Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: IA 12810 2012

THE IMMIGRATION ACTS

Heard at Sheldon Court	**Determination Promulgated**
On 23 April 2013 and 29 July 2013	**On 24 September 2013**
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Before

UPPER TRIBUNAL JUDGE PERKINS
DEPUTY UPPER TRIBUNAL JUDGE M A HALL

Between

D--- R--- K--- B---
(ANONYMITY ORDER MADE)

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellant: Mr A Briddock, Counsel instructed by Lawrence Lupin Solicitors
(on 23.04.2013)
Ms C Meredith, Counsel instructed by Lawrence Lupin Solicitors
(on 29.07.2013)
For the Respondent: Mr J Singh, Senior Home Office Presenting Officer (on 23.04.2010)
Mr N Smart, Senior Home Office Presenting Officer (on 29.7.2013)

DETERMINATION AND REASONS

1. Although this case concerns the deportation of a rapist and is therefore a case in which there can be expected to be considerable public interest we decided to agree with the appellant's request that we make an order that this decision must not be reported in a way that identifies the appellant. This is because many of the arguments before us touched on the interests

of his children in the United Kingdom who should be protected from publicity.

2. The appellant is a citizen of Tanzania who was born in 1971. He appeals a decision of the First-tier Tribunal dismissing his appeal against the decision of the respondent to deport him from the United Kingdom dated 25 May 2012.

3. At the hearing on 23 April 2013 we found that the First-tier Tribunal had erred in law. The decision was made because the Presenting Officer, having heard our preliminary views, did not feel able to defend the First-tier Tribunal's decision. However, as Mr Smart pointed out on 29 July, the reasons given at the hearing were not satisfactory and we explain below precisely why we found the First-tier Tribunal had erred in law. In the event of anyone seeking to appeal this part of our decision then it is the reasons given here that are to be taken into account.

4. As is plain from reading the notice of decision the respondent decided to make the appellant the subject of a deportation order using her powers under Section 5(1) of the Immigration Act 1971. The appellant was liable for deportation by reason of Section 3(6) of the 1971 Act because, following his conviction before the Crown Court sitting at Kingston of the offence of rape he was sentenced to six years' imprisonment and recommended for deportation by the trial judge.

5. The appeal was dismissed by the First-tier Tribunal but permission to appeal was ordered by a Judge of the Upper Tribunal who (wrongly) described the appeal as an appeal against the decision to make a deportation order because removing the appellant was conducive to the public good.

6. The substance of the grounds were set out in paragraph 2 of the Upper Tribunal Judge's grant of permission where he said:

> "The detailed grounds raise a number of arguable errors in the FtT's decision. First, it is arguable that the FtT failed properly to direct itself as to the correct approach in considering a conducive deportation decision. Secondly, it was relevant to the risk of the appellant re-offending that since 2008 he has been of good character. The OASys Report was three years earlier. It is arguable that the FtT failed to consider that factor and give adequate reasons for its view that the risk of re-offending remained the same today. Thirdly, whilst it was in the discretion of the FtT whether to grant an adjournment on the appellant's request in the absence of certain witnesses, it was arguably unfair to make adverse findings against those witnesses (in particular the Church Pastor) when the Presenting Officer indicated that he was content that their witness statements should stand as their evidence. Finally (although I am less persuaded of this), the FtT arguably failed to properly consider the best interests of the appellant's children. However, contrary to what is said in the grounds, these children are not British citizens and therefore the reliance on EU law has no application in relation to them."

7. Paragraph 4 of the grounds points out that the First-tier Tribunal directed itself that the respondent intended to deport the appellant "as conducive to the public good". That this is an error on the part of the First-tier

Tribunal is plain from the Notice of Decision and the supporting "Reasons for Deportation under Section 3(6) of the Immigration Act 1971" dated 25 May 2012. Although the respondent asserted at paragraph 64 of the letter that "the presumption is that the public interest favours deportation" this case did not arise from the respondent's decision that removal was conducive to the public good. The grounds say that this mistake was compounded into material error because, when the Tribunal balanced the rights of the appellant and his family members against the public interest for the purpose of deciding if removal was a proportionate interference with his or their private and family lives, it did not weigh the right things in the balance. Rather the First-tier Tribunal said at paragraph 34, "[t]he appellant has committed a serious crime and this effectively discharges the respondent's burden regarding Article 8 (**Rocky Gurung [2012] EWCA Civ 62**).

