Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: DA/01000/2013

THE IMMIGRATION ACTS

Heard at Newport	**Determination Promulgated**
On 9 October 2013	**On 30 October 2013**

Before

UPPER TRIBUNAL JUDGE GRUBB

Between

DS

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Ms C Grubb instructed by Hoole & Co Solicitors
For the Respondent: Mr I Richards, Home Office Presenting Officer

DETERMINATION AND REASONS

1. This appeal is subject to an anonymity order made by the First-tier Tribunal pursuant to rule 45(4)(i) of the Asylum and Immigration Tribunal (Procedure) Rules 2005 (SI 2005/230). Neither party invited me to rescind the order and I continue it pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008 (SI 2008/2698).

Background

2. The appellant is a citizen of Jamaica who was born in 1965. He entered the United Kingdom on 29 April 2002 with entry clearance as a visitor. The appellant overstayed. On 4 July 2011, the appellant applied for further leave to remain on the basis of his relationship with ("KJF"), with whom he had begun a relationship in 2005, and their child ("JLSF") who was born in 2008. That application was refused on 17 August 2011 without any right of appeal.

3. On 26 May 2012, the appellant was convicted, following guilty pleas, at the Bristol Crown Court of two offences of possession with intent to supply Class A drugs, namely cocaine and heroine. On 21 June 2012, he was sentenced to two concurrent periods of eighteen months imprisonment. On 7 December 2012, the Secretary of State wrote to the appellant seeking reasons why he should not be deported following his conviction and sentence. The appellant responded on 6 February 2013. On 26 April 2013, the Secretary of State made a decision that the automatic deportation provisions in s.32(5) of the UK Borders Act 2007 applied. The appellant is now subject to a deportation order as a result of that decision.

4. The appellant appealed to the First-tier Tribunal. He relied upon Article 8 of the ECHR and claimed that his deportation would be a disproportionate interference with his "family life" with KJF and their son JLSF. In a determination dated 9 July 2013 the First-tier Tribunal (Judge Whiting and Ms V S Street JP) dismissed the appellant's appeal. On 2 August 2013, the First-tier Tribunal (Judge Plumptre) granted the appellant permission to appeal to the Upper Tribunal. Thus, the appeal came before me.

Discussion

5. Ms Grubb, who represented the appellant, relied upon her grounds of appeal and written skeleton argument which she amplified in her oral submissions.

Adjournment Decision

6. Ms Grubb submitted that the First-tier Tribunal had erred in law as it had failed to deal with one basis upon which the appellant had sought an adjournment of the hearing. Ms Grubb submitted that, at the hearing, she had sought an adjournment on three grounds. First, in order that important documents could be obtained from the appellant's instructing solicitors but which had not been submitted in the appeal. Secondly, in order that KJF could attend the Tribunal in order to give oral evidence. Thirdly, in order, in effect, for the appellant to make an asylum claim. Ms Grubb did not take issue with the Tribunal's reasoning in paras 4-6 which led it to refuse the adjournment on the first and third bases upon which the adjournment was sought, however, she submitted that the Tribunal had simply not dealt with the application on basis two.

7. Ms Grubb relied upon rule 21 of the First-tier Tribunal Procedure Rules (SI 2005/230) which in rule 21(2) states that the Tribunal "must not" adjourn a hearing: "unless satisfied that the appeal cannot otherwise be justly

determined." She referred me to rule 21(3) which states that in relation to an application "in order to allow [a] party more time to produce evidence", the Tribunal "must not" adjourn a hearing unless satisfied that: (1) the evidence relates to a matter in dispute in the appeal; and (2) it would be unjust to determine the appeal without permitting the party a further opportunity to produce evidence; and (3) where the non-production of the evidence arises out of a failure to comply with directions, that the party has provided a "satisfactory explanation" for that failure.

8. Ms Grubb submitted that the Tribunal had not properly dealt with the adjournment on the basis of KJF's non-attendance in accordance with rule 21.

