



**Upper Tribunal  
(Immigration and Asylum Chamber)**

Appeal Number: DA/00173/2014

**THE IMMIGRATION ACTS**

**Given orally at Field House**

**On 29<sup>th</sup> September 2014**

**Determination**

**Promulgated**

**On 7<sup>th</sup> October 2014**

**Before**

**UPPER TRIBUNAL JUDGE PETER LANE**

**Between**

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

Appellant

**and**

**MR ABDERRAHMANE GOUCHAM**

Respondent

**Representation:**

For the Appellant: Mr E Tufan, Home Office Presenting Officer

For the Respondent: No Appearance

**DETERMINATION AND REASONS**

1. This is the Secretary of State's appeal against the determination of the First-tier Tribunal, First-tier Tribunal Judge Beg and Mrs Bray JP, sitting at Taylor House on 18<sup>th</sup> July 2014 in which by a determination dated 24<sup>th</sup> July 2014 they allowed the claimant's appeal against the decision of the Secretary of State that he should be deported from the United Kingdom

pursuant to a conviction and a sentence of imprisonment for a criminal offence. Permission to appeal the determination was granted by the First-tier Tribunal on 11<sup>th</sup> August 2014. The granting judge correctly noted that the panel had fallen into error in applying paragraph 364 of the Immigration Rules. That provision had been deleted from the Rules from July 2012 and the relevant Rule for these purposes would have been paragraph 397.

2. At the hearing this morning, Mr Tufan represents the Secretary of State. There is no appearance by the claimant or any representative of the claimant. As I indicated before hearing Mr Tufan's submissions, I am satisfied that notice of the hearing has been sent to the claimant at his last recorded address, applying rule 38 of the Tribunal Procedure (Upper Tribunal) Rules 2008. I am also satisfied that it is in the interests of justice to proceed with the hearing. I note in that regard that the claimant was in fact not present at the First-tier Tribunal.
3. The facts of the matter are as follows. As far as can be ascertained, the claimant entered the United Kingdom sometime around 2011/2012. He appears to have spent time in other European countries before arriving in this country on the back of a lorry. He was encountered sometime later and served with illegal entry papers and sought asylum. On 1<sup>st</sup> March 2012 he had been convicted at Blackfriars Crown Court of an offence of dishonesty in making false representations to cause gain for himself and loss to another. This involved possession of an identity document. For this offence he was sentenced to ten months in prison and recommended for deportation. In April 2012 the claimant was informed of liability to deportation. There then followed an asylum interview. He was detained in July 2013 and served with notice of decision to make a deportation order. A series of events then ensued as a result of which the original deportation decision was withdrawn and a new one was served on the claimant in July 2014.
4. The determination of the First-tier Tribunal dealt amongst other matters with the claimant's refugee claim. In short, the panel came to the firm conclusion that the claimant had failed to demonstrate any well-founded fear of persecution or of serious harm on return to Algeria. That is not challenged and therefore stands.
5. The panel then embarked upon an analysis of the claimant's position under Article 8 of the ECHR. The panel came to the conclusion that the claimant had failed to show that his removal pursuant to the deportation decision would constitute a disproportionate interference with his Article 8 rights. With respect, that must be right. The claimant asserted no family life in the United Kingdom. He appears to have no private life other than the barest kind by reason of his physical presence in this country. At all events, that was the panel's view and again no challenge has been brought against it.

6. As I have indicated, the reason why the panel decided to allow the appeal is to be found in paragraph 28 of its determination. There the panel went on to consider what they described as “discretion under paragraph 364 of the Immigration Rules”. There they took account of the length of residence, criminal convictions and other relevant matters. They decided that the offence did not involve any human victim. It had no aggravating features.
7. They then embarked upon a balancing of the claimant’s private life against the state’s interests in removal but concluded that since the claimant had no previous convictions and in view of the nature of his offence they should allow the appeal under paragraph 364. In doing so the panel said this:

“We find that the appellant has no leave to remain and it would be more appropriate in this case for the respondent to consider removal through administrative means rather than deportation. We find in conclusion exceptional circumstances in this case referred to above; the public interest in deportation does not outweigh the appellant’s circumstances.”
8. With great respect to the panel, there is no rationale for that conclusion. Even if this had been a case of removal under section 10 of the 1999 Act, it is quite manifest that the applicant could not succeed. He has nothing to put in the scales, whether those scales are viewed in terms of Article 8 or any other relevant balancing exercise. On the other hand, the Secretary of State can point to the need to remove somebody who has been convicted of a criminal offence and recommended for deportation, quite apart from the fact that the applicant has never had any lawful reason to be in the United Kingdom.
9. Accordingly, applying the correct Immigration Rules, it falls to me to re-make the decision. I have no hesitation in doing so by dismissing this appeal under the Rules and for good measure by reference to the ECHR. Accordingly my conclusion is that the First-tier Tribunal materially erred in law and I set that determination aside and substitute a fresh decision dismissing the applicant’s appeal against the Secretary of State’s decision for the reasons I have given.

Signed  
Date

Upper Tribunal Judge Peter Lane