was convicted for falsification of immigration documents and sentenced to 5 years 6 months. The issues appear to be unsatisfactorily resolved and disproportionate. In Balogun's case, given his existing ties to the United Kingdom, and especially the trajectory that his life was taking towards transformation, which was acknowledged by the Court, it had no impact in swaying the outcome of the case. In KO's case, it was established that he had a qualifying partner and qualifying children, and played a domestic role that enabled his partner to keep a regular job, and financially support the family, yet in determining whether his deportation would be unduly harsh to his qualifying family, the Court attempted to make a distinction between what is 'harsh', and what is 'unduly harsh', without setting clear objective standards for measuring the harshness of the deportation on qualifying family members.⁴⁶ Lastly, Unuane was convicted and sentenced to a term of 4 years and above, putting the onus on him to prove compelling circumstances under the third exception in Section 117 of the UK Immigration, Nationality and Asylum Act to avoid deportation, which is over and above the requirements in KO's case, but Court considered his situation compelling and reversed the deportation order. The question then is what is the standard of assessment applied in the cases? This work maintains that setting objective standards for proportionality assessment would achieve consistent outcomes.

The proportionality test is done against public interest because public interest is the basis for deporting foreign criminals under Article 8 ECHR. The assessment of the proportionality of the impact of a deportation is balanced against public interest, and determined by the severity of the offence. The more serious the offence committed, the greater the public interest in deporting the

[prison#:~:text=The%20case%20concerns%20the%20deportation,from%20a%20serious%20heart%20condition>](#) accessed 25 January 2025.

⁴⁶ *Balogun v UK* (n 17).

person.⁴⁷ On the other hand, in determining the ‘undue harshness’ of the deportation on a qualifying partner or child, the evaluation as the court held in KO’s case is in resolving the question, of whether it would be unduly harsh for the child to live in the country to which the person is to be deported, and whether it would be unduly harsh for the child to remain in the UK without the person to be deported, the Court held that the evaluation is of the impact of the deportation on the qualifying partner, and not the conduct of the person to be deported.⁴⁸ The court is obliged under such instances to balance public interest against the deportation on one hand, and the impact on a qualifying person against the deportation on the other hand. It is doubtful if that can be achieved without reference to the offence of the foreign criminal to be deported. Even the Court conceded to the difficulty of doing these in deciding the case KO’s case.⁴⁹ Therefore, the exceptions ought not to be considered in isolation; if the severity of the offence is considered it would be fair and just to consider other mitigating factors including, but not limited to the transformation of the offender, and guarantees or indicators of the improbability of the person to be a repeat offender.

4.4 Determining the best interest of a child in migration cases

The complexity of applying the provision of Article 8 of the ECHR in deportation cases takes another dimension when assessing the best interest of a child, where there are qualifying children affected by the decision, according to the provision of the UK Immigration, Nationality and Asylum Act. The issue of applying the ‘unduly harsh’ test of deportation decisions on children is already challenging, despite the guidelines in place requiring case-by-case assessment, which is rarely done by the responsible administrative bodies.⁵⁰ The Court maintains that the aim of the test is not protecting the child from the ‘harshness’ of the decision, but the ‘undue harshness’ of the decision, which it insists should be handled

⁴⁷ UK Nationality, Immigration and Asylum Act 2002 s e117C (2).

⁴⁸ *KO (Nigeria) v SSHD* (n 18).

⁴⁹ *ibid* 10 para 20.

⁵⁰ Griffith Melania et. ceteraa, ‘Unduly Harsh’? An Empirical Examination of Best Interest Assessment in the Context of Parental Deportation’, (2024) 32 *The International Journal of Children’s Rights* 690.

factually on a case-by-case basis, rather than setting an objective standard for determining when a decision is unduly harsh. The UK Supreme Court was emphatic in reiteration that there should be no abstract personality to be used in the assessment when it held that; "There should be no "notional comparator", and the fact-finding tribunal is obligated to consider an applicant's unique circumstances on a case by case basis and in the round."⁵¹ The situation is further compounded because the courts are enjoined to consider the best interest of the child in any case that involves a child, and how can the courts achieve that while permitting a degree of 'harsh' consequences on the child?

In determining the best interest of the child in deportation cases, the Court ought to consider only the interest of the child and not the offence upon which the deportation order is predicated.⁵² Balancing all these issues and the public interest of the host country is no doubt a conundrum, or to say the least, challenging, which the most objective Court may not be able to achieve without carefully thought-out standards expressed in an abstract persona of an objective reasonable man, to guide the Court in exercising its discretion, which the UK Government guidelines does not provide for, but leaves it to the discretion of the court on a case-by-case basis.

The principle of the best interest of a child is provided for in the UN Convention on the Rights of a Child under Article 3(1)⁵³ as follows:

In all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities, or legislative bodies, the best interests of the child shall be a primary consideration.

The principle has gained acceptance and has been assimilated into regional, sub-regional, and domestic instruments, including the European Convention on Human Rights. The best interest of the child implies a consideration of the holistic well-being of the child

⁵¹ Reiss Joel. Op. Cit.

⁵² *KO v United Kingdom*, Op. Cit.

⁵³ UN Convention on the Rights of the Child 1990 art 3(1).

in any matter where the right of a child is involved.⁵⁴ Given the decision in KO's case, can it be said that there was a holistic consideration of the best interest of the children because of the distinction that the court sought to make on the meaning of what is 'harsh' and what is 'unduly harsh'? We answer the question in the negative and recommend a review of the test of the 'best interest of a child' in deportation cases.

5 Challenges of deported migrants and observations

In the course of this work, some challenges related to migrant deportation were identified, and reported below:

1. Difficulty of reintegration in the country of origin or that to which the migrant is to be deported due to the time already spent in the host country.⁵⁵ Acceptance upon return to the country of origin may be challenging, coupled with the stigma associated with returning as a deportee,⁵⁶ which could likely result in an attempt by the person to leave the country of origin or the country of deportation.⁵⁷
2. Deportation as a second punishment for the crime committed. It is conceded that the public interest of the host country is critical in making a deportation decision, but the effect of such on a person who has demonstrated remorse and transformation has the effect of a second punishment for the crime committed. An example is the case of Balogun who attempted suicide upon the trauma of facing deportation after serving his prison term and showed evidence of positive change.⁵⁸

⁵⁴ Versea Federica, 'The Best Interest of the Child as Put into Practice Worldwide', (February 2021) *Humanium* <<https://www.humanium.org/en/the-best-interest-of-the-child-as-put-into-practice-worldwide/>> accessed 26 January 2025.

⁵⁵ Edeh Vincent Obiora, 'Journey to Nowhere? Reintegration of Nigerian 'deported returnees' from Libya' (Masters' Thesis, International Institute of Social Studies, (2021) 19 <[file:///Users/mac/Downloads/Vincent-Obiora-Edeh-Journey-to-Nowhere.-Reintegration-of-Nigerian-deported-returnees-from-Libya%20\(2\).pdf](file:///Users/mac/Downloads/Vincent-Obiora-Edeh-Journey-to-Nowhere.-Reintegration-of-Nigerian-deported-returnees-from-Libya%20(2).pdf)> accessed 25 January 2025.

⁵⁶ Wapmuk Sharkdam. 'International Migration, Nigerian Returnee Migrants and Challenges of Reintegration into Local Communities's (2019) 9 *Arts and Social Science Research* 158.

⁵⁷ *ibid.*

⁵⁸ *Balogun v UK*, Op.Cit.

The issue of family disruption and the impact on the deportee's immediate family members is critical.

6 Exploring options for deportation and recommendations

As a result of the hardship caused to deported migrants under circumstances similar to those in the reviewed cases, there is a need to explore other options for deportation that will serve the interest of the host country and meet the needs of the migrant in question. The alternatives explored here are restricted to the context of the reviewed cases and do not address other instances of deportation like those following failed asylum applications, notoriously used by the Global North in addressing migration political controversies in what has come to be described as a political technology in migrant population decongestion⁵⁹ and justifiable removal of unsettled irregular migrants⁶⁰

It is conceded that there are instances where deportation is non-negotiable because of the danger the migrant poses to the host country, some of these instances include imminent threat to the national security of the host country.⁶¹ The alternatives explored are presented serially below.

6.1 Opportunity for rehabilitation and integration for previously convicted migrants:

Migrants convicted for offences, who have served their term in prison ought to be allowed to demonstrate that they are reformed and can contribute meaningfully to the host country. Deportation decisions should take note of efforts made by a migrant in that direction, and attach weight to them in deportation cases. States can put mechanisms in place that would assess character changes of previously convicted migrants, and issue certificates of good

⁵⁹ Lemberg-Pedersen Martin, 'The Contours of Deportation Studies', Handbook of Return Migration (2022), <https://www.academia.edu/94612786/9_The_contours_of_deportation_studies>, accessed 24 January 2025.

⁶⁰ LeVoy, Michele, and Eve Geddie, 'Irregular Migration: Challenges, Limits and Remedies' (2009) 28 *Refugee Surv* Q 87.

⁶¹ Esteves, João. 'Migration, Security Challenges, and National Security, in A J Masys (eds) Handbook of Security Science (Springer, (2022).

conduct when the migrant demonstrates stability and positive integration in the host country. Balogun's case would have been decided differently if the Court placed weight on his transformation after he completed his jail term. His automatic deportation could be perceived as a second punishment for the crime of which he was remorseful.

6.2 Setting standards for proportionality assessment to achieve substantial consistency in judicial and administrative decisions:

The decisions reached in the cases reviewed in this article have a level of inconsistency in the assessment and application of the proportionality test. The proportionality test under each of the exceptions under Section 117 of the UK Immigration, Nationality, and Asylum Act, should not be left entirely to the discretion of the Courts, or administrative bodies, and even though there is a guidance document, it would be more appropriate to develop proportionality checklist to guide the Courts and administrative bodies in exercising their discretion, which should result in more consistent decisions.

6.3 Legal aid services to Nigerian migrants standing facing deportation trial:

The impact of deportation on Nigeria is multifaceted, there is the dimension of the negative image and publicity it gives Nigeria as a nation,⁶² and the impact on the self-image of Nigerians in the diaspora.⁶³ There is also the economic impact of reduced financial returns to extended family members of migrants in Nigeria, impacting the nation's economy.⁶⁴ Therefore, it is imperative for Nigerian embassies to make provision for qualitative legal aid services for their citizens in the diaspora to ensure proper legal representation and better outcomes for Nigerians in the diaspora.

⁶² Owuamanam Chukwuma M. and Alexander Nnaemeka Agbaenyi, 'Nigeria's International Image Crisis: An Evaluative Analysis' (2021) 4 ZIK J Multidis. Rs'rch 95.

⁶³ *ibid*

⁶⁴ Aja Innocent Ngene 'Diaspora Remittances Inflows and Nigeria's Socio-Economic Development in the 21st Century' (2024) 17 Afr J Pol & Admin Stud 173.

6.4 Further review of the 'unduly harsh' test in the best interest of the child in deportation cases:

There is a need to review what is harsh to a child and what is harsh to a person in general, the capacity of a child to endure harshness should not be on the same pedestal with the capacity of an adult to endure hardship. Therefore, the determination of what is unduly harsh should have a different standard of assessment when it involves the interest of a child, and such assessment must be done considering the holistic interest and well-being of the child.

7 Conclusion

This article reviewed three cases relating to the deportation of settled migrants from the United Kingdom, whose stay was regular at the time of their deportation. They all challenged their deportation based on the exceptions under Section 117 of the UK Immigration, Nationality, and Asylum Act, 2002, and relied on the protection of their rights under Article 8 of the European Convention on Human Rights. Some of the issues discussed in this article include the lack of an objective standard for determining the proportionality of the deportation with the public interest of the host country, which is handled by the courts on a case-by-case basis. The article argues that setting an objective test standard will result in more consistent decisions. Other issues discussed include the complexity in determining the best interest of a child, the undue harshness of a deportation order on a qualifying partner or child, and the public interest, stressing the need for carefully thought-out guidelines specifying situations that fall under each exception under Section 117 of the Act to guide courts and administrative bodies in decision making. Recommendations were made in line with the issues discussed, including the need to carefully consider, and weigh all facts placed before the court by a person facing a deportation trial, including a change in the behaviour and conduct of the person in the host country