9. I do not accept Ms Grubb's submissions on this issue. It is clear in paras 4-6 of its determination that the Tribunal did not expressly deal with any application to adjourn the hearing on the basis that KJF wished to attend and give oral evidence. Although Ms Grubb did not challenge the Tribunal's reasoning in para 4 in relation to the first basis upon which an adjournment was sought, there is some overlap, as will shortly become clear, therefore I set out the Tribunal's reasoning as follows:

> "4. Prior to the commencement of the hearing the appellant's representative requested an adjournment, the reasons for which were twofold. Firstly that representative had been told by the appellant on the morning of the hearing that there were important documents in the possession of the appellant's instructing solicitors from his former partner in relation to his Article 8 claim which had not been submitted and secondly that the appellant had sought to make a claim for asylum. In respect of the first matter a short adjournment was granted to enable the appellant's representative to contact instructing solicitors to arrange for the transmission by fax to the court of any relevant documents in their possession. It transpired that those solicitors had no such documents. We were informed that the appellant made a telephone call to a private individual; that individual had subsequently spoken with the appellant's representative, and a hand-written document was subsequently faxed to the appellant's representative at court by that individual, the contents of which we note below. That being the only document [the contents of which had been said to have been sent to the appellant's instructing solicitors] we were satisfied that refusing the adjournment request would not prevent the just disposal of the appeal in conformity with paragraph 21 of the First Tier Asylum and Immigration Tribunal (Procedure) Rules 2005 upon such ground."

10. As can be seen, the Tribunal (following a short adjournment) received by facsimile one document. That document is contained in the appeal file and consists of two copied pages (four pages in the original) and purports to be a letter from KJF in support of the appellant's appeal. There would appear to have been no other documents which, although initially said to exist, were in fact not in the possession of the appellant's solicitors. Ms Grubb did, in her skeleton argument, repeat the allegation that the Tribunal had "wrongly assumed" that there were no more documents. At the outset of the hearing, she invited me to delete that part of her skeleton argument as it was not supportable by her present instructions. As I have said, the Tribunal's reasoning in relation to the first basis upon which an adjournment was sought is now not challenged.

11. However, the Tribunal did have before it, as a result of the short adjournment, a letter on its face apparently signed by KJF and submitted in support of the appellant's appeal. Nothing in that letter suggests that KJF wished to give oral evidence at the hearing. Indeed, it was the appellant's own evidence that she did not wish to attend. In paragraph 28 of the determination, the Tribunal records some of the appellant's evidence given in cross-examination as follows:

> "28. In cross-examination the appellant was asked when Ms KJF came to know about the appeal hearing. He responded that she was informed about two weeks previously and then amended his answer that she came to know within the past month. The appellant's Notice of Appeal is dated 28 May 2013, at which time he was legally represented when the significance of his Article 8 claim would have been fully realised by those representatives. The Notice of Hearing is dated 10 June 2013, sufficient to enable evidence of the extent of any family life existing between the parties to be gathered and presented. The appellant had no photographs of him taken together with his son to submit, stating there were some "on his phone" which had not been accessed. He stated that he had informed Ms KJF how important the appeal hearing was. He said that she did not really want to attend. She had no money to buy petrol. He further stated that she owned a car and that she received "her money" every Wednesday. The appeal hearing took place on a Friday. That evidence does not demonstrate that Ms KJF has any strong desire that the appellant should remain in the U.K. in consequence of any family life relationship between him and JLSF which would be breached by his deportation or any support which she may consequentially receive from the appellant's presence in the U.K."

12. On the basis of this evidence, and there was no contrary evidence before the Tribunal, it is difficult, if not impossible, to see upon what evidential basis the Tribunal was being asked to adjourn the hearing in order for KJF to attend.

13. At para 50 the Tribunal again returned to the letter purporting to come from KJF and what had transpired at the hearing and led to it being faxed to the Tribunal as follows:

> "50. As above noted, an adjournment had been requested on the basis that important documents relating to the appellant's family life had failed to be submitted by his legal representatives. Enquiries prior to the commencement of the hearing revealed that those representatives had no knowledge of any such documentation. The appellant consequently made a telephone call which resulted in a faxed letter being sent to the appeal centre under the signature of KF. It was explained that the appellant had spoken to the individual who had written and faxed such document. The appellant's representative indicated that she had spoken with the person with whom the appellant had communicated by telephone. The faxed document is without benefit of address.

14. The Tribunal, then, in para 50 went on to determine what, if any, weight it could give to this letter. I will return to that shortly in relation to Ms Grubb's other submissions.

15. In her oral submissions, Ms Grubb referred me to the evidence given by the appellant (and recorded in paras 38-40 of the determination) concerning a Ms W who attended the hearing but, at the appellant's request, was asked not to be in the hearing room when he gave evidence. That was because the appellant did

not want Ms W to know that he no longer wished her to be his partner and that he wished "KJF back in his life". Whilst it may well have been that there were difficulties in both Ms W and KJF attending the hearing at the same time, it does not appear that it was expressly put to the Tribunal that this could, in any way, explain KJF's absence. As I have already said, KJF herself did not indicate in the faxed letter that she wished to attend. The appellant's own evidence was that she "did not really want to attend". His evidence was that she could not afford to do so. Even assuming that this was an explanation for her absence, it is difficult to see how it could have led the Tribunal to adjourn the hearing until a time when she had sufficient funds to attend. That was a matter for the appellant and KJF and, despite his evidence that he had told her how important it was to attend, KJF did not wish to do so.

