**Upper Tribunal**
**(Immigration and Asylum Chamber)** Appeal Number: IA/20206/2012

**THE IMMIGRATION ACTS**

| **Heard at Bradford** | **Determination Promulgated** |
|---|---|
| **on 1st August 2013** | **On 18th September 2013** |

**Before**

**UPPER TRIBUNAL JUDGE HANSON**

**Between**

**TOME PETER**
**(Anonymity direction not made)**

Appellant

**and**

**THE SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Respondent

**Representation:**

For the Appellant: Ms Kaur of Andrew Williams Solicitors.
For the Respondent: Ms R Pettersen – Senior Home Office Presenting Officer.

**DETERMINATION AND REASONS**

1. This is an appeal against the determination of a panel of the First-tier Tribunal composed of First-tier Tribunal Judge Sarsfield and Ms V Street (hereinafter referred to as 'the Panel') who, in a determination promulgated on 16th November 2012, dismissed the appellant's appeal against the decision of the Secretary of State made on 7th September 2012 not to revoke a deportation order made against him. The appellant was born on the 31st December 1974.

2. The chronology set out in paragraph 6 of the Panel's determination shows the appellant arrived in the United Kingdom on 2nd June 2002 and claimed asylum. This was refused on 7th November 2002. On 27th July 2007 he was convicted of two offences of possessing false

documents for which he received a 14 month custodial sentence. Notice of intention to deport was served on 13th March 2008. The appellant became appeal rights exhausted on 28th September 2008 following refusal of a High Court application to challenge the decision relating to the notice to deport him from the United Kingdom. A request to revoke the deportation order was refused on 5th May 2009 and his appeal dismissed on 18th September 2009. High Court review was refused on 12th November 2010. Further representations for leave to remain in the UK were made on 21st July 2010 and refused on 12th November 2010 and a further application for leave to remain was refused on 17th October 2011.

3. The Panel set out their findings at paragraphs 14 and 15 of the determination in the following terms:

> 14. We find the following:
>
> (a) The appellant has been convicted of, and imprisoned for, serious offences; although the judge did not order deportation he indicated it remained a possibility.
> (b) We accept that the motivation for the crime was to provide for his then family, however, his crime involves deception of the UK authorities.
> (c) He has been found to be Nigerian; his claim to be from Sierra Leone is a fabrication and it has been found that he has been dishonest about his nationality.
> (d) His account of events in Sierra Leone was found to be not credible.
> (e) His account of obtaining a birth certificate was found to be not credible and it was found that he had deliberately obtained it and tendered a false document in the hope of convincing the UK authorities that he was from Sierra Leone - another deception.
> (f) Two Tribunals have found he is not credible and has fabricated an account and at the last had deliberately tried to mislead the Tribunal on one point.
> (g) After failing to obtain asylum he failed to leave the UK.
> (h) We conclude that the appellant cannot be regarded as a credible individual.
>
> 15. We also find the following:
>
> (a) The appellant last had contact with the children born to Ms Milnes in October 2011. It is accepted that there is no current family life with Ms Milnes. We notice that the only attempt to contact that family was by obtaining advice from the Citizens Advice Bureau and he has done nothing more. We are of the view that there is no family life with those children or Ms Milnes.
> (b) We note that no proceedings have been undertaken in relation to access to those children, nor legal advice sought
> (c) He has married Ms Duerell, a Ghanaian who has indefinite leave to remain in the UK and they have a daughter; we accept that there is a family and private life with them.

(d) Ms Durell accepts that she has known of the appellant's precarious status for sometime, long before they married.

(e) We note that neither party has any other family in the UK.

(f) The appellant claims to have no family in Nigeria, but given the nationality finding, the deception, fabrication and lack of credibility found, we cannot accept this.

4. The Panel went on to conclude that the appellant could not meet the requirements of the Immigration Rules and 276ADE before turning their mind to paragraph 390 which is the correct paragraph relating to the issues to be considered when dealing with revocation of a deportation order. The Panel concluded that the mother's of the various children are able to care for them in the United Kingdom if the appellant is removed although, given the age of the daughter born as a result of the appellant's relationship with Ms Durell, it was not considered unreasonable for them to leave the UK with the appellant as she would be able to adapt to life abroad should her mother choose to accompany the appellant [18]. The Panel found no insurmountable obstacles to Ms Durell living outside the UK as she is not a British citizen and had only lived here nine years, only two of which were with leave. She is Ghanaian and speaks English which could assist her in Nigeria. Having considered all the relevant facts the Panel concluded that the appellant was not able to succeed under the Immigration Rules.

5. In relation to Article 8 ECHR the Panel concluded that the issue was one of proportionality [28]. Having considered the competing interests, including the family dynamics and the appellant's medical condition, it was found that the high threshold of Article 3 had not been reached on medical grounds and that the decision is proportionate to the legitimate aim relied upon by Secretary of State.

6. Permission to appeal was granted by another judge the First-tier Tribunal on 30th November 2012 and an Initial hearing conducted by Upper Tribunal Judge Roberts who, on 13th March 2013, concluded that the determination contained an error of law on the basis that her analysis of the determination did not demonstrate adequate reasoning showing essential findings of why it would be reasonable to expect the appellant's wife and child to dispose of their life in the United Kingdom and settled in a country where they have never lived. It is also said there was no analysis of whether the wife and child will be allowed to enter Nigeria.

## The submissions

7. On behalf the Secretary of State it was accepted that the appellant has established private and family life in the United Kingdom. It was accepted that the appellant's wife, the child's mother, is currently in employment although she is able to care for the child. It was accepted there have been changes over the years in relation to the appellant's

private and family life since the signing of the deportation order and that his wife obtained lawful status in 2010 and that they married and have a child. It is accepted the appellant is liable to be removed as a result of his criminal conduct and it was submitted the relevant issue was whether this family should be split or whether the wife should be required to make a choice. There was nothing in the evidence to show that the wife as a Ghanaian national would not be admitted to Nigeria or that the family could not established themselves in Nigeria or elsewhere. Although the child is a British national she is dependent on her mother and could enjoy the benefits of her nationality at a later date. The further application for leave to remain was refused in 2009.

8. On behalf of the appellant it was argued that the offences were not serious criminal offences and the age of them needed to be taken into account. The motivation had been considered by the First-tier Panel and it was submitted there is no strong public interest objection as the offence was not at the higher end of the scale for that particular offence or offending in general. It was submitted that since 2007 the appellant has not offended and has expressed remorse. He is now a family man with values. His wife became pregnant and they decided to get married at which point they cohabitated. It was submitted that no attempt had been made to deport the appellant since 2008 notwithstanding his complying with Home Office requests which meant they had the opportunity to detain and deport him.

9. The current application was made in 2012 and the public interest in the case was not such that it was imperative the appellant be removed as he should not be deemed to be a threat to society.

10. It was also submitted on his behalf that it was not reasonable to expect the wife and their child to leave the United Kingdom as the child had never left this country or visited Africa and the appellant's wife had very little contact with that continent. It was also said to be unfair to expect a British national to leave, especially as she is also a European national, and there was evidence of strong family and private life in the United Kingdom. It was further submitted that it was not proportionate to split the family due to the appellant’s relationship with his daughter who is dependent upon her father; they have a good relationship and the father is the primary carer. If refused the family will be divided with minimal chances of return so there will be a loss of family life. It is accepted the appellant has a poor immigration history and that credibility issues arose in the determination, but notwithstanding this fact, family life has been found to exist. It is submitted that when balancing the appellant’s family life against the offence committed, the family life outweighs the need to remove him indicating that the balance should be in his favour.

## Discussion

11. It was accepted at the outset that the issue upon which a ruling was required relates to the proportionality of the decision by reference to Article 8 ECHR only.

12. The only relevant child, born on the 25th November 2011, is a British national as a result of the fact her mother has indefinite leave to remain and is an EU citizen as a result. Following Sanade [2012] UKUT 00048 it is accepted as a matter of EU law that it is not possible to require the family as a unit to relocate outside the European Union if to so would deprive that individual of the right to enjoy benefits accruing to them as a result of their status as European citizens.

13. If the child remains in the United Kingdom a parent will also need to remain although it is a preserved finding that the appellant is not able to succeed under the Immigration Rules which must include the finding that the mothers' of all the appellant's children are capable of caring for them and meeting their needs. What has not been shown is that the appellant needs to remain in the United Kingdom as there is no one else capable of meeting the child's needs. I accept it is in the best interests of the child to grow up in a settled and stable family unit, if at all possible, but this is not determinative albeit a very important element of paramount importance, as per the relevant case law.

14. The fact the appellant is not able to succeed under the Rules is a factor to be taken into account when considering the Article 8 ECHR issue but, again, his inability to do so is not determinative. The Rules as currently drafted represent the view of the Secretary of State in relation to those individuals who should be permitted to remain in the United Kingdom and those who should not, within the States margin of appreciation, and the appellant is unable to fulfil such requirements.

15. The appellant has been found to be dishonest in relation to claims previously made, including those relating to his own nationality. The Panel in the clearest terms set out why they found the appellant untruthful. His conduct does not assist his cause when considering whether the balance should fall in his favour and is one of the factors to be taken into account.

16. The appellant is now married but it is clear that the marriage was entered into at a time when both he and his wife were aware of his precarious immigration status particularly in relation to the fact that he was to be deported from the United Kingdom. A previous appeal at Bradford on 9th September 2009 against the decision made a late May 2009 to refuse to revoke the deportation shows that at that time he knew he was subject of a sign deportation order he had not

successfully been able to challenge. This is relevant to the weight to be given to this aspect of his claim.

17. I accept that the appellant has not been removed from the United Kingdom but delay in enforcing a deportation decision creates no legitimate expectation that an individual will be granted leave to remain in the United Kingdom or that the deportation order will be revoked. Any unexplained delay will, of course, give an individual time to prove they have remained trouble-free and not committed further offences. In relation to this issue the findings of the Panel that acts of deception have continued after the date of the offence, as demonstrated by the adverse finding set out above, including deliberately attempting to mislead an appeal tribunal, are a cause for concern. I accept and take into account, however, there is no evidence the appellant has been charged with any further acts of criminality.

18. Paragraph 390 of the Immigration Rules states that an application for revocation of a deportation order will be considered in light of all the circumstances including:

(i) the grounds on which the order was made ;
(ii) any representations made in support of revocation ;
(iii) the interests of the community, including the maintenance of effective immigration control
(iv) the interests of the applicant, including compassionate circumstances.

19. The deportation order was made as a result of the appellant's use of false documents to obtain employment in the United Kingdom thereby circumventing immigration provisions relating to those who have a lawful right to work. When sentencing the appellant the Sentencing Judge noted that offences of this nature are extremely prevalent, such that the Court of Appeal has given guidance when sentencing. The Sentencing Judge referred to "the sheer cheek of it" in that the appellant used one name, leaves and returns in another name. Had he been convicted by a jury he would have receive 21 months imprisonment but as a result of the discount given for the guilty plea he was sentenced to 14 months imprisonment; being 10 months for the first count and 4 months consecutive on the second count.

20. This is not a simple offence and although submissions were made suggesting it was at the lower end of the scale of criminal offending, it is the type of offence that can do great harm to society if individuals are permitted to think they can employ deception relating to their status and identity for the purposes of obtaining pecuniary benefit through deception. It excludes those lawfully entitled to work from certain sections of the labour market and, as stated, enables those who have no legal right to be in the United Kingdom or to work in this country to circumvent immigration laws put in place precisely to

regulate access to the labour market to those legally entitled. There is therefore a strong deterrent element in making it clear that those that who choose to act in this way face a real risk of being deported from the United Kingdom if they have no legal right to remain.

