Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: DA/01103/2012

THE IMMIGRATION ACTS

Given orally at Field House	**Determination Promulgated**
On 19th August 2013	**On 6th September 2013**

Before

UPPER TRIBUNAL JUDGE PETER LANE

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

MR MUHAMMED UMAR FAROOQ

Respondent

Representation:

For the Appellant: Mr S Walker, Senior Home Office Presenting Officer
For the Respondent: Mr A Jafar of Counsel, instructed by Thopee & Co Solicitors

DETERMINATION AND REASONS

1. This is an appeal by the Secretary of State against the determination of the First-tier Tribunal Judge Abebrese and Mr Robinson, sitting at Taylor House on 25th February

2013 in which they allowed on Article 8 grounds the claimant's appeal against the decision of the Secretary of State that the claimant should be deported from the United Kingdom consequent to the provisions of the UK Borders Act 2007.

2. The appellant's circumstances are essentially as follows. He is now in his early 30s. He arrived in the United Kingdom in 1996, aged 15, when his father was exempt from immigration control due to his employment with the Pakistan High Commission in London. The appellant spent the remainder of his adolescence and his twenties in the United Kingdom where he lives with his parents and a number of siblings. The appellant was convicted at Isleworth Crown Court of an offence of dishonesty relating to money laundering and sentenced to a term of imprisonment of four years. That offence gave rise to the deportation order decision to which I have referred.

3. The determination of the First-tier Tribunal is, I find, entirely unsatisfactory. Mr Jafar has done his considerable best to persuade me that the determination is legally sound, but I have no hesitation in finding it is anything but that. The Tribunal has manifestly failed to balance the public interest in this case against the interests of the claimant. Apart from anything else, when one reads the determination, one finds no indication of what the offence leading to the deportation decision even was. More particularly, there is in paragraph 10 – which is the only determinative paragraph in the determination – no recognition of the public interest in deportation.

4. Mr Jafar contends that, reasoning by analogy, the cases of N (Kenya) [2004] EWCA Civ 1094 and OH (Serbia) [2007] EWCA Civ 1440, in which reference is made to the importance to be attached to societal disapprobation, should not apply in the present case since the present case does not involve violence, sexual offences or serious drug offences. The answer to that I find is made plain in the recent judgments of the Court of Appeal in SS (Nigeria) [2013] EWCA Civ 550. In those judgments at [51] and [52] as well as [53] to [55], Laws LJ clearly explains the nature of the public interest to be taken into account. That public interest stems from what Parliament has seen fit to enact in the 2007 Act. A person who commits a criminal offence of the requisite seriousness is identified by Parliament as somebody in whom there is a strong public interest in deporting. That important matter finds no expression at all in the determination in the present case.

5. There is, however, quite a lot more that is wrong with the determination. The facts of the appellant's life as I have set them out make it plain that his Article 8 case rests upon his being an adult child living with parents and siblings. We know from the case law, including Konstantinov [2007] ECHR 336 and more recently the domestic cases involving Ghurkhas, including Gurung [2013] EWCA Civ 8, that particular care is needed in identifying in a case of this kind whether Article 8 is even engaged. It is not necessary to find anything exceptional; but what are needed are clear findings relating to the extent of dependence between family members and whether the person in question can be said to have formed an independent family life. Mr Jafar contends that on the facts this appellant meets the relevant requirements. That may

be so, but it is indicative of the problems with the determination that he had to take me this morning through the various witness statements, where family life is described. This was because there are no proper findings of fact in this determination.

6. The Tribunal refers to the case of Maslov [2008] ECHR 546 – indeed it is the only piece of case law mentioned – but does so in these terms:

> "The Tribunal considered all the relevant authorities, including Maslov, and found that the facts of this case can be distinguished in that the facts of this case do not justify the appellant being removed from this country."

7. With great respect, it is extremely difficult to understand what is meant by that passage of the First-tier Tribunal. Mr Jafar submits that it may have to do with the different nature of the criminal offence as between that committed by Maslov on the one hand and that committed by this claimant. That may be so, but it is unclear and in matters of this kind, involving the serious issue of deportation for criminal conduct, such obscurity is unacceptable.

8. What to do about this case? As I explored with the advocates, it seems to me that, unusually, this case should be remitted to the First-tier Tribunal for a fresh decision, rather than being re-made in this Tribunal. I say that because the failure of the First-tier Tribunal to record properly the evidence before it and to make findings on important matters takes it, I consider, into the realm of a case where there has been no fair hearing, either to the claimant, notwithstanding that he was successful, or to the Secretary of State, representing the public interest. Mr Jafar submitted that in those circumstances I should preserve the findings of fact of the First-tier Tribunal. For the reasons I have given I find that difficult to do, save with this exception: that the Tribunal on remittal should have regard to the fact that the first Tribunal accepted the evidence of the appellant regarding his rehabilitation and in particular the activities that he had carried out whilst subject to detention. That seems to me to be plain from the evidence I have seen. The point however, as I have already indicated, is that the case law, and in particular SS (Nigeria) makes it abundantly evident that such a finding, whilst of importance, is by no means determinative.

9. I therefore find that the determination of the First-tier Tribunal contains errors of law. I set it aside and I direct that the appeal should be remitted to the First-tier Tribunal to be heard by a panel not including Judge Abebrese and Mr Robinson.

Signed Date

Upper Tribunal Judge Peter Lane