16. I am left in no doubt that this ground is without merit. There was simply no basis upon which the Tribunal could have adjourned the hearing on the basis that it was unfair or unjust to continue in the absence of KJF attending to give evidence. The appellant has now, in a bundle of documents submitted for the hearing before me, included a statement from KJF dated 24 August 2013. That such a statement exists now, but did not at the time of the hearing before the First-tier Tribunal, cannot cast any doubt upon the First-tier Tribunal's hearing conducted on the basis of the evidence before it. Even, therefore, if the Tribunal failed to consider this basis for an adjournment (as opposed to failing to record its reasons in its determination having done so), it would, in my judgment, have been bound to refuse the application on the evidence before it. No unfairness or other material error of law is established.

Other Grounds

17. Ms Grubb also made a number of submissions concerning the Tribunal's assessment of the evidence and its findings, including its failure to make certain findings. Before turning to those submissions, it is helpful to set out the Tribunal's ultimate findings and conclusions.

18. The appellant relied upon his relationship with KJF and his son JLSF. In para 58 the Tribunal found that they were not satisfied that "family life" existed between the appellant and KJF. However, the Tribunal concluded that "family life" did exist between the appellant and his son, JLSF but was: "not one which could be described as particularly strong." The Tribunal noted that the appellant had never lived with KJF and JLSF in a family unit and: "we do not accept that the appellant has played an important role in the upbringing of his son. He is essentially an absent father." At para 57, the Tribunal noted that JLSF's best interests were served by: "remaining living with his mother who has cared for him since birth in the family unit and in the surroundings which are familiar to and secure for him."

19. Having noted the nature of the appellant's offending involving, as it did, the supply of Class A drugs, at para 58, the Tribunal noted that "the removal of the appellant would effectively bring to an end any meaningful family life with his son" and at para 69 found that the appellant's deportation would interfere with the appellant's family life with his son. Nevertheless, bearing in mind the

legitimate aim of the prevention of disorder or crime and, noting the Judge's sentencing remarks at para 63, the Tribunal took into account at para 69 the importance of "general deterrent" and concluded at para 71, "having placed the best interests of the child involved as a primary consideration", that the public interest outweighed any interference with the appellant or his son's Article 8 rights.

20. Ms Grubb submitted that in reaching its findings, the Tribunal was wrong to place weight upon the non-attendance of KJF and the fact that the appellant was not cohabiting with her or her son. She submitted that there was evidence before the Tribunal, upon which it failed to make findings, that supported the role played by the appellant in his son's life, namely a pre-school letter; that the appellant had visited his son in prison; that the appellant had visited his son since his release from prison; and the faxed letter from KJF. Ms Grubb also relied upon an error of fact made by the Tribunal in para 41 when it stated that the appellant was residing with Ms W and her family. In fact, the appellant was not residing with Ms W.

21. Mr Richards, on behalf of the respondent, submitted that the Tribunal had considered all the available evidence including the last minute letter faxed on the morning of the hearing. Mr Richards submitted that the Tribunal was entitled to conclude that there was no "family life" between the appellant and KJF and also to conclude that there was "family life" between the appellant and his son but that he had not played an important role in his sons' life. Mr Richards submitted that the Tribunal had fully considered the "best interests" of the appellant's son and had acknowledged that the removal would have the effect of ending any "meaningful" family life with his son. Mr Richards submitted that the Tribunal had correctly directed itself in carrying out the balancing exercise as to the seriousness of the offending and the importance of deterrence. He submitted that there had been a "painstaking" review of the evidence and the balancing act had been carried out properly and the Tribunal's conclusion was not unreasonable or otherwise unlawful.

22. Having carefully considered Ms Grubb's submissions and those of Mr Richards, I am unable to accept Ms Grubb's submissions that the Tribunal was not entitled, for the reasons it gave, to dismiss the appellant's appeal on the basis that his deportation would be a proportionate interference under Article 8.2.

23. In my judgment, the Tribunal was entitled to take the view that it did as to the weight to be given to KJF's evidence. She did not attend the hearing and, as I have already pointed out, the appellant accepted that she did not wish to attend. The appellant accepted in his evidence (see para 28 of the determination above) that she had known about the hearing for some weeks, no written statement had been prepared by the appellant's solicitors in respect of her evidence. All that was before the Tribunal was the handwritten faxed letter which was only obtained after the appellant, and it would appear Ms Grubb, had spoken to KJF. In para 50 the Tribunal said this:

> "50. That document, seeking to record a positive view of the appellant's relationship with his son, also records that the author and the appellant have been together for eight years. The appellant's evidence is that he

> met Ms. KJF in 2005 and left her in Marlow in 2009 to live in Bristol. Their relationship would thus not have been extant for eight years but for four years. The above recorded factors, and a the absence of properly prepared and important documentation from Ms KJF, the significance of which will not have been lost upon the appellant's legal representatives, undermines the reliability of the content of that faxed document."

24. It was patently the appellant's own evidence that he had no current relationship with KJF. His own evidence – put at its highest if accepted – was that he had had a relationship with her and he now wished her "back in his life" rather than Ms W with whom, it is quite clear he had been in a relationship as it was that relationship which was relied upon in the document submitted by the appellant in response to the Secretary of State's invitation to provide a basis why he should not be deported (see para 37 of the determination). The appellant referred to KJF as his "ex-partner" in submissions made to the Secretary of State.

25. As regards Ms Grubb's submission that the Judge had wrongly recorded at para 41 of the determination that the appellant was living with Ms W, I do not see, however, how this can be said to have affected the Judge's central findings on the appellant's with KJF given the appellant's own evidence on that issue. He no longer relied upon a relationship with Ms C in order to remain in the UK.

26. The finding of the Tribunal that KJF and the appellant did not have a relationship amounting to "family life", in my judgement, was not only properly open to it but was inevitable on the evidence before the Tribunal.

27. As regards the appellant's relationship with his son, as Ms Grubb acknowledged in her submissions the Tribunal had accepted that "family life" existed but that it was not "particularly strong". That is plainly correct given the Tribunal's express finding to that effect in para 58. Ms Grubb's challenge to that finding amounts, in my judgement, to no more than a disagreement with it; not disclosing any error by the Tribunal.

28. The Tribunal did take into account the evidence from the pre-school dated 28 June 2013 and two other letters from Ms CM who claims to have known the appellant for thirty years and Mr S who says that he is the appellant's nephew. The Tribunal dealt with this evidence at paras 45-47 as follows:

> "45. A letter from Ms CM of [] , is to be found in the appellant's bundle which records that the author has known the appellant for more that 30 years, having grown up in the same environment. That would be principally in Jamaica. The letter recording that the appellant is caring, trustworthy and totally committed to his family and that he played a huge part in the upbringing of his son. It is further recorded that the appellant is "somehow family" as he is related to the author's daughter.
>
> 46. A letter from OS of [] within the appellant's bundle, records that the appellant is a paternal uncle of the author who cares deeply for his family, especially his son. That letter attributes the appellant's surname to his son rather than his mother's surname. Whether that record is an error or whether the author resident in London has little knowledge of the appellant's son is unclear.

> 47. That two such letters seeking to support the appellant's relationship with his son, in very similar layout and identical typescript, had been obtained and submitted to the appellant's legal representatives for submission in the appellant's bundle, taken together with a like letter from [] Pre-School, indicates a clear awareness on the part of the appellant's legal representative's of the need to supply supporting evidence in respect of the appellant's established family life in the UK."

29. The Tribunal also referred to the evidence from the pre-school at para 34 as follows:

> "34. In the appellant's appeal bundle is to be found a copy of a document dated 28 June 2013 under the signature of the manager of {} Pre-School, operative on Tuesdays and Thursdays of each week. That document records that the appellant has played an active role in collecting his son from pre-school. There is no indication as to the frequency or over which period the appellant has collected his son from pre-school attendance."

30. In my judgement, it was open to the Tribunal to give the weight that it did to this documentary evidence.

31. That evidence has to be seen in the light of all the evidence before the Tribunal. The appellant's own evidence about the contact with his son was not wholly satisfactory. At paras 43-44 the Tribunal said this:

> "43. The appellant has recorded in his response questionnaire that he was visited every month whilst in custody by his son and Ms KJF. The appellant's written statement records that he was visited in custody by his son brought by Ms KJF on "a number of occasions". That would have been during a period of eight months spent in custody. In evidence the appellant said that whilst in custody he was visited on a monthly basis by his son; together with his son's mother, grandfather and aunt. There is no independent evidence of any such visits placed before us. We take judicial notice that there would exist a formal record of such visits which could have been placed before us in support of that assertion. No independent evidence of such contact has been submitted.
>
> 44. We further note that in the response questionnaire the appellant had inconsistently recorded that the child JLSF had no grandparents or aunts residing in the UK."

32. The evidence was, therefore, that the appellant lived in Bristol whilst his son lived with KJF in Marlow. The Tribunal was clearly mindful of the need to have regard to JLSF's "best interests" as "a primary consideration". The Tribunal expressly stated so at para 24 and again, correctly directed itself as to the importance of those interests at paras 55 and 60. The Tribunal gave its reasons and reached its finding in relation to the relationship between the appellant and his son at paras 56-58 as follows:

> "56. There is very little independent evidence placed before us supporting the Article 8 rights asserted to exist by the appellant between his son and with his son's mother. The appellant has been represented from a least 10 May 2013 by Hoole & Co., solicitors of Bristol, which firm specialise in immigration law. The requirement for and significance of probative evidence will have been fully appreciated by those representatives. Whilst the very fact of paternity may give rise to de facto family life and to

> exercisable rights under Article 8 we record doubt that the appellant has been exercising any significant or important parental responsibility giving rise to any relationship of meaningful depth in respect of his son.
>
> 57 JLSF has, as above noted, commenced pre-school attendance twice a week and will be starting to develop elements of a private life outside the family unit comprising of his mother. There is no suggestion that he or Ms KJF could or would be required to accompany the appellant if returned to Jamaica. The appellant has never lived with those parties together as a family unit. There is no suggestion that those parties would travel to Jamaica to reside of their own free will. The child's best interests are served by remaining living with his mother who has cared for him since birth in the family unit and in the surroundings which are familiar to and secure for him. JLSF will remain in education and develop and progress within the society in which he has spent his early formative years.
>
> 58 The removal of the appellant would effectively bring to an end any meaningful family life with his son. We are not persuaded that any elements of family life exists between the appellant and Ms KJF and find that the relationship demonstrated to exist between the appellant and JLSF is not one which could be described as particularly strong. The appellant accepted in cross-examination that the parties had never lived together as a family unit. He accepted that JLSF had been cared for since birth by Ms KJF. We do not accept that the appellant has played an important role in the upbringing of his son. He is essentially an absent father. We bear in mind that as JLSF grows he might wish to develop family ties with his natural father. Such prospect of meaningful development would be diminished by the appellant's deportation although there is the prospect of future contact through the usual means of international communication, both visual, oral and written, and the prospect of international travel to Jamaica as JLSF reaches adulthood."

33. As Mr Richards submitted, the Tribunal did consider all the available evidence including the faxed letter from KJF. The Tribunal referred to the documentary evidence relied upon and the evidence concerning visits by the appellant's son to him whilst in prison and subsequent visits by the appellant to his son following his release. The reasoning of the Tribunal is clear. It did not accept that the evidence established a "particularly strong" relationship between the appellant and his son. Despite Ms Grubb's sustained attack upon the Tribunal's reasons and, she said, absence of findings, the Tribunal has, in my judgement identified the relevant evidence; given reasons for accepting or not accepting parts of that evidence and has arrived at clear findings on the nature of the relationships between the appellant and his son and KJF.

34. For these reasons, I reject Ms Grubb's submissions that the Tribunal erred in law in reaching its finding in relation to the nature of the relationship between the appellant and his son and KJF.

35. Finally, Ms Grubb submitted that the Tribunal had erred in law in finding the appellant's deportation to be proportionate. As I understood her submissions, she relied upon Sanade [2012] UKUT 48 (IAC) and submitted that the Tribunal had failed to have proper regard to the fact that KJF and the appellant's son were British citizens. Ms Grubb, in her skeleton argument, submitted that the Tribunal had failed to "strike the appropriate balance" in assessing proportionality "given the low risk of reoffending". In addition, she submitted,

that the Tribunal had failed to have regard to two cases relied upon before it where individual's succeeded in their appeals where the level of offending was "far less serious" than that of the appellant, namely Omotunde [2011] UKUT 00247 (IAC) and Peart v SSHD [2012] EWCA Civ 568.

