Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: DA/00639/2012

THE IMMIGRATION ACTS

Heard at Field House	**Determination Promulgated**
On 19 June 2013	**On 16 July 2013**
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Before

UPPER TRIBUNAL JUDGE GRUBB

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

SJE

Respondent

Representation:

For the Appellant: Mr C Avery, Senior Home Office Presenting Officer
For the Respondent: Mr M Jayfurally of Callistes Solicitors

DETERMINATION AND REASONS

1. The Secretary of State appeals against a decision of the First-tier Tribunal (Judge Ross and Mrs J Holt) who allowed an appeal against the Secretary of State's decision that s.32(5) of the UK Borders Act 2007 applied. For convenience, I will refer to the parties as they were before the First-tier Tribunal.

2. In the course of giving my reasons in this determination it is necessary to refer to the appellant's son. Although neither party addressed me on this issue, it is uncontroversial that there is no valid reason why the appellant's son should be identified. Consequently, pursuant to rule 14(1)(b) of the Tribunal Procedure (Upper Tribunal) Rules 2008 (SI 2008/2698) I make an order prohibiting the disclosure or publication of any matter likely to lead directly or indirectly to the appellant's son's being identified. As a consequence, the appellant should only be identified as "SJE" and his son as "SE".

The Background

3. The appellant entered the United Kingdom on 2 April 2001 with leave to enter as a visitor valid until 1 October 2001. On that date, he submitted an application for an extension of stay as a student which was granted until 20 June 2002. On 17 April 2002 the appellant made a claim for asylum based upon a fear of persecution from a criminal gang in Jamaica. That claim was refused on 13 May 2002 and was not subject to appeal. On 26 June 2002 the appellant applied for further leave to remain as a student but, it would appear, no decision was reached on that application. However, on 30 May 2006 the appellant applied for indefinite leave on the basis that he was a dependent of his mother who was settled in the UK. On 20 June 2006 the appellant was granted indefinite leave to remain.

4. On 20 May 2010 the appellant was convicted at Croydon Crown Court of attempted robbery and was sentenced to a period of 8 years imprisonment which was subsequently reduced by the Court of Appeal (Criminal Division) to 6 years imprisonment. On 12 August 2012 the appellant was served with a notice that he was liable to deportation under the automatic deportation provisions in the UK Borders Act 2007. Thereafter, on 14 September 2012 the Secretary of State made a deportation order against the appellant. The appellant became eligible for release on licence on 16 September 2012 but was, on 11 September 2012 detained under the immigration laws. On 7 November 2012, he was granted bail by the First-tier Tribunal.

5. The appellant appealed to the First-tier Tribunal. The First-tier Tribunal dismissed the appellant's appeal under para 398 of the Immigration Rules (Statement of Changes in Immigration Rules, HC 395 as amended) on the basis that he had not established that his circumstances were "exceptional". The First-tier Tribunal, however, allowed the appellant's appeal under Article 8 of the ECHR on the basis that his deportation would be a disproportionate interference with the family life established between him and his mother and son in the UK. The Secretary of State was granted permission to appeal by the First-tier Tribunal on 14 May 2013. Thus the appeal came before me.

The First-tier Tribunal's Decision

6. Before the First-tier Tribunal the appellant relied upon Article 8 of the ECHR. His earlier asylum claim was not pursued. The First-tier Tribunal had a substantial bundle of documents running to some 305 pages submitted on behalf of the appellant. Contained within that bundle are witness statements from the

appellant (pages 8-13); the appellant's mother (pages 14-17); and the appellant's sister (pages 18-21). All three witnesses gave oral evidence before the First-tier Tribunal.

7. The facts maybe summarised as follows. The appellant came to the United Kingdom when he was 19 years of age from Jamaica. He has two sisters who live there but his father is deceased. His mother has lived in the UK since 2000. Following a relationship which has now ended, the appellant's son (SE) was born on 15 August 2007. He is a British citizen. The appellant's son lived with his mother for only a short while of about 6-8 weeks. Thereafter, the appellant's son lived with the appellant and his mother who shared his care. His sister also lived with them together with her two children. Between December 2008 and September 2009 when the appellant was arrested, the appellant and his son lived separately from the appellant's mother but she was still involved in looking after him. After the appellant's arrest, the appellant's son went to live with the appellant's mother and his sister and her two children. Since the appellant's release, the appellant, his son, his mother and his sister and her two children have lived together. Those children are aged 15 and 8. The evidence before the First-tier Tribunal was that whilst he was in prison the appellant's mother brought his son to visit him once or twice a week.

8. The evidence before the First-tier Tribunal was that in 2005 the appellant had been involved in a very serious car accident and had sustained a major head injury. The appellant's evidence was that he did not have any medical condition for which he was receiving treatment but he suffered from memory loss. At para 12 the First-tier Tribunal quoted from a social services report (at page 43 of the bundle) where it is stated that:

> "Father is dependent upon [his mother] emotionally and practically and has not functioned as an independent person for years. He had acquired a brain injury and I have sent out a fax….requesting for outcome of scan. Possible side effects was reported to include aggression, impatience and forgetfulness. "

9. The appellant's mother gave evidence concerning the effect of the injury on the appellant (at para 13 of the determination) that he became:

> "…aggressive, impatient and forgetful. Sometimes things have to be explained more than once to him."

He also became dependent upon her emotionally and could not function on his own.

10. The appellant's mother gave evidence that the appellant now looks after his son and takes him to school and provided personal care for him. Her evidence was that the relationship between the appellant and his son was very close and that she thought it would be seriously detrimental to the appellant's son if the appellant had to return to Jamaica.

11. The appellant's sister also gave evidence that as a result of the 2005 car accident the appellant's behaviour had changed and that he would easily become agitated and forgetful. Her evidence was that the appellant became very reliant on his mother. She said that the appellant was a very caring and

loving father and that he was very much involved with his son's life and that they are really close. She gave evidence that the appellant helps with his son's homework and speaks to his teacher and they play and watch football together.

12. Before the First-tier Tribunal, the appellant relied upon a report prepared by Dr Walker dated 14 December 2012 who is a Chartered Psychologist with expertise in the field of child and family psychology. The report is at pages 290-302 of the appellant's bundle. The First-tier Tribunal summarised Dr Walker's reports as follows at paras 17-18:

> "17. In relation to the appellant, Dr Walker noted that his presentation suggested that he may have some cognitive deficits. At times his ability to process information appeared limited as did his short term memory and verbal expression skills. He benefitted from having time to process information presented in jargon free language before being required to respond. He told Dr Walker that he had experienced some difficulties since his car accident.
>
> 18. Dr Walker's assessment of the appellant's son SE, was that he views his father as a primary attachment figure. He appeared relaxed when in close proximity to his father but displayed signs of separation anxiety when separated from him for a period of time and when unsure as to when he was returning. Dr Walker has further stated that the relationship between SE and the appellant is such that SE experiences his father as playing a very significant part in his life. Whilst it is noted that the appellant could maintain contact with SE via technology, for a child of SE's age it is the direct contact, involvement and anticipation that his father is in his everyday life that will aid his emotional development. Separation could result in SE experiencing cognitive, psychological, emotional, behavioural, physical and practical difficulties."

13. Having set out the circumstances of the appellant and his family at paras 19 and 20, the First-tier Tribunal dealt with the appellant's offending as follows:

> "19. We have considered the evidence in relation to the offence for which the appellant was convicted. He pleaded guilty, on the second day of trial to one count of attempted robbery of an individual and was sentenced to 8 years imprisonment. He appealed against the length of his sentence. ….. At paragraph 18 of the judgment, Mr Justice Hickinbottom states,
>
> > *"we consider the position of [SJE] to be different. Although involved in a joint venture to rob [Q] using the steering wheel lock as a weapon, the evidence suggested that his role was not as great as that of [O], whose fingerprints and DNA linked him both to the weapons and to the jewellery. [O] attacked [Q], whereas [SJE] did not. [SJE] certainly did not play a greater part than [O] in the events of that evening. However, in our view, the greater difference between the men was in respect of their criminal records. [SJE] is 28. His record is very light. He has received cautions and fines for driving matters and for possession of cannabis – nothing near as serious as this crime or [O's] previous convictions…Serious as this offence was, bearing in mind [SJE's] role in it and his relatively good previous record, we consider that the sentence of 8 years was excessive, and manifestly so. We consider that, after a trial,*

the sentence would appropriately have been seven years; and after his lat plea, it ought to have been six years."