8. The decision in **Rocky Gurung** was a decision on an appeal against automatic deportation where the presumption in favour of removal was created by statute. It was argued that the First-tier Tribunal had misdirected itself by not making any findings about how the public interest that was served by the appellant's removal but had simply concluded without consideration that this was a case where there was a presumption in favour of removal by the authority of Parliament and this error had skewed the approach to Article 8.

9. We make it plain that we find there is merit in that criticism. Whether it in fact makes any difference can only be seen after the case is re-determined. The First-tier Tribunal did not explain correctly the initial steps in measuring the proper purpose behind the appellant's removal and therefore the justification for the disruption inherent to his and other people's private and family lives.

10. It was common ground that paragraph 364 of HC 395 applied to the decision and Mr Smart was concerned that it had not been applied properly.

11. We set out below paragraph 364 which states:

> "Subject to paragraph 380 [Human Rights Convention], while each case will be considered on its merits, where a person is liable to deportation the presumption shall be that the public interest requires deportation. The Secretary of State will consider all relevant factors in considering whether the presumption is outweighed in any particular case, although it will only be in exceptional circumstances that the public interest in deportation shall be outweighed in a case where it would not be contrary to the Human Rights Convention and the Conventions and Protocol relating to the Status of Refugees to deport. The aim is an exercise of the power of deportation which is consistent and fair as between one person and another, although one case will rarely be identical with another in all material respects…."

12. Further we were not satisfied that proper regard had been taken for the interests of the appellant's children. Whilst we respectfully acknowledge the Upper Tribunal Judge's observation in granting permission to appeal that the appellant's children are not British citizens (or at least not in the case of the youngest child with whom the appellant has a strong

relationship) and therefore not entitled to remain under EU law they have been in the United Kingdom for a sufficient time to have established a private and family life of their own. In any event they are clearly not going to be removed.

13. We also agree that the First-tier Tribunal erred in its treatment of the supporting evidence from the appellant's spiritual advisors. It is wrong to find, as the First-tier Tribunal did at paragraph 47 of its Determination that the supporting letters were not "genuine" after indicating that it would accept such evidence. We appreciate that the finding that the letters were not "genuine" is qualified by an alternative finding that the letter writers were not well informed but we accept that the appellant has cause to feel misled by the Tribunal indicating when it refused an adjournment application that it would accept the letters that it went on to find were "not genuine".

14. Having set aside the decision of the First-tier Tribunal we had to remake the decision. It is for the appellant to show that his appeal should be allowed under the rules or that removing him would interfere with his private and family life. If it does then it is for the respondent to justify that interference. To the extent that a standard of proof is meaningful in a case such as this the "real risk" standard is appropriate to a claim based on human rights and the usual "balance of probabilities" is appropriate to an appeal under the rules.

15. For the avoidance of doubt we make it plain that although we do comment on some of the evidence when we outline it we reached no conclusions on the case without first considering the evidence as a whole.

16. Although it is now appreciated that the decision to deport the appellant was precipitated by the recommendation of a sentencing judge we agree with Ms Meredith's skeleton argument that in deciding if the appellant ought to be deported we bear in mind the guidance given in RU (Bangladesh) v SSHD [2011] EWCA Civ 651 by Aikens LJ at paragraphs 33-35, concerning the nature of the public interest in removal, where he said:

> 33 In ***OH(Serbia),***[15] Wilson LJ summarised three important "facets" of the public interest that had to be considered in deportation cases involving non-British citizens who had been convicted of offences in the UK and where the SSHD had concluded that deportation of the person concerned was conducive to the public good. The "facets" he identified were: (a) the risk of re-offending by the person concerned; (b) the need to deter foreign nationals from committing serious crimes by leading them to understand that, whatever the other circumstances, one consequence of them may well be deportation; and (c) the role of deportation as an expression of society's revulsion at serious crimes and in building public confidence in the treatment of foreign citizens who have committed serious crimes. Wilson LJ also emphasised that the primary responsibility for the public interest was that of the SSHD, who would be likely to have a broader and better informed view of that interest than would a tribunal.
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> 34 The effect of ***sections 32(1)-(3)*** of the UKBA must be that if a person meets the conditions which bring him within the definition "*foreign criminal*", then his deportation is deemed by statute to be conducive to the

> public good. I therefore agree with Sedley LJ's statement (when sitting in the Upper Tribunal) in ***SSHD v MK***[16] that what was in the field of "*executive policy*" (because it was for the SSHD to decide whether it was conducive to the public good to deport a foreign criminal) has now become "*legislative policy*". Parliament has stated that it ***is*** conducive to the public good to deport "*foreign criminals*". I also agree with Sedley LJ's statement, at [24] in the same Determination, that where a "*foreign criminal*" challenges a deportation order made by the SSHD under ***section 32(5)*** of the UKBA, on the basis that his removal would infringe his ECHR rights and it would be disproportionate to deport him, it is not open to that person to argue that his deportation is not conducive to the public good, nor is it necessary for the SSHD to prove that it is. In such cases it will be so: see the proviso to ***section 33(7)*** of the UKBA.
>
> 35 I further agree with Sedley LJ's statement, at [25] to [27] in the same Determination, that in a case where the SSHD has made a deportation order against a "*foreign criminal*" which is challenged on the ground that removal would infringe the potential deportee's ECHR rights under Article 8(1) and would be disproportionate under Article 8(2), a tribunal must move directly to consider whether (i) the person's ECHR rights would be infringed if removed and (ii) if so, whether the removal would be disproportionate. If the "proportionality" exercise has to be carried out under Article 8(2) because it is concluded that removal of the deportee would infringe his Article 8(1) rights, then both the SSHD, as the original decision maker, or any tribunal reviewing that decision, must take into account the public interest embodied in the terms of the proviso to ***section 33(7)*** of the UKBA: viz. that deportation of a "*foreign criminal*" is conducive to the public good, even if he can demonstrate removal would infringe his Article 8 ECHR rights.

17. We were asked to adjourn the appeal. There is a letter from Bishop T explaining that he was about to commence an annual holiday on Monday 29 July 2013.

18. We made it plain that we did not wish to frustrate Bishop T's holiday but we gave clear directions on 29 April 2013 that any additional evidence on which the appellant sought to rely should be served no later than 22 May 2013. The pastor had not served such evidence and we really did not know what he intended to say.

19. As we explained at the hearing, the interests of justice are greater than the interests of the parties. This hearing is already rather old and we saw no merit in adjourning further so that someone could come to give evidence when he had not complied with directions. Further any such adjournment would unjustly inconvenience other appellants whose cases would be delayed to accommodate this appeal being relisted.

20. We were then given letters from a Pastor K and Bishop P. We consider them below.

21. The appellant's wife has a serious problem with her health. This was explained to us in some detail and was well understood and accepted by the respondent. Although we have made an anonymity order we see no need to risk embarrassing her by saying more.

22. She gave evidence in accordance with her statement. She confirmed her wish that we show discretion when talking about her health. She also adopted her letter to the Tribunal dated 15 July 2012.

23. She described the appellant as someone she had known for twelve years as her "common law husband", her closest friend and a father to their 8 year old child, T, and his older brother H.

24. She described the appellant in glowing terms. She said how since his release from prison he had been affectionate and developed his character "on Christian values and morals". She referred to his acknowledging his "mistakes in the past" and his being remorseful.

25. She also commented on the strong bond between T and his father and his father's role in instilling God-fearing Christian values.