36. This submission is doomed to failure. The Tribunal correctly directed itself at paras 62, 65 and 67 in relation to the public interest in play in a deportation appeal, in particular in one concerned with the automatic deportation provisions in the UK Borders Act 2007. The Tribunal set out the headnote in Masih [2012] UKUT 0046 (IAC) at 62; referred to the importance of the public interest in carrying out the balancing exercise inherent in deportation proceedings set out in the Court of Appeal's judgements in JO (Uganda) v SSHD [2010] EWCA Civ 10 and KB (Trinidad and Tobago) v SSHD [2010] EWCA Civ 11 at para 65 of its determination. Then, at para 67, it referred to the more recent (and consistent) Court of Appeal authority in AM v SSHD [2012] EWCA Civ 1634.

37. At para 63 the Tribunal said this about the appellant's two offences in the light of the sentencing Judge's remarks:

> "63. We have noted the learned judges sentencing remarks in respect of the two offences relating to the supply of Class A drugs and the reduction in the sentence imposed in the consequence of mitigation and guilty pleas. Drugs offences are considered to be particularly serious offences within the European deportation case law."

38. At para 68, the Tribunal added this (entirely correctly) about the public interest:

> "68. We take judicial notice that the supply of Class A drugs can have a deleterious effect upon both users who may become addicted to such use and to society at large, often encouraging criminal activity to fund such unlawful habit and use."

39. At para 52, the Tribunal quoted the Offender Manager Report dated 16 June 2012 which stated that the future risk of the appellant causing serious harm to the public was "low". Clearly the Tribunal had that in mind when assessing the weight to be given to the appellant's offending when weighed against the interference with the family life established with his son. In concluding that the public interest outweighed the interference with family life, the Tribunal expressly noted the "best interests" of the appellant's son and, as it stated in para 58, the appellant's deportation would effectively bring any "meaningful family life" to an end.

40. The Tribunal correctly directed itself as to the balancing exercise and the need to strike a fair balance between the public interest and the individual's rights. It set out at length (correctly) the importance to be given to the public interest in the context of deportation for foreign criminals falling within the UK Borders Act 2007. The Tribunal fully took into account the appellant's offending, namely his conviction for two offences of possession with intent to supply Class A drugs for which he received two concurrent sentences of eighteen months imprisonment. That sentence took into account the circumstances of the appellant's offending, including his previous lack of convictions. The Tribunal properly gave weight to the sentencing remarks of the Crown Court Judge and the factors taken into

account when imposing those sentences. The appellant's offending was undoubtedly serious. In my judgement, the Tribunal was properly entitled to conclude that, even though deportation would effectively end any meaningful family life between the appellant and his son, the public interest represented by the appellant's offending outweighed that interference and so the appellant's deportation was proportionate.

41. Ms Grubb's reliance, by analogy, on the outcome in other cases cannot establish an error of law in the Tribunal's approach. It is axiomatic that each case, involving the balancing of the public interest against the Art 8 rights of an individual and others, depends upon its own facts. Putting it at its highest, even if the facts were identical (which they are not), reliance upon Omotunde and Peart amounts to no more than a submission that the Tribunal could have made a different decision. All would depend upon the nature of the family life established on the evidence in each case and the particular offending of the deportee. In relation to Omotunde, it suffices to note what was pointed out by the Tribunal at [38] of its determination in finding that deportation would not be proportionate. There the Tribunal, in allowing the appeal, said:

> "We note that the appellant has not been convicted of an offence of serious intentional violence or sexual misconduct; nor is this an offence of importing or dealing in Class A drugs or people trafficking where deportation as a measure to deter others may have particular efficacy".

Of course, in this appeal the appellant was convicted of two such offences.

42. Peart did involve a conviction for possession with intent to supply Class A drugs for which that individual was sentenced to thirty months imprisonment following a plea of guilty. However, the Court of Appeal did not decide that the public interest did not outweigh that individual's Article 8 rights. Rather, the Court of Appeal concluded that the Judge, in concluding that it did outweigh his Art 8 rights, had failed properly to carry out the balancing exercise inherent in proportionality. The appeal was remitted to the Upper Tribunal for a fresh determination of that issue. Peart, therefore, tells us nothing about the correct outcome on the facts. The eventual outcome is unknown.

43. For these reasons, I reject Ms Grubb's submissions that the First-tier Tribunal was not entitled to find on all the evidence before it that the appellant's deportation was proportionate.

Decision

44. Thus, the First-tier Tribunal's decision to dismiss the appellant's appeal under Article 8 did not involve the making of an error of law. Its decision stands.

45. The appellant's appeal to the Upper Tribunal is dismissed.

Signed

A Grubb

Judge of the Upper Tribunal

Date: