IMMIGRATION AND PROTECTION TRIBUNAL NEW ZEALAND **[2016] NZIPT 600284**

AT AUCKLAND

Appellant:	**FLOHR, Damas Tutehau**
Respondent:	**The Minister of Immigration**
Before:	Judge P Spiller
Representative for the Appellant:	The appellant represents himself
Counsel for the Respondent:	M Denyer
Date of Hearing:	6 July 2016
Date of Decision:	15 July 2016

DEPORTATION (RESIDENT) DECISION

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[1] This is an appeal against liability for deportation on humanitarian grounds by the appellant, a 71-year-old citizen of Tahiti, who has repeatedly held New Zealand residence status since 1974.

THE ISSUE

[2] This appeal is brought on humanitarian grounds. In broad terms, the appeal requires the Tribunal to consider whether the appellant has exceptional circumstances of a humanitarian nature, arising out of his long-term connection with New Zealand and the interests of his New Zealand-citizen wife, that would make it unjust or unduly harsh for him to be deported from New Zealand, and whether it would not in all the circumstances be contrary to the public interest to allow him to remain in New Zealand.

[3] For the reasons that follow, the Tribunal declines this appeal.

BACKGROUND

[4] The appellant was born in Tahiti (French Polynesia) in 1944. He was one of 10 siblings. He spent his childhood years there, but then travelled extensively to places such as Fiji, with periodic residence in Tahiti.

[5] The appellant arrived in New Zealand in 1963, aged 19 years, and stayed here for six years, on temporary permits (as visas were then known). He completed his secondary schooling, worked part-time, and completed most of a Bachelor of Commerce degree. In December 1969, he married his wife, a New Zealand citizen.

[6] Also in December 1969, the appellant and his wife went to New Caledonia where his parents were residing. The appellant and his wife were both employed there, he as an accountant. In February 1974, their first child was born, during a visit by the wife to New Zealand.

[7] Later in 1974, the appellant obtained a New Zealand resident visa and the family returned for nine months to New Zealand.

[8] In early 1975, the appellant took up employment as an accountant in Tahiti, and the family moved back there. In June 1983, some eight years later, the couple's twin children were born in Tahiti (they have acquired New Zealand citizenship by descent from their mother). The appellant's residence status lapsed as a result of his having left New Zealand and not having the appropriate returning resident visa allowing his return.

[9] In June 1991, the appellant again acquired residence status here but again this lapsed when he returned to Tahiti some time thereafter. (Under section 41(1) of the Immigration Act 1987, a residence permit expired when its holder left New Zealand.) From August 1993, he visited New Zealand on visitor visas, working for a company exporting fruit and flowers to New Zealand and importing flowers from New Zealand. He later invested in real estate. His wife also periodically made short trips to New Zealand.

[10] In February 2002, the appellant and his wife established a home in New Zealand. However, over the next five-and-a-half years, he continued to have a real estate agency in Tahiti, and he spent most of his time there. During this period he came to New Zealand sporadically on visitor visas. His wife also spent considerable periods of time in Tahiti until November 2005 when she settled in New Zealand.

[11] In December 2007, the appellant returned to New Zealand, and remained here for two years. He initially held visitor's permits. On 18 June 2008, he applied for a work permit and also for a residence permit, both on partnership grounds. On 27 June 2008 he was granted a work permit, valid to 27 September 2008, and this was renewed. On 3 October 2008, he was granted a residence permit. He worked as an accountant/financial adviser for motels and later as the owner of a real estate agency.

[12] During the period 2002-2009, when the appellant and his wife had a home in New Zealand, they were active members of a church community. They associated with the congregation and stayed with the minister for nine months. Between September 2008 and December 2009, the appellant asked the minister and other members of the church for money. He stated that he had the opportunity to help overseas people bring investment money here, but that he needed funds to achieve this.