21. I set out above the submissions made in support of revocation based upon the fact the appellant has not reoffended and the nature his ties to the United Kingdom including his young daughter. I accept the appellant has not reoffended but note the fact it was recently found he lacks credibility indicating that the use of deception or acts of dishonesty is not something that the Tribunal can accept there is no risk of re-occurring in the future. It appears on the facts that the appellant is a resourceful individual who is prepared to resort to acts of dishonesty if it suits his purposes to do so.

22. The interests of the community are not going to be served by having a person in the United Kingdom who has no rights to remain here and who is a dishonest and deceitful individual. For the reasons set out above the interests of the community are not served by individuals using unlawful methods to secure access to the labour market to which they are not entitled, especially if it circumvents the regulation of access to jobs and employment. This is particularly so at a time of recession when jobs are not as plentiful or accessible as they may have been in the past. Also, as stated above, there is a strong element to this appeal in the Secretary of State's favour relating to the need not only to have but also to demonstrate strong and effective immigration controls. In relation to the passage of time the chronology set out above shows that the appellant has made numerous applications in attempting to be permitted to remain in the United Kingdom. The effect of the law is that if such applications are accepted, whilst they are being processed and whilst any resultant appeal is being considered, the appellant cannot be removed from the United Kingdom. It is therefore in part the appellant's insistence on making numerous applications, none of which have been found to have merit, that are in part responsible for the fact he has not been removed to the country of which it has now been found he is a national, Nigeria, and not Sierra Leone as he initially claimed to be a national of. An individual claiming to be from a country which they have no right to enter or remain in will, of course, create further delay in securing relevant travel documents all of which contributes to the difficulties for the Secretary of State in effecting removal.

23. In relation to the interests of the appellant, including compassionate circumstances, these relate to his family life in the United Kingdom including this time with his daughter. It is not suggested that this is an appeal in which the family can reasonably be expected to go and live in Nigeria with the appellant although that is a matter for them. The fact the child is only one year of age means that the child’s dependency and private life is currently internal, i.e. with one or both

parents, and that as result of the choices made by the appellant's wife working whilst he cares for his daughter, I accept a bond will have developed between them. The child was, however, conceived and born at a time when the appellant and his wife knew he had no leave to remain and that his immigration status was precarious. This fact cannot be ignored. Individuals must not think that if they have no status getting married and conceiving children will allow them to circumvent immigration controls in every circumstance. It is contrary to the ability of the Secretary of State to maintain proper immigration controls.

24. There are number of elements in this appeal that stand in favour of the appellant being able to show that the strength of his family and private life in the United Kingdom is such that after the passage of time he should be permitted to remain. But there are also strong arguments in favour of the Secretary of State who has given credible reasons in the refusal letter for why she feels it is inappropriate to revoke the deportation order at this stage, notwithstanding the presence of family members in the United Kingdom. As with any case involving a family and children I have taken great care to ensure that all aspects of the evidence are considered with the required degree of anxious scrutiny. Having done so I conclude that there is still a very strong argument in favour of the need for the appellant to be removed from the United Kingdom based upon the legitimate aim relied upon by the Secretary of State and the deterrent factor relating to offences of this nature referred to above. The deportation order was made yet the appellant has not left the United Kingdom. Is always open to him at some point in the future to make an application for revocation and the Immigration Rules make provision in paragraph 391 if his circumstances can be said to have altered sufficient to warrant revocation at some later date. This is not the case at this time.

## Decision

25. **The First-tier Tribunal Judge has been found to have materially erred in law and the decision set aside. I remake the decision as follows. This appeal is dismissed.**

Anonymity.

26. The First-tier Tribunal did not make an order pursuant to rule 45(4)(i) of the Asylum and Immigration Tribunal (Procedure) Rules 2005.

I make no such order (pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008) has no application friend and in that he was made and the grounds failed to establish any basis for such an order.

Signed…….
Upper Tribunal Judge Hanson

Dated the 17th September 2013