Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: DA 00529 2013

THE IMMIGRATION ACTS

Heard at Field House	**Determination Promulgated**
On 15 October 2013	**On 22 October 2013**

Before

UPPER TRIBUNAL JUDGE PERKINS

Between

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

ILIR HALIMI

Respondent

Representation:
For the Appellant: Mr L Tarlow, Senior Home Office Presenting Officer
For the Respondent: Mr B Halligan, Counsel instructed by Malik & Malik Solicitors

DETERMINATION AND REASONS

1. This is an appeal by the Secretary of State against a decision of the First-tier Tribunal to allow an appeal by the Respondent, who I will call the claimant, against a decision that the claimant should be deported pursuant to section 32(5) of the UK Borders Act 2007.

2. The grounds are of a kind which I have seen on many occasions recently, and refer to the approach of the Tribunal in the light of amendments to the Immigration Rules and the explanation of the effect of those amendments given by the Tribunal in the case of **MF (Nigeria) [2012] UKUT 00393**. The decision in **MF (Nigeria)** has been the subject of an appeal to the Court of Appeal reported at **MF (Nigeria) v SSHD [2013] EWCA Civ 1192**. It will on some occasion be necessary for me to look with great care at that decision. However, neither party before me made any representations about it. It is quite clear to me from my own reading of the case that although the Court, unlike the Tribunal, found the Rules to be an all-embracing, complete codification of the necessary qualities in an Article

8 decision, the assessment of proportionality is a judicial decision and that a decision allowed properly in accordance with jurisprudence based on Article 8 of the European Convention on Human Rights should be allowed under the Rules as an exception within the Rules. I see no need to say more about that today given that neither party urged me to look at the case.

3. The first substantial point taken against the decision of the First-tier Tribunal was that it did not express any proper regard for the public interest in deporting somebody who, like the claimant, has been convicted of offences involving the supply of Class A drugs. I do not agree with that criticism. It is justified in the sense that there is not a particular paragraph of the determination where the Tribunal reminds itself that there is a strong public interest in removing people who are convicted of such offences. However, I find it wholly unfounded to suggest that the Tribunal was not aware of the seriousness of the offence of which the claimant was convicted.

4. At paragraph 2 of the determination the Tribunal said, correctly, that it was dealing with an appeal against a deportation order. This clearly recognises that the Tribunal appreciated that the claimant had done something sufficiently serious to make him be the subject of a deportation order. It is trite and clear that the Tribunal understood that the claimant had done something that was seriously wrong. A relevant extract from the Crown Court judge's sentencing remarks is set out at paragraph 4 of the determination. At paragraph 31 of the determination the Tribunal reminded itself that under Section 32(5) of the United Kingdom Borders Act 2007 the respondent must make a deportation order where a person is convicted in the circumstances in which this claimant has been convicted.

5. Judges dealing with deportation appeals are not students writing essays where it is necessary to impress the examiner by stating things that might be thought to be plain and obvious. It is necessary to write a determination which shows that the relevant issues have been analysed and a rational decision reached. I regard it as self-evident in the absence of a contrary indication that a judge would appreciate the strong social concern about the misuse of drugs and the undesirability of people involved in drugs offences being established in the United Kingdom.

6. Here the Tribunal, including an experienced non-legal member, clearly realised that this was a serious offence. Indeed, it is plain from paragraph 39 of the determination that the Tribunal was thoroughly unimpressed with the appellant's own conduct and indicated that the appeal would have been dismissed if his rights were the only consideration. Against this background it is wrong to suggest that the Tribunal did not appreciate that there was a strong public interest in removing the claimant.

7. The Tribunal did not allow the appeal because it took a slight view of the claimant's criminality but, as is so often the case when appeals against deportation are allowed, because of the effect of deportation on the claimant's immediate family.

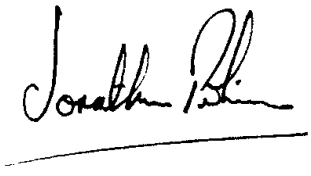
8. It is particularly clear from paragraph 39 of the determination that the Tribunal had regard to the interests of all the people affected by deportation. This it was plainly required to do. It concluded that the impact of removal on the claimant's daughters would be just too much for them to have to bear. I will set out paragraph 39 in its entirety because I consider it a very important part of the determination. The Tribunal said:

> "Were we considering the case of the claimant as a single man, or even in conjunction with his wife alone, it is clear that he would not be able to benefit from the Immigration Rules and the appeal would accordingly have to be dismissed. However, Xhorxhina is only 15 (later this month), whilst Xhesika is only just 13 years old. Kevin will be 4 years old later this month. All are British citizens, and entitled to the benefits that ensue. Their mother has established a life for them in this country, having left Kosovo in terrible circumstances, and they have not returned. She, of course, also has another child, the appellant's step-son, who is aged 9. All of them would face enormous disruption were they to go to Albania with the appellant. Equally, in the case of the girls, in particular, we are satisfied that, their father having 'miraculously' come back into their lives, it would be extremely damaging were the relationship to now be effectively severed. We appreciate that, with modern technological advances, there are many ways of keeping in contact, but these would be very inadequate given the relationships which they have enjoyed with him."

9. It is important to remember the savage nature of a deportation order. A person who has been deported from the United Kingdom usually cannot be readmitted for a period of ten years. The consequences on family life are usually far greater than, for example, serving a prison sentence, where for all the necessary indignities and difficulties of prison life, positive steps are taken to preserve relationships between close relatives and provision made for children to see their parents.

10. Public policy encourages stable family life and recognises that, generally, children benefit from a close relationship with both of their parents. This is why considerable weight is given to family life between parents and children in Article 8 balancing exercises. Here the First-tier Tribunal and made a decision not for the sake of the claimant but for the sake of his children. It is not a decision that I can regard in any way as wrong in law. I regard it as reasoned and humane, and whilst there may be technical criticisms to be made of the way that the Tribunal expressed itself consequent on the decision of the Court of Appeal in **MF**, its reasons are clear and are sound in law.

11. Given the way that I was addressed about the effect of **MF** I do not think it necessary or desirable for me to do any more than to say that I dismiss the Secretary of State's appeal, so the decision of the First-tier Tribunal shall stand.

Signed
Jonathan Perkins
Judge of the Upper Tribunal  Dated 21 October 2013