20. The appellant has been assessed as a medium risk of harm to the public. We note that he was released from his custodial sentence on 16 September 2012 into immigration detention. He was granted immigration bail on 7 November 2012 and remains on licence until 17 September 2015. "

14. Having set those matters out, at paras 25 and 26 of its determination the First-tier Tribunal briefly considered para 398 of the Immigration Rules and noted that the public interest in deporting the appellant as a result of him receiving a term of imprisonment of 6 years was "strong" and would only be displaced "in exceptional circumstances".

15. At para 26 the First-tier Tribunal found that the appellant's circumstances were not "exceptional":

"26. The appellant's circumstances, as we find them, are that he now lives in a close family unit with his mother, son and sister. We accept that the appellant has cognitive difficulties which will make it very difficult for him to obtain employment. We accept that he is very close to his son and is dependent upon his mother. Whilst we find that the appellant's circumstances are difficult, we do not find them to be exceptional. Accordingly the appeal under the Immigration Rules is dismissed."

16. The appellant does not challenge that finding.

17. Having, therefore, dismissed the appellant's appeal under the Immigration Rules, the First-tier Tribunal went on at paras 27-32 to consider the appellant's case under Article 8 of the ECHR. The First-tier Tribunal said this:

"27. The fact that we do not find any exceptional circumstances in this case, does not mean that the appellant's deportation is proportionate, accordingly, we have considered the matter outside of the Immigration Rules, under Article 8 ECHR.

28. We accept that the appellant's deportation will amount to an interference with is family life with his mother and son and engages Article 8 ECHR. Given that the appellant is subject to automatic deportation, the deportation order is in accordance with the law. The issue is whether the deportation order is proportionate to the legitimate aim of the maintenance of law and order.

29. We have taken into account that a primary consideration as to the balancing exercise is the interests of welfare of the appellant's son who is now aged 6. We find that notwithstanding that the appellant has not been the primary carer for the first 5 years of his son's life, he does have a strong emotional attachment with is son. We accept the evidence of Dr Walker, that his son regards the appellant as a primary attachment figure. We consider that the effect on his son, of the appellant's deportation, could be extreme as set out in Dr Walker's report. The appellant's son is a British citizen who is in the custody of his grandmother and therefore would remain in the UK. We find that the prospect of his son being able to travel to Jamaica for visits is negligible, for financial reasons alone. We find that the likelihood is that the effect of deportation would be permanent separation between the appellant and his son. We find that

the appellant does have cognitive difficulties as described in the social services report. We accept the evidence that he is totally reliant upon his mother emotionally. We regard it as highly unlikely that he would be able to obtain any employment in Jamaica. We find that he could be destitute there. We accept that the appellant has effectively cut all ties with Jamaica, having lived in the United Kingdom for 12 years without returning home.

30. We acknowledge that the appellant has been convicted of a serious criminal offence and was sentenced to a long period of imprisonment. We consider that the strong public interest in the deportation of those convicted of serious criminal offences weighs heavily in favour of it being proportionate. However, we consider that the interference on the appellant's family life and the effect on his 6 year old son also weigh heavily against his deportation being proportionate. We have had regard to LD (Article 8 best interests of child) Zimbabwe [2010] UKUT 278 (10 August 2010) in which it was stated that the interests and welfare of minor children are a primary consideration. Weighty reasons would be required to justify separating a parent from a lawfully settled minor child or separation of a child from a community where they had lived most of their life. The general conditions in the country of removal are also relevant to the assessment. In considering the general conditions in Jamaica, we have had regard to the appellant's evidence, in relation to his asylum claim concerning the presence of a "gang" culture there, which is supported by background evidence, and the appellant's vulnerability due to his lack of ties and economic standing.

31. We have also had regard to QJ (Algeria) v SSHD [2010] EWCA Civ 1478 (21 December 2010) in which the Court of Appeal distinguished between the interests of the child being a primary consideration but not necessarily the primary consideration where there might also be strong public interest considerations in deportation cases.

32. We have carefully weighed the competing interests in this case. Whilst we find that the public interest in deportation is strong, we conclude that, given the appellant's personal characteristics and the effect of being separated from his son and family in the United Kingdom, his deportation would amount to a disproportionate interference. Taking all of above factors into account, we come to the conclusion that the appellant's deportation is disproportionate to the legitimate aim of the maintenance of law and order."