[13] The details of the appellant's financial dealings with church members are outlined in case summaries which formed the basis of the charges to which the appellant later pleaded guilty. According to these documents, the first transaction occurred on 15 September 2008, when he approached a personal friend (whom he had met in 1965) and requested $5,000. He obtained this in cash from her. This payment was the first of a series of advances from her, which took place over the following year and which eventually amounted to $305,709. Over the course of 15 months, 10 people in the congregation handed over a total of $875,483, in the course of 162 transactions, to the appellant. This money was sent to recipients in China, the USA and Nigeria.

[14] In December 2009, the appellant and his wife left New Zealand, and stayed in Australia (where their daughter and younger son had settled) for the next 13 months. In October 2010, the appellant's residence status again lapsed due to his absence from New Zealand.

[15] In January 2011, the appellant returned to New Zealand, and he again held a visitor visa. His wife returned the following month. In February 2011, he obtained a permanent resident visa. He has remained in New Zealand on this visa ever since.

[16] In November 2013, the appellant was brought to trial by jury on seven counts of causing loss by deception (over $1,000), each charge carrying a maximum sentence of seven years' imprisonment. Part way through the trial, he

requested a sentence indication by the presiding Judge, and, when this was given, he pleaded guilty to all charges.

[17] In the pre-sentence report (dated 6 December 2013) by the probation service, it was noted that the appellant expressed sadness when speaking about the losses suffered by his victims, but he did not view himself as an offender. His likelihood of re-offending was assessed as high based on his strong belief that the money he claimed was owing to him remained in an offshore bank waiting for him to gain access.

[18] On 4 February 2014, the appellant was convicted of seven offences of causing loss by deception (over $1,000). The sentencing Judge stated:

> "This was a significant series of frauds perpetrated on trusting and supportive friends. … Several of your victims were vulnerable by reason of their age and it must be said by reason of their naivety. … your persuasion and guile must have convinced these trusting, and sometimes naïve folk, that their funds were secure in your hands. Perhaps taken in at first by a beguiling and charming exterior, you in fact manipulated the Christian ethos of your victims. … that charm at later stages turned to emotional and unrelenting pressure by you. … It is aggravating that the offending took place over two years with, as the Crown notes, 162 instances of deception.
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> The major concern I have today in terms of the future, and what I describe as alarming, is that you still believe the money exists and that it belongs to you and after following correct procedures, you can claim it. I say alarmingly because that in my view indicates you are at a very high risk of re-offending and may set out to get further funds from others to attempt to get these non-existent funds you believe for some reason are still overseas."

[19] The Judge imposed a sentence of four years' imprisonment on each charge (to be served concurrently) and a total reparation amount of $569,362.

[20] On his first parole hearing on 14 August 2014, the Parole Board was not satisfied that the appellant had reached the stage where he would meet the statutory criteria for release on parole. In the Board's view, he remained an undue risk to the safety of the community, with inadequate insight into his crimes.

[21] On 27 July 2015, the appellant was released from prison.

[22] On 3 November 2015, the respondent signed a Deportation Liability Notice for the appellant. The Notice was served on him on 5 November 2015.

[23] The appellant lives with his wife in the home of his brother in New Zealand. The appellant's older son lived in Tahiti until December 2008, he periodically made short trips to New Zealand, but has not been here since. The appellant's two younger children live in Australia. Two siblings remain in Tahiti, two live in the

outer islands of French Polynesia, and two reside in New Caledonia. His wife has a sister in New Zealand.

THE APPELLANT'S CASE

[24] The Tribunal heard evidence from the appellant, his wife Heather Flohr, and the appellant's pastor Paul Jonker.

Evidence of the Appellant

[25] The appellant first came to New Zealand when he was 19 years old. He has been married to his wife for nearly 47 years. He studied in New Zealand. He worked as an accountant in New Caledonia and in various capacities in Tahiti. His son works as a real estate agent in Tahiti. The appellant has two siblings and their families in Tahiti. These siblings own their own property, but are both over 80 years and unwell. He also has two siblings who live and own their own property in the outer islands of French Polynesia, and two in New Caledonia. He has one brother in New Zealand.

[26] The appellant realises that members of the church have given a lot of money to assist and help him out. He is very regretful, sorry and remorseful, and has a contrite heart. He has never spent or used a cent of their money. Only two of the complainants were old at the time. Before they gave money, most of the complainants consulted with the pastor. The appellant still holds a genuine belief in what he did. He only repeated the messages given to him by others, and did not formulate anything to deceive or harm anyone at all.

[27] The appellant disputes the amounts outlined in court documents. He estimates that he received $600,000 to $700,000 from the church members. He does not believe that the people from whom he took large sums have suffered, as they were well off financially. He honestly believes that the money he sent will be returned eventually. In the meantime he is slowly paying back the money taken, and has paid off a few hundred dollars. During his life he has always tried to comply with the law.

[28] In New Zealand, the appellant has the support of his wife and brother and his church community. Otherwise they keep away from people and do not associate with his wife's family or former friends here. If he was not married, he would not have much problem going back to Tahiti. His main concern is for his

wife who will find it difficult to return there. When they were overseas, she always wanted to get back to New Zealand, and she was sick when she was in Tahiti.

Evidence of Heather Flohr

[29] Mrs Flohr is the wife of the appellant. She is a New Zealander, whose family has been in New Zealand for generations. She left New Zealand with her husband when she was 20 years of age, but always planned and worked towards returning to live in New Zealand. Her three children are New Zealand citizens. She found living in Tahiti difficult and her health suffered. She looked after her children there and did some voluntary work. She and her husband tried to come back to New Zealand when they lived in Tahiti, but this did not work out and he had good jobs in Tahiti.

[30] Mrs Flohr's older son lives in Tahiti and she is on good terms with him and in regular contact. Her other two children are settled in Australia. In New Zealand, she and her husband keep to themselves apart from his brother and their church community. She has not seen her sister in New Zealand for a long time. Her husband's conviction and prison sentence were a shock to her and her family.

[31] Mrs Flohr wants to live her retirement years in her own country with her husband, with dignity and the rights and safeguards of her own country. Her integration in Tahiti will be compromised by the social stigma put on her because of what has happened to her husband. To be forced to leave her home country or be separated from her husband of 46 years would be cruel and inhuman. If he is deported she will have no option but to follow him through love, loyalty, affection and necessity, and to stay alone in New Zealand would be a disaster. Whatever happens to her husband happens to her. But the negative repercussions will be inestimable.

Evidence of Paul Jonker

[32] Pastor Jonker is a pastor for the appellant's church in the town where he has settled with his brother. Pastor Jonker has known the appellant for at least five years, and describes him as a faithful and active member of his church.

[33] Pastor Jonker states that the appellant and his wife have been married for many years. New Zealand has been her home, she is a New Zealand citizen by birth and her family has been in New Zealand since the 1840s. If the appellant is deported she will be forced to leave the country of her birth or be separated from

her husband. She has been faithful and supportive of the appellant and deportation will add enormous stress to the couple. They are not young any more.

[34] Pastor Jonker states that the appellant is committed to avoid any possible offending in the future. Pastor Jonker and his church can provide good support systems for the appellant and his wife in New Zealand, and the church is in regular contact with them. With the support of Pastor Jonker and the church community, the appellant will remain an honest and dutiful resident of New Zealand.

Documents and Submissions

[35] The appellant has lodged:

(a) Statements (30 November 2015 and 6 July 2016) from Heather Flohr.

(b) A statement (November 2015) from Pastor Paul Jonker.

(c) A statement (1 December 2015) from Alexandre Flohr, the younger son of the appellant, stating that he is deeply concerned about the physical, mental and emotional health of his mother and his father. Deportation will have a tremendous impact on his mother especially, particularly in view of her age. She is a New Zealander and her family lives in New Zealand, and she has health problems and is in need of medical care and assistance. She and the appellant have started to rebuild their lives and find some healing and stability following very challenging years.

(d) A statement (25 November 2015) from Natacha Flohr, the daughter of the appellant stating that her father should not be deported. This will affect the wellbeing of her mother psychologically, emotionally and physically. She is a fifth generation New Zealander whose family have always upheld law and order. Her entire family has always contributed to and played a part in New Zealand. All of her mother's family and friends live in New Zealand and Australia. Her mother is 66 years old and been married to her father for 46 years. She has waited all this while to come home and enjoy her sunset years with her husband in her country.

(e) A statement (5 May 2016) from Reverend Peter Collett, a chaplain at the prison where the appellant spent over two years. Mr Collett

states that the appellant was a delightful, polite man who was very accepting of his situation. He never accepted the court ruling but always remained compliant and respectful of the system.

(f) A letter (16 September 2003) and supporting documents from the director of a company that was incurring losses, and which the appellant assisted.

(g) Submissions (29 June and 5 July 2016).

[36] In summary, the appellant submits:

(a) He has exceptional circumstances of a humanitarian nature. He has been in New Zealand lawfully since he was 19 years old, and was granted a residence visa 42 years ago. He has always complied with immigration rules. He has been married to his wife for nearly 47 years. His wife and three children are all New Zealand citizens and are entitled to the rights and safeguards of this country. There is an obligation to support the family unit. His wife has not found it easy to live in Tahiti in the past, and the last time she was there she was sick with fever.

(b) It would be unjust and unduly harsh for the appellant to be deported from New Zealand. If he is required to leave New Zealand his wife will be forced to choose between leaving her home country or remaining behind without him. If she leaves she is unlikely to return as she does not have the financial means to return. It will be hard for her to integrate into Tahitian life because of the social stigma attached to the appellant.

(c) It would not be contrary to the public interest to allow the appellant to remain in New Zealand. He has always upheld the law, and will not re-offend. He should be allowed to stay in the interests of family unity.

THE RESPONDENT'S CASE

[37] For the respondent, counsel has lodged:

(a) a copy of the file prepared for the Minister of Immigration before the Deportation Liability Notice was issued; and

(b) submissions (30 June 2016).

[38] In summary, the respondent submits:

(a) The appellant does not have exceptional circumstances of a humanitarian nature. He and his wife have a genuine option of returning to Tahiti together. They lived there for much of their married life and raised their children there. Their eldest son and a number of his siblings live in Tahiti, and there is no evidence to suggest that they would be destitute or devoid of support there. His family owns three properties in French Polynesia. The preference of the appellant and his wife to live in New Zealand is not supported by any compelling or unusual circumstances or hardships about returning to Tahiti. His time in New Zealand has been marked by financial difficulties, he has no property or significant assets here, he relies on his brother for accommodation, and none of his children live here.

(b) It would not be unjust or unduly harsh for the appellant to be deported from New Zealand. He has lived in Tahiti for most of his life. He is familiar with the language, lifestyle and customs, and is able to adjust to life there. His son and other family live there and his family owns property there. His wife has lived most of her married life in Tahiti and can choose to return there with the appellant. The offending that took place while the appellant was on a temporary entry class visa was part of a background of broader offending. His offending was serious, as indicated by the significant sentence of imprisonment.

(c) The appellant has not established that it would not be contrary to the public interest to allow him to remain in New Zealand. The Judge who sentenced the appellant noted his very high risk of re-offending and that he maintained the view that he had done nothing wrong.

> The offending is sufficiently serious that he would have to establish that he is at a low risk of re-offending.

STATUTORY GROUNDS

[39] The appellant's liability for deportation arose under section 161(1)(a)(ii) of the Immigration Act 2009 (the Act) because he has been convicted of an offence for which the court has the power to impose imprisonment for a term of three months or more if committed at any time when he held a temporary entry class visa.

[40] In spite of the appellant's long periods of residence in New Zealand, he cannot be made liable under section 161(1) of the Immigration Act 2009 (which one might normally encounter in a case of this kind), as 34 years have passed between the grant of a residence class visa to him (in 1974) and the date of his offending (starting in 2008). The Act requires an interval of no longer than 10 years between the grant of a residence class visa and the date of his offending. It is for this reason that the deportation liability notice was predicated upon that part of the offending which had occurred while the appellant held a temporary visa.

[41] Section 206(1)(c) of the Act provides the appellant with a right to appeal his/her liability for deportation. The grounds for determining humanitarian appeals against deportation are set out in section 207 of the Act:

> (1) The Tribunal must allow an appeal against liability for deportation on humanitarian grounds only where it is satisfied that –
>
> (a) there are exceptional circumstances of a humanitarian nature that would make it unjust or unduly harsh for the appellant to be deported from New Zealand; and
>
> (b) it would not in all the circumstances be contrary to the public interest to allow the appellant to remain in New Zealand.

[42] In regard to section 47(3) of the Immigration Act 1987 (which is analogous to section 207(1)(a) above), the majority of the Supreme Court stated in *Ye v Minister of Immigration* [2010] 1 NZLR 104 that three ingredients had to be established: (a) exceptional circumstances; (b) of a humanitarian nature; (c) that would make it unjust or unduly harsh for the person to be removed from New Zealand.

[43] Because there are family interests at issue in this appeal, regard must be had to the entitlement of the family to protection as the fundamental group unit of

society, exemplified by the right not to be subjected to arbitrary or unlawful interference with one's family – see Articles 17 and 23(1) of the 1966 *International Covenant on Civil and Political Rights* (the ICCPR). Whether such rights would be breached depends on whether deportation is reasonable (proportionate and necessary in the circumstances) – see the United Nations' Human Rights Committee's General Comment 16 (8 April 1988) and the discussions in *Toonen v Australia* (Communication No. 488/1992, UN Doc CCPR/C/50/D/488/1992, 4 April 1994) and *Madafferi v Australia* (Communication No. 1011/2001, UN Doc CCPR/C/81/D/1011/2001, 26 August 2004, para 9.8).

ASSESSMENT

Whether there are Exceptional Circumstances of a Humanitarian Nature

[44] As to whether circumstances are exceptional, the Supreme Court noted, in *Ye v Minister of Immigration*, at [34] that they "must be well outside the normal run of circumstances" and, while they do not need to be unique or rare, they do have to be "truly an exception rather than the rule".

[45] The appellant was born in Tahiti and for the first 19 years of his life was based there. He then spent six years in New Zealand, completing his schooling and a university degree. While here he married his wife, a New Zealand citizen, and they have been married for over 46 years. They then spent five years in New Caledonia. After a brief return to New Zealand, they spent the next 27 years in Tahiti and raised their three children there. Their eldest child still lives there. They then established a home in New Zealand and, over the next five years, the appellant travelled between here and Tahiti on business, spending most of his time in Tahiti. He and his wife then spent two years in New Zealand, followed by 13 months in Australia, where two of his children had settled. For the past five-and-a-half years the appellant and his wife have lived in New Zealand.

[46] The appellant appeals against his liability for deportation partly on the basis of his lengthy association of New Zealand, which extends over a period of 53 years. During this time he has been granted residence status on four occasions (in 1974, 1991, 2008 and 2011). After the first three occasions, his residence status lapsed as a result of his having left New Zealand and not having the appropriate returning resident visa allowing his return. For the remainder of his time in New Zealand, he has been here on temporary visas.

[47] The Tribunal acknowledges that the appellant's association with New Zealand extends over a lengthy period and spans much of his adult life. However, apart from a period of six years in his early adult life, it is only in recent years that the appellant has spent continuous time in New Zealand. Most of his life has been spent in his home country Tahiti, where he maintained close and strong links until nine years ago. His older son and two of his siblings and their families live there, and two others live in other parts of French Polynesia. His family owns property in French Polynesia. By contrast, in New Zealand, his only family apart from his wife is one brother with whom they live. Although his wife's sister lives in New Zealand, they have not been in recent contact with her or other members of her family, and their only support community is their church. He owns no property in New Zealand.

[48] The appellant also appeals against his liability for deportation on the basis of the interests of his wife. She is a New Zealand citizen whose family has strong roots in New Zealand. She states that, although she has lived overseas, her wish has always been to return to New Zealand as she regards this as her home country. She does not want to be separated from her husband, to whom she has been married for a long time and is devoted. She also does not wish to live in Tahiti, as she has found living there in the past difficult for her health, and because she fears social stigma arising out of the past behaviour of her husband in New Zealand. The appellant, her two younger children and the pastor of her church have expressed support for her being allowed to remain in New Zealand with the appellant.

[49] However, the Tribunal notes that the appellant's wife's actual ties to New Zealand are tenuous. None of her three children lives here. Her closest relative in New Zealand is her sister, who lives over 400 kilometres from the wife, and with whom she has not been in contact for some time. She owns no property and lives with her husband at the home of his brother, with little contact with other people apart from the members of her local community. Her main focus is on her husband and her three children who live overseas.

[50] The appellant's wife has stated that she will feel obliged to accompany her husband to Tahiti if he is deported there. The Tribunal notes that she lived for three decades with her husband in Tahiti, and raised her children there. Then, for the first three-and-a-half years after she set up a home in New Zealand, she spent most of her time in Tahiti. She will retain familiarity with the lifestyle and culture there. She will have the opportunity to be reunited with her elder son. These

factors should assist her in the difficult process of readjusting to living there again. There is no evidence that her present health needs cannot be met in Tahiti. As a New Zealand citizen she will retain the right to return to New Zealand should she choose or be required to do so.

[51] Looked at cumulatively, the appellant's circumstances are such that deportation may well cause him and his wife difficulty, hardship and emotional upset. However, the High Court has held that these circumstances do not suffice unless the circumstances themselves or their consequences can legitimately be characterised as exceptional – see *Nikoo v Removal Review Authority* [1994] NZAR 509 (HC) at 514. The High Court has held that the stringent statutory test of "exceptional circumstances of a humanitarian nature" cannot be equated with "compassionate factors", circumstances that are more than simply "routine", or "genuinely concerning circumstances". The High Court has noted "the high threshold for a finding of exceptional circumstances of a humanitarian nature" – see *Minister of Immigration v Jooste* [2014] NZHC 2882 at [45].

[52] Assessing the circumstances of the appellant, the Tribunal is not satisfied that he has met the high threshold required for exceptional circumstances of a humanitarian nature.

Conclusion on exceptional circumstances of a humanitarian nature

[53] Taking into account the above circumstances, the Tribunal is satisfied that there are not exceptional circumstances of a humanitarian nature in the appellant's case.

[54] An appeal must fail if there are no exceptional circumstances of a humanitarian nature. The Tribunal's finding that there are none in this case makes it unnecessary to consider the "unjust or unduly harsh" stage of the inquiry under the statutory test. However, for the sake of completeness, the Tribunal considers whether, even if there were exceptional circumstances, it would be unjust or unduly harsh for the appellant to be deported.

Whether it would be Unjust or Unduly Harsh for the Appellant to be Deported

[55] According to the Supreme Court in *Guo v Minister of Immigration* [2015] NZSC 132 at [9], this assessment is to be made "in light of the reasons why the appellant is liable for deportation and involves a balancing of those considerations against the consequences for the appellant of deportation".

[56] The appellant is liable for deportation because he has been convicted of an offence for which the court has the power to impose imprisonment for a term of three months or more if committed at any time when he held a temporary entry class visa. He committed the offence of causing loss by deception (over $1,000), for which the court had the power to impose a sentence of seven years' imprisonment, and the offence was committed (in September 2008) when he held a work visa.

[57] The specific offence which the appellant committed, while he held a temporary visa, involved the sum of $5,000. The Tribunal acknowledges that this offending, seen in isolation, is not of the most serious kind. However, the offence was the start of an ongoing series of offending, the rest of which occurred after the appellant was granted a resident visa in October 2008. The Tribunal considers that, in assessing whether it would be unjust or unduly harsh for the appellant to be deported from New Zealand, it would be artificial to exclude the remainder of the appellant's offending in New Zealand from the Tribunal's consideration. The Tribunal adopts the facts of the offending as set out in the charges (and supporting case summaries) to which the appellant pleaded guilty.

[58] In relation to the person from whom the appellant took $5,000 in September 2008, the total amount which he eventually received from her was $305,709. Over the course of 15 months, 10 people, all members of the appellant's church community, handed over a total of $875,483, in the course of 162 transactions, to the appellant. The appellant ultimately pleaded guilty to seven counts of causing loss by deception (over $1,000).

[59] The seriousness of the appellant's offending is indicated by the sentence of four years' imprisonment that he received. The Judge who sentenced the appellant noted that his offending involved "a significant series of frauds perpetrated on trusting and supportive friends", several of whom were "vulnerable by reason of their age". The Judge said that the appellant had "manipulated the Christian ethos" of his victims, and applied "emotional and unrelenting pressure" on them on multiple occasions. The Judge expressed alarm that the appellant still justified his behaviour, and said that this indicated a "very high risk of re-offending".

[60] To be balanced against the appellant's offending are his humanitarian circumstances. As identified above, these are his lengthy association with New Zealand and the interests of his wife. However, the Tribunal notes the significant nexus that the appellant has retained with his home country, Tahiti. If he and his

wife return there, they will be returning to the country with which they are well familiar, having spent three decades of their married life there. They will have the chance to be reunited with their elder son. The appellant has siblings and their families in Tahiti and other parts of French Polynesia, he and his family own property in French Polynesia, and he is fluent in the local language and familiar with the local lifestyle. These factors should assist with what will probably be a difficult period of readjustment especially for the appellant's wife. By contrast, in New Zealand, the appellant and his wife live without their children and with no property of their own. Their only close relatives comprise the appellant's brother with whom they live, and the appellant's wife's sister who lives some distance away and with whom they have had no contact for some time.

[61] Finally, the concern of the appellant's wife about her health is noted. She advises that, the last time they lived in Tahiti, she came down with fever. That is acknowledged but the fact that she has had fever in the past (the type of fever is unspecified) is not determinative of whether she will contract it again in the future. Further, she is able to access prophylactic medicine in Tahiti.

Conclusion on unjust or unduly harsh to deport

[62] Weighing the appellant's offending against his humanitarian circumstances, the Tribunal is satisfied that it is not unjust or unduly harsh for the appellant to be deported from New Zealand.

[63] The Supreme Court has stated that, if it is not shown that there are exceptional circumstances of a humanitarian nature that would make it unjust or unduly harsh for the person concerned to be removed from New Zealand, the inquiry ends there (*Ye v Minister of Immigration* [2010] 1 NZLR 104 at [30]; confirmed in *Helu v Immigration and Protection Tribunal* [2015] NZSC 28 at [157]). The Tribunal's finding that the appellant does not have exceptional humanitarian circumstances which would make it unjust or unduly harsh for him to be deported therefore makes it unnecessary to consider the 'public interest' limb of the test.

DETERMINATION

[64] For the reasons given, the Tribunal finds that there are no exceptional circumstances of a humanitarian nature that would make it unjust or unduly harsh for the appellant to be deported from New Zealand.

[65] The appeal is declined.

"Judge P Spiller"
Judge P Spiller
Chair

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Judge P Spiller
Chair