26. She recalled how in July 2012 T was very upset having had a dream in which his father was removed and that he was deeply upset by the experience. She said:

> "As a parent, this dream is quite disturbing because T has no knowledge of his father's deportation appeal. The only possible explanation would be that, T still has memories of his father being away as he was growing up to the age of 4 and currently living in fear that his dad would be gone one day."

27. She and the appellant reassured him.

28. She also said how T had some contact with H and that they deserved to be together.

29. She referred to a statement by a Home Office Minister in 2012 that it was time society accepted the children needed fathers. She said that the decision to deport the appellant:

> "could leave my son without a positive male role model, leading to problems in later life and the likelihood to suffer mental health problems."

30. She explained how she could not go to Tanzania because of her illness or to Zimbabwe with the appellant because her family lived in the United Kingdom.

31. We have not dwelt on this part of the evidence because Mr Smart expressly and carefully conceded that it was not reasonable to expect the appellant's family to go with him and the decision to deport him would split the family.

32. She continued by saying how she was raised without knowing her father and knows the pain involved with that.

33. She explained in answer to additional questions how the appellant helped her hold her job as a social worker by giving her support and child care when her illness weakened her.

34. The appellant played his role as father thoroughly and diligently. She illustrated this by saying how he went to school and made appropriate enquiries and gave support there.

35. She was cross-examined. She said she was not aware of the appellant's immigration status when they first became friendly but made more enquiries when the police showed an interest in him.

36. She was aware that the appellant had made an asylum claim in a false name.

37. She removed to the Midlands in April or May 2012 as a result of her finding work.

38. She accepted that she was aware of the support networks for people with her health problems and could contact them.

39. In re-examination she said how she continued to be treated in London because she did not want any risk of her condition becoming known locally.

40. There are many dimensions to this case. The reasons for the decision were given in a refusal letter dated 25 May 2012.

41. This began by acknowledging that the appellant was liable to deportation because he was recommended for deportation by the sentencing judge who imposed a term of six years' imprisonment for the appellant's crime of rape.

42. The letter set out the salient parts of the appellant's immigration history. He entered the United Kingdom as a student in January 1995 using an entry visa issued by the British High Commission in Tanzania and recognising the appellant as a Tanzanian national. He entered the United Kingdom on 17 January 1995 and was given twelve months' leave to remain. Before his leave lapsed he applied for further leave but the application was refused. Thereupon he remained in the United Kingdom without permission until he came to the attention of the UKBA by applying for asylum on 4 August 1998 in the assumed name of D K with a date of birth slightly different to the one presently said to be his. He identified himself as a Rwandan national who had entered the United Kingdom on 25 March 1998 using a false passport. The application was refused in September 1998 but in May 1999 he was served with illegal entry papers and an appeal against the decision to refuse him asylum was not admitted because it was made late.

43. On 25 June 2004 he was convicted at Kingston Crown Court of rape and sentenced to six years' imprisonment. He was given notice of liability for deportation on 3 November 2005 and on 9 November 2009 he was served with a decision to make him the subject of a deportation order. The order required that he be removed to Rwanda.

44. He appealed that decision unsuccessfully and the appeal was dismissed in March 2006. By then there was uncertainty about his nationality although he maintained his claim to be Rwandan and the Immigration Judge had so described him. A deportation order was signed on 21 November 2006. He declined to comply with the emergency travel document process until he had received the outcome of an appeal to the European Court of Human Rights and on 26 October 2007 he was detained under immigration powers. He again failed to comply with the emergency travel document

process. He was bailed by a judge on 18 March 2008 subject to weekly reporting conditions. He was refused permission to work. On 28 March 2012 the deportation order was revoked because the existing deportation order was signed in the belief that the appellant was a national of Rwanda but the respondent was now satisfied that the appellant was in fact a national of Tanzania.