18. Accordingly, the Tribunal allowed the appellant's appeal under Article 8.

The Secretary of State's Grounds

19. The Secretary of State's grounds, upon which permission to appeal was granted, are as follows:

"1. It is respectfully submitted that the Tribunal has erred in law. At paragraph 20 the Tribunal has noted that the appellant has been assessed as a medium risk of harm to the public. However, it is respectfully submitted that the Tribunal has failed to make any findings of their own in regards to the appellant's risk of harm or re-offending and have only found at paragraph 30 that his offence was a serious one.

2. It is respectfully submitted that the Tribunal has failed to provide adequate reasons for what role the appellant plays in his son's life given that he

does not have custody of his son. Given that the Tribunal has found at paragraph 29 that he is totally reliant on his mother emotionally, by failing to provide these reasons it is submitted that the Tribunal's findings as to the best interest of his son and whether it is proportionate to remove him are flawed.

3. It is further submitted that the Tribunal has failed to provide adequate reasons as to how the appellant is dependant upon his mother beyond normal emotional ties. Whilst the Tribunal has found at paragraph 20 (sic) that the appellant would be destitute, the Tribunal has failed to provide adequate reasons for this finding, especially given that he has 2 sisters in Jamaica who could support him and provide him with emotional support as his mother has done. It is submitted that the Tribunal has failed to provide adequate reasons as to why the appellant's mother and son could not relocate to Jamaica. It is respectfully submitted that there are no insurmountable obstacles to the appellant's mother and son from joining him in Jamaica and that any separation would be of choice and not necessity. It is submitted that financial reasons for being unable to visit the appellant is not adequate reasons for finding that the appellant would not be able to continue his relationship with his son if deported.

4. It is also respectfully submitted that the Tribunal has failed to provide adequate reasons for why the appellant's child's best interests outweigh the public's interest to deport him.

5. It is respectfully submitted that by failing to provide adequate reasons for these issues the Tribunal's findings on proportionality is flawed.

6. Permission to appeal is respectfully sought so that a fresh decision can be made in regards to the human rights decision."

20. In his submissions, Mr Avery who represented the Secretary of State focussed upon ground 1. He made no oral submissions in relation to the remaining paragraphs 2-6 although he stated that the Secretary of State continued to rely on them. I will return to the other grounds shortly.

Discussion: (1) Ground 1

21. Mr Avery submitted that the First-tier Tribunal had failed to take into account the evidence in the OASys report (at pages 328 and 429) that the appellant was a "medium risk" of causing serious harm to the public. He accepted that the Tribunal had referred to that risk at para 20 of its determination but had made no mention of it in its reasons for finding the appellant's deportation to be disproportionate in paras 27-32. The only reference to the offence was in para 30 where it was described as a "serious criminal offence". Mr Avery submitted that the First-tier Tribunal's assessment of proportionality was, consequently, unbalanced. He also submitted that the First-tier Tribunal had not, even in para 19 where it dealt with the appellant's offending, considered the actual circumstances of his offence. Mr Avery relied upon the First-tier Tribunal's finding under the Rules that the appellant's circumstances were not "exceptional" and he also referred me to the recent decision of the Court of Appeal in SS (Nigeria) v SSHD [2013] EWCA Civ 550.

22. Mr Jayfurally, on behalf of the appellant submitted that the First-tier Tribunal had referred to the appellant's risk of re-offending in para 20 and it should not

be understood not to have had that in mind when shortly after in its determination it reached its findings on proportionality. He acknowledged that perhaps the First-tier Tribunal's reasoning could have been fuller but, he submitted, it had done enough and it was open to the First-tier Tribunal to reach the conclusion that it did.

23. Both ground 1 and Mr Avery's submission supporting it seeks to argue that the First-tier Tribunal failed to take into account a relevant matter, namely the appellant's risk of re-offending in reaching its conclusion that his deportation would not be proportionate. In its terms, this ground does not argue that the First-tier Tribunal's decision was not properly open to it on the evidence. In particular, it raised no issue of perversity.

24. It is clear that in paragraph 20 of its determination the First-tier Tribunal acknowledged and accepted that the appellant was a "medium risk of harm to the public". At para 19, the First-tier Tribunal quoted a passage from the Court of Appeal (Criminal Division) judgement setting out the elements of the appellant's offending which that court considered relevant in setting the appropriate sentence for the appellant and, in particular, in concluding that the sentence of 8 years was excessive and that the appropriate sentence was one of 6 years imprisonment.

25. Although the First-tier Tribunal did not make specific reference to that in para 30 of its determination, it did note that the appellant had been convicted of a "serious criminal offence" and that he was "sentenced to a long period of imprisonment". The First-tier Tribunal then noted that:

> "We consider that the strong public interest in the deportation of those convicted of serious criminal offences weighs heavily in favour of it being proportionate."

26. The Tribunal's determination has to be read as a whole. The Tribunal set out the appellant's risk of re-offending in para 20 and dealt with the circumstances of his offending at para 19. It would require a wholly unjustified distortion in the First-tier Tribunal process of reaching its decision to conclude that what had been set out clearly and unequivocally in paras 19 and 20 had simply been omitted from its thinking in paras 27-32 (in particular at 30) in weighing the public interest against the interference with the appellant's family life in finding that his deportation would not be proportionate.

27. In my judgement, the Tribunal did have well in mind the risk that the appellant posed to the public. Nothing that the Tribunal said in para 30 suggests otherwise and the Tribunal's clear finding that there was a "strong public interest" that "weigh heavily" in favour of the appellant's deportation being proportionate was a proper reflection of the seriousness of his criminal offending consistent with the approach of the Secretary of State set out in para 398 of the Immigration Rules and the legislative policy in favour of deporting "foreign criminals" in the UK Borders Act 2007. Nothing, in my judgement, said by the Tribunal in para 30 of its determination is inconsistent with the view (most recently) expressed by Laws LJ in SS (Nigeria) at [54] where he said:

> "54. …while the authorities demonstrate that there is no rule of exceptionality for Article 8, they also clearly show that the more pressing the public interest in removal or deportation, the stronger must be the claim under Article 8 if it is to prevail. The pressing nature of the public interest … is vividly informed by the fact that by Parliament's express declaration the public interest is injured if the deportation is not effected. Such a result could in my judgement only be justified by a very strong claim indeed."

28. As I have already indicated, ground 1 of the Secretary of State's grounds of appeal relied upon by Mr Avery in his oral submissions does not seek to challenge the rationality of the First-tier Tribunal's decision. Rather, it is restricted to arguing that the First-tier Tribunal fell into error in failing to take into account the appellant's risk of re-offending. For the reasons I have given, that ground is not made out.

Discussion: (2) Remaining Grounds

29. Mr Avery did not seek to address me on the remaining grounds set out in the Secretary of State's application for permission to appeal. These grounds argue, in essence, that the First-tier Tribunal failed to give adequate reasons for its findings:

    (1) that the appellant is dependent upon his mother beyond normal emotional ties so as to give rise to "family life";

    (2) as to the role that the appellant plays in his son's life given that he does not have custody of his son;

    (3) that the appellant's mother and son could not relocate to Jamaica;

    (4) that the best interests of the appellant's child outweigh the public interest in deporting the appellant.

30. Although Mr Avery made no oral submissions in relation to these grounds, Mr Jayfurally briefly dealt with the grounds in his submissions.

31. In relation to a so-called "reasons" challenge the correct approach was recently summarised by the Chamber President (Blake J) in Shizad (Sufficiency of Reasons: Set Aside) Afghanistan [2013] UKUT 00085 (IAC) at [10] as follows:

> "10. We would emphasise that although there is a legal duty to give a brief explanation of the conclusions on the central issue on which the appeal is determined, such reasons need not be extensive if the decision as a whole makes sense, having regard to the material accepted by the Judge. Although a decision may contain an error of law where the requirements to give adequate reasons are not met, this Tribunal would not normally set aside a decision of the First-tier Tribunal where there has been no misdirection of law, the fact-finding process cannot be criticised and the relevant Country Guidance is taken into account, unless the conclusions that the judge draws from the primary data before him were not reasonably open to him."

32. Again, I emphasise that neither Mr Avery nor the grounds argue that the First-tier Tribunal's decision was "not reasonably" open to it.

33. In respect of the appellant's relationship with his mother, the evidence from the witnesses was that, as a result of the injuries he suffered in the serious car accident in 2005, he was dependent emotionally upon his mother with whom he lived. That was also supported by the social services report although it is not entirely clear whether that was an independent view reached or one based upon what the report writer had been told. At para 29 the First-tier Tribunal stated that:

> "29. We accept the evidence that he is totally reliant upon his mother emotionally."

