Upper Tribunal
(Immigration and Asylum Chamber) Appeal Numbers: DA/00311/2013
Approved Ex Tempore Judgment

THE IMMIGRATION ACTS

Heard at Field House	**Determination Promulgated**
On 4 December 2013	**On 6 February 2014**

Before

The Hon. Mr Justice McCloskey, President
Upper Tribunal Judge Eshun

Between

MARK WAYNE MILLER

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr R Spurling, (of Counsel), instructed on behalf of Barnes Harrid & Dyer Solicitors

For the Respondent: Mr Laurence Tarlow, Home Presenting Officer/ Treasury Solicitor

DETERMINATION AND REASONS

1. This is the Secretary of State's appeal against the Determination of the First-tier Tribunal ("the Tribunal"). The Determination had its origins in a decision made by the Secretary of State on 24 January 2013 which

entailed the making of a deportation order against the Appellant. That Order was the subject of a successful appeal to the Tribunal.

2. In seeking permission to appeal several grounds were advanced on behalf of the Secretary of State. The grant of permission to appeal was formulated in the following way: the grounds were considered arguable in light of the sentencing Judge's recommendation and remarks and the decision in the Masih at [2012] UKUT 00046. Accordingly, in determining the appeal, our focus is drawn to the sentencing Judge's recommendations and remarks and the Masih decision.

3. In presenting the appeal on behalf of the Secretary of State, Mr Tarlow helpfully refined the grounds to two points. The first he described as the public interest issue. The argument developed was that there is a strong public interest in deporting offenders such as the Appellant. Continuing, Mr Tarlow indicated that this is a weight challenge. He explained that in submitting that the Tribunal gave insufficient weight to the public interests engaged these are conveniently drawn together in the case of Masih, where they are described as the strong public interest in removing foreign citizens convicted of serious offences, which is linked to the deterrence of others from committing crimes. It was submitted that the Tribunal was guilty of inadequate assessment of the competing interests, namely, these public interests, on the one hand, and the Appellant's and other family members' Article 8 interests, on the other, in the balancing exercise which had to be performed.

4. In response, on behalf of the Appellant it has been submitted by Mr Spurling of Counsel that properly analysed, this is a perversity challenge. We agree with that submission. Where there is a complaint about the weight that is attributed to certain factors and an associated complaint about the inadequacy of weight attributed to others one finds oneself in the territory of an irrationality challenge. The legal principles to be applied are well settled: see Edward v Bairstow. In summary, the test is whether a reasonable Tribunal properly directing itself on the law could, having regard to all the evidence, and the findings made, have rationally come to the conclusion under scrutiny. In rehearsing that test one is appropriately reminded that in challenges of this kind there is no suggested misdirection in law as such. Accordingly, the question becomes whether the impugned decision of the Tribunal lay within the band of conclusions reasonably open to it having regard to all the evidence and the findings made.

5. We find it unnecessary to rehearse the main passages in the Determination of the Tribunal. We do, however, in brief draw attention to the following. Firstly, the rehearsal of the Appellant's immigration history in paragraph 2. Secondly, the recitation of his criminal history in paragraph 3, which included in particular a lengthy excerpt from the sentencing hearing and the words of the sentencing Judge. Next we highlight the additional consideration given to the Appellant's criminality

in the context of considering the family life factors. All of this is detailed in paragraph 9 of the Determination. We draw attention also to the formulation of the argument considered by the Tribunal in paragraph 11 and in particular in paragraph 11(B).

6. In paragraph 12, the Tribunal reminded itself once again of the Appellant's criminality and of the gravity of his offending. Next, we draw attention to the summary contained in paragraph 17, where the Tribunal draws together a number of the factors in the equation before it. Following this, the Tribunal made a series of findings and evaluative assessments which are contained in paragraph 23. This, in turn, was followed by an extensive rehearsal of the decision in SS (Nigeria). The importance of this was that the Tribunal was clearly alert to the potency of the public interest in play. Finally, in paragraph 25, the Tribunal said: " In the balance we conclude that the Appellant has a strong family life". We pause to observe that this conclusion, in the context of this error of law appeal, is unimpeachable. Next, the Tribunal said while full account was taken of the strong public interest in the removal of foreign citizens, it was of the considered opinion that it did not regard the Appellant's deportation as proportionate to the legitimate aim engaged. Overall, the interference with the family life of the Appellant, his partner and all the children contemplated by his deportation was not considered by the Tribunal necessary in public interest.

7. We conclude that there is no irrationality identifiable in the Tribunal's conduct of the Article 8 exercise and its undertaking of the associated necessary exercise of considering the best interest of the children and according to those the primacy which they must receive in accordance with Section 55 of the 2009 Act. In this context we have been appropriately reminded of the most recent pronouncements on this subject by the Supreme Court in the case of Zoumbas [2013] UKSC 74. Accordingly, the first ground of appeal fails.

8. The second ground of appeal helpfully formulated by Mr Tarlow in argument was that inadequate reasons were given by the Tribunal for the outcome of the balancing exercise which it conducted. The Tribunal undoubtedly expressed reasons. These can be found in the passage to which we have just adverted in paragraph 25. They are not full, nor are they extensive, but one can understand from then what was in the Tribunal's mind. That assessment is appropriate when one performs the duty of reading the Determination as a whole and, in this respect, we have nothing to add to our outline of the Determination above. The ultimate barometer in a reasons challenge is whether there are sufficient indications in the text of the judgement under scrutiny of what the Tribunal was doing, where it was going, where it finished and why it finished where it did. That is a basic summary of the extensive case law on the subject of the judicial duty to provide reasons for decisions. We are particularly mindful of that duty having regard to the recent decision of this Tribunal in the case of MK Pakistan [2013] UKUT 64 (IAC).

Adequacy is the ultimate touchstone. While the reasons in the present case could have been better and more fully articulated and while the Determination could have been more elegantly structured, these are counsels of perfection. We are satisfied that it passes the test which we have identified. Accordingly, the second ground of appeal fails also.

9. It follows that we dismiss the appeal against the Determination of the First-tier Tribunal, which we affirm.

THE HON. MR JUSTICE MCCLOSKEY
PRESIDENT OF THE

UPPER TRIBUNAL

IMMIGRATION AND ASYLUM CHAMBER

Date: 4 February 2014