45. Under the heading "Circumstances of Offence" the respondent noted that the "Secretary of State regards as particularly serious those offences involving sex" and was concerned about the effect of the crime on the wider community. The respondent was particularly concerned to protect the public from serious crime and its effects and was not impressed with the appellant's personal circumstances. The refusal letter summarises the sentencing judge's remarks including reference to the victim of the rape being a "young girl". This is slightly misleading if taken out of context. It was accepted before us, as is plain from the evidence, that the victim was a woman who had achieved her majority. Rape is always a very serious offence but the appellant has not been convicted of an offence with a minor and should not be treated as if he had been. The appellant's offence was aggravated by reason of his being a person the appellant was entitled to trust "as an older man". The gravity of the offence prompted the judge to say that it was:

> "contrary to the interests and welfare of the people in this country that he remain – it is to the detriment of this country to take the test that I have to apply – and therefore I recommend you to be deported at the end of your sentence".

46. The letter then refers to the "presumption in favour of deportation" considered above and assesses the appellant's case against his human rights claim and the rights of the children.

47. Dealing with proportionality the letter suggests the appellant would be able to re-establish himself in the country of which he was a national because he had lived there as an adult. The letter acknowledges that the appellant's partner and child have indefinite leave to remain in the United Kingdom but says that communication could be preserved through "email, telephone, social network, internet science, Skype, mobile phones, texts or letter" and concludes that of course the appellant's partner can travel to live with him "any split to your family cannot be attributed to UKBA". Education and health treatment would be available in both Tanzania and Rwanda. However, as indicated above, Mr Smart disassociated himself from the suggestion that the appellant's family could reasonably be expected to relocate.

48. In short the reason to deport this man is to protect the public from the appellant and to show disapproval of a particularly serious crime.

49. The appellant did not give evidence before us. He gave evidence before the First-tier Tribunal and we repeat the summary of the evidence given in the First-tier Tribunal's Determination of the appeal, beginning at paragraph 16. The Tribunal said:

"16. We have set out below what we consider to be the pertinent core evidence of the appellant's case. This is based on the appellant's and the witness's oral and written evidence. The evidence is set out in the Record of Proceedings and has been considered by us in reaching our decision.

17. The appellant was born in Tanzania on 18 December 1971. His stepfather was a Tanzanian Ambassador and he travelled with his parents to several countries. He was educated in Kenya and in Switzerland where he obtained a degree. He returned to Tanzania in 1994 but decided to further his education in England. He entered the United Kingdom on 17 January 1995 on a student visa. He applied for further leave to remain but this application was refused on 9 July 1996.

18. He began a relationship with a Tanzanian national Miss L--- L--- in 1996. L-- became pregnant in July 1998. He wanted to remain in the United Kingdom with L--- and to live with her and support their unborn child, so on 4 August 1998 he made a claim for asylum as a Rwandan national because he desperately wanted to keep his family together and accepts now '*that this was (not) a way to go about it* (sic)'. L--- miscarried in September 1998 but became pregnant again in December 1998 and his son H--- was born on XX August 1999. In 2000 the relationship with L--- broke down due to her infidelity. He was working as a security guard from 2000 to 2003 and when he stopped working he could not pay money to L--- for H--- and she became angry.

19. In 2000 he commenced his relationship with U--- a Zimbabwean national who is [ill]. In December 2000 they underwent a traditional marriage ceremony. The relationship was undergoing difficulties and the appellant began an extramarital affair with M---. U--- found out about the affair and the appellant ended the relationship with M--- after six months.

20. U--- gave birth to their son T--- on XX February 2004.

21. The appellant and M--- remained friends and they would see each other socially on occasions. He fell into temptation and had sex with her believing that this was by mutual consent. On 25 June 2004 he was convicted of raping M--- after a trial and sentenced to six years' imprisonment. He sought to appeal the conviction and sentence but this was refused. He is still of the belief that the sexual activity with M--- was consensual and he regrets the mistake that he made. He has not been in any trouble with the police since he has been released. Upon completion of his sentence he was transferred to immigration detention and was released on bail on 18 March 2008. Since then he has cohabited with U--- and with T--- and since U--- has found work he has become T---'s main carer.

22. On release from prison he has also regained contact with H--- and he now sees him regularly and has a good father and son relationship with him.

23. U--- and T--- were granted Indefinite Leave to Remain on 6 February 2009. The appellant now wishes to maintain his family and private life in the United Kingdom, he wishes to work and take care of his family. His wife requires specialist care because she is [ill] and the required specialist care is not available in Tanzania.

24. He has now been in the United Kingdom 17 years and has built a life in the United Kingdom with a wife and two sons whom he wishes to support. He is a practising Christian. He accepts that he has made mistakes in the past but since being released from prison he has strived to be a good

> Christian and a law-abiding citizen. He said that he is now a changed man and eventually revealed to the immigration authorities in 2009 his true identity and nationality. Whilst in prison at Wandsworth he was given trusted status. He asked that his appeal be dealt with compassionately.
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> 25. We heard evidence from U---. She is a Zimbabwean national. We have considered her witness statement which adds little by way of factual information but consists largely of a plea for the appellant to remain in the UK. She says that the appellant is a changed man since he has been released from prison. She confirms that the appellant is now a practising Christian and that there is a good father and son relationship not only with T--- but also with H---. T--- and H--- have formed a close bond. She states that T--- became distressed when they tried to explain to him that his father might have to leave them."

50. We have a letter from someone identified as Pastor K--- of the Spirit Embassy Church UK. It is dated 20 April 2013 and says the writer has known the appellant since May 2012 when he joined the church in Birmingham. The appellant is described as "a very committed member of our church, a leader of the praise and worship team and indeed he has volunteered to advise young adults on issues of staying away from drugs and living a better Christian life." He is "recommended without reservation" because of his good character, integrity, and he is a family man he has been a valuable member of the community. This letter gives no indication at all of the writer's knowledge of the appellant's background. It does not say if he knows the appellant has a child by an earlier relationship. It gives no indication that he appreciates that the appellant is a convicted rapist.

51. We do not doubt that Pastor K--- has expressed his opinion honestly but we are not able to ascertain the evidence on which Pastor K--- has based his opinion.

52. This appellant has plainly been very manipulative. This is how he has managed to sustain a claim in two different identities for prolonged periods of time. Whilst we do not doubt that Pastor K--- has told us the truth as he sees it we are not in a position to put very much weight on his opinions about the appellant or the appellant's private and family life.

53. The letter from Bishop P--- is dated 24 July 2013. It is clear from the correspondence that Bishop P is a supervising minister in a group of free churches. He is not using the title to claim that he is ordained as a bishop in the Episcopalian church. This letter is of more help because although he describes the appellant as a man of "proven integrity" it does say how he first met the appellant when the appellant was in Wandsworth Prison as a serving prisoner and is based on knowing the appellant for about six years.

54. The letter does not actually say that the Bishop appreciates the appellant is a convicted rapist but it certainly appreciates the appellant has been in prison.

55. We find it an extraordinary omission that Bishop P--- has made no effort to explain his opinions about the appellant's integrity against the background of his being a convicted prisoner. We recognise that people can change

and that good people sometimes do very bad things but we cannot regard Bishop P---'s letter as showing more than a superficial consideration of the appellant's circumstances. It does not begin to show us that the appellant has really faced up to his past wrongdoing or has resolved to change his ways.

56. There are supporting references from K--- W---, P--- S--- and A--- C---. These letters show no indication that the appellant has been frank about his past and his reasons for being subject to deportation. They reveal one side of his character but they do not show that he is a man who has faced up to his previous seriously bad behaviour. Rather they reveal a picture of a man who continues to deny his previous wrong behaviour.

57. We have a report prepared by Christine Brown who describes herself as an independent social worker holding the degrees or qualifications of BSc. Hons, CQSC, DGDip Social Worker, MA Social Work Studies. Her report is dated 15 April 2013 and was based primarily on discussions with the appellant and his wife. She did not feel able to pursue matters with T--- for fear of upsetting him. She shows that she has been a qualified social worker since 1986 and has worked for three major local authorities as well as developing an independent practice.

58. The report draws on academic opinion to support the essentially uncontroversial assertion that little boys benefit from a close relationship with their fathers and we are wholly unsurprised that her conclusion that the appellant's removal could not be done without adversely affecting both his son and his partner. T---'s year 4 autumn term report is before us. It shows an impressive 100% attendance and speaks well of his abilities and attitude. There are pictures from the child and writing showing affection for his father. There are also photographs of the appellant playing with his son. Photographs are only of very limited value because they can do no more than create an impression from an image that froze a fraction of a second of time. Nevertheless they are consistent with the picture of a meaningful father and son relationship.

59. As far as we are aware the appellant has not been in any trouble since his release from prison.

60. We have a very full skeleton argument from Miss Meredith which we now consider.

61. By way of background it makes the point that the appellant and his partner have been together since 2000 when they met and that they were married in a traditional ceremony in 2003. T--- was born on XX February 2004 and so is now 9 years old. H--- is now just 14 years old.

62. It is accepted that the appellant's appeal cannot be allowed under paragraphs 398 and 399 of HC 395. Nevertheless she submitted that the best interests of T--- and indeed H--- (although he features less prominently in the case) required constant contact or availability of the appellant. Given there is no suggestion of H--- being removed and it is accepted that T--- cannot reasonably be expected to be removed and there is clear evidence of the appellant living in the family unit with T---, it is quite plain

it is in T---'s best interest that the appellant remains in the United Kingdom.

63. She also asserted that the appellant's partner needs particular care. She is under disability because of her serious ill-health and her needs need to be given particular weight.

64. She argued that the appellant's private and family life has been built up in over seventeen years' residence in the United Kingdom and contains three particularly strong relationships. These are the relationships with his child T---, with his partner and the less important, but significant, relationship with H---. Miss Meredith accepted that the respondent relied on the seriousness of the conviction and the legitimate aim of the prevention of crime and disorder to justify the decision but said that the appellant was rehabilitated. The argument asserts that it is irrelevant to the prevention of crime and disorder that the appellant made an asylum claim in a false identity from a false nationality. She then reminded us of the very well-known case of Regina v. Secretary of State for the Home Department ex parte Razgar [2004] UKHL 27. She said the offence leading to the deportation order was committed over a decade ago and the appellant's excellent behaviour in prison has to be taken into account. He has not re-offended. In 2006 he was assessed to be at a low risk of recidivism. The implication is there was no sensible basis for concluding any real risk of his creating further trouble.

65. He was clearly well-established in the United Kingdom where people depended on him and he made a contribution to the community.

66. Ms Meredith also relied on the delay in processing the claim but we are not particularly impressed with this point. Part of the delay at least was because the appellant was not truthful about his identity. A fresh decision was made and the truth emerged. Whilst it is in a way to the appellant's credit that he eventually told the truth it does not excuse him from the considerable harm done to his credibility by his being so dishonest and manipulative.

67. Essentially the problem here is that the respondent is overworked and under-resourced. The appellant has used that to his advantage by changing his account. If this was a case where the respondent had contributed to the delay by her ineptitude there may be a point to be made but the real problem here is not the respondent being lackadaisical but the appellant not telling the truth.

68. We make it plain that we accept that the appellant's partner does depend on him from time to time because of her own ill-health and this is a real factor in favour of allowing the appeal. We also accept that his removal would be a big disruption in his private and family life and the private and family lives of his children. They are clearly innocent of his wrongdoings and the respondent's delay in processing the application.

69. We also reminded ourselves of the extremely serious nature of the order being contemplated. For practical purposes the appellant would be returned to a country where he has not lived for some years and left to

establish himself as best as he could and somehow preserve a relationship with his sons in the United Kingdom. For the boy T--- it would represent the father being snatched from the family home and removed to a point where he would be unlikely to have any meaningful contact with him for a long time. Certainly there would be no prospect of his father being involved in his day to day life in a way which we believe is wholly beneficial to the child's development. Deporting the appellant is in some ways a greater threat to the parent child relationship than was imprisoning him. Apart from possible periods of occasional contact the separation will last longer than the prison sentence and travel for the purposes of contact will be much harder and expensive to arrange.

70. As we made clear above the rather cavalier way in which the respondent considers the effects of removal on T---, implying that a day-to-day relationship with a father can be satisfactorily replaced by plugging into a computer is chillingly wrong. Whilst the respondent no doubt takes very seriously her obligations to protect the citizens of the United Kingdom it does leave us wondering just how much regard she gives to her obligation to respect and promote the private and family lives of people who live there lawfully.

71. Although not persuaded by them we understand the arguments for allowing this appeal. Notwithstanding the serious nature of the offence the appellant has established a nuclear family in the United Kingdom where, on the evidence before us, his wife is more than ordinarily dependant on him and his son T--- enjoys a lively and important relationship with him. Although guilty of a serious offence the appellant's criminal behaviour was sometime ago and has not been repeated. What is achieved by breaking up this family?

72. We do not accept that this is a case of a man who has put his past behind him. Certainly there is no evidence of his having committed further offences but neither is there is any evidence of his having faced up to the consequences of what he did. He denies that he is a rapist. Further there is no evidence that he has been frank with the people in the church who may have been in a position to assist him. His history is one of a person who is "manipulative" which word describes aptly a person who continues to pursue an asylum claim in a false identity. We do not accept that he is a man who has put his criminal past behind him. Rather we find he is a man who has behaved himself when he has been subject to intense scrutiny and that is not the same at all. Whilst the risk of re-offending is probably low we find that there is a risk of his becoming violent or unlawfully working out his frustrations on another innocent victim if he is thwarted in the future. His failure to accept his responsibility means, we find, that we are not satisfied that he does not present a risk to public safety and that is a reason for removing him.

73. Further his failure to accept responsibility heightens society's revulsion of his crime. We do not mean to imply that the appeal would necessarily have been allowed if the appellant had admitted his wrong doing. He would still have committed a very serious offence. However the need to express public disapproval is diminished (not necessarily extinguished) where the

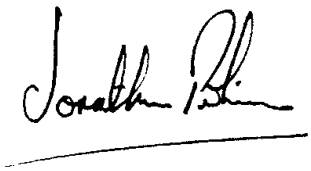
appellant can say that however wrong he has been he has addressed his criminal behaviour and has taken steps to avoid further trouble and can point to many years without conviction to give substance to his claim. Such a line of argument is not open to someone such as this appellant who refuses to admit that he has done wrong.

74. We have reflected carefully on Counsel's argument but we cannot avoid the fact that this is a man who has been to prison for six years for an offence of rape which he continues to deny. He committed the offence when he had no lawful right to be in the United Kingdom and the close family ties that have been developed since have been developed at a time when he knew that there was uncertainty concerning his status.

75. We do not think that deporting the appellant is an obvious or easy step. It will cause significant disruption to the private and family lives of innocent people. However, we have come to the conclusion that it is a justified interference. If an unrepentant rapist cannot be removed then perhaps no one could be removed. He can be removed and he should be. We are aware that this will be a hard decision that will cause pain to his partner and his son H--- and maybe even harm to his son T...

76. Before reaching a conclusion we reminded ourselves expressly of the requirements of paragraph 364 of HC 395. All relevant factors have been considered. We have had particular regard to the needs of his children and his partner and to the passage of time. We accept that he is a man integrated into the United Kingdom and who in some ways, albeit perhaps modest ones, makes a positive contribution. Nevertheless, putting all these things together we cannot ignore the public revulsion that is felt towards a rapist and the appellant's situation is made worse by his refusal to admit the offence.

77. The appellant's offence was one of great gravity and in all the circumstances we dismiss the appeal.

Signed
Jonathan Perkins
Judge of the Upper Tribunal  Dated 20 September 2013