34. It does not seem that the evidence concerning the appellant's head injury and its consequences was directly challenged before the First-tier Tribunal. In any event, the First-tier Tribunal was entitled to accept that evidence and to find, as it did in para 29, that the appellant was "totally reliant" upon his mother. On the basis of that finding, even though the appellant is 32 years of age, the Tribunal was entitled to find that that amounted to "family life". That finding is entirely consistent with the jurisprudence concerning the nature of "family life" between an adult offspring and its parents set out in summary by the Upper Tribunal in Ghising (Family Life – Adults – Ghurkha Policy) [2012] UKUT 00160 (IAC) at [50]-[62] and approved by the Court of Appeal in R (Gurung and Others) v SSHD [2013] EWCA Civ 8 at [46].

35. As regards the appellant's relationship with his son, the First-tier Tribunal had before it an expert report of Dr Walker which is summarised at paragraph 17 and 18 of the determination which I set out earlier. On the basis of that report, the Tribunal was entitled to find that the appellant was a "primary attachment figure" for his son and that his son would experience, as the First-tier Tribunal put it in para 18, "cognitive, psychological, emotional, behavioural, physical and practical difficulties". That was Dr Walker's view even in the light of the fact that the appellant's son also lived with the appellant's mother who had custody of him. It was the reality of the appellant's relationship with his son to which Dr Walker's report spoke and which the Tribunal was fully entitled to take into account, despite the appellant's mother having custody of the child, in reaching its findings on the impact upon the appellant and his son's "best interests" if the appellant were deported.

36. In relation to the claim that the Tribunal failed to provide adequate reasons as to why the appellant's mother and his son could not relocate to Jamaica, in response to an enquiry from me Mr Avery accepted that it was the Secretary of State's position that it was not reasonable to expect a British citizen child to relocate outside the European Union. That was the Secretary of State's confirmed position before the Upper Tribunal in Sanade and Others (British Children -Zambrano – Dereci) India [2012] UKUT 00048 (IAC) and clearly it continues to be so. I need say nothing more about this ground other than to state that it is without merit.

37. Turning to the issue of the child's best interests, it is clear that the Tribunal correctly directed itself on the relevance of the best interests of the appellant's son and that they were not necessarily determinative (see ZH(Tanzania) v SSHD

[2011] UKSC 4 *per* Lady Hale at [26]). Those interests can be outweighed by the public interest in the deportation of a "foreign criminal" if sufficiently pressing (see SS(Nigeria) *per* Laws LJ at [58]). At para 31 the First-tier Tribunal reminded itself that the best interests of the appellant's son were "a primary consideration but not necessarily the primary consideration" and then reminded itself that "there might also be strong public interest considerations in deportation cases" before finding that the appellant's deportation would not be proportionate. The First-tier Tribunal took those into account, as it was required to do, and "carefully" weighing them against the public interest, concluded that the impact upon the appellant and his son outweighed the public interest. The First-tier Tribunal's reasons, linked to their earlier factual findings, adequately explain to the reader its ultimate conclusion that the Secretary of State has failed to establish that the appellant's deportation is proportionate.

38. Reminding myself of what was said in Shizad, whilst the First-tier Tribunal reasons may not be extensive, their decision that the appellant's deportation would be disproportionate makes sense reading the determination as a whole. The Tribunal makes clear finding on the nature and dependency of the appellant's relationship with his mother and also clear findings on the nature of the relationship between him and his son and the likely effect on his son if the appellant is deported to Jamaica where it would not be reasonable to expect the appellant's son to relocate as a British citizen and with the attendant financial difficulties of visits by his son to Jamaica. Having regard to the best interests of the appellant's son and the impact upon the appellant's family life if deported, the Tribunal was entitled to find, despite the serious nature of the appellant's offending which it expressly recognised and the strong public interest in deportation given that offending, that the Secretary of State had not established that the appellant's deportation would be proportionate.

39. As I have already indicated, neither the grounds nor Mr Avery's submissions challenged the First-tier Tribunal's assessment of proportionality on the basis it was irrational or perverse. A mere disagreement with the First-tier Tribunal's finding that the appellant's Art 8 rights outweighed the public interest does not in itself demonstrate any legal error even if not every judge would necessarily have reached the same view given the serious nature of the appellant's offending. The appellate function of the Upper Tribunal is to correct any legal error identified in the First-tier Tribunal's decision. In this appeal, there are none.

40. For the above reasons, the Secretary of State's appeal is dismissed.

Decision

41. The First-tier Tribunal did not err in law in allowing the appellant's appeal under Article 8 of the ECHR. That decision stands.

Signed

A Grubb
Judge of the Upper Tribunal

Date: