Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: DA/00540/2014

THE IMMIGRATION ACTS

Heard at the Royal Courts of Justice	**Determination Promulgated**
On 22 December 2014	**On 29 December 2014**

Before

Upper Tribunal Judge Southern

Between

MD JAIFUR NOOR

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellant: Mr A. Alexander of counsel
For the Respondent: Mr S. Walker, Senior Home Office Presenting Officer

DETERMINATION AND REASONS

1. The appellant is a citizen of Bangladesh born on 12 April 1990, although a significant issue in this appeal is that he arrived in the United Kingdom in July 1990 when aged just 3 months old, having been brought by his mother who was joining her husband who was settled in this country. Both the appellant and his mother were soon after granted indefinite leave to remain and he has not left the United Kingdom, even for a holiday, since then.

2. On 30 October 2012 the appellant was convicted before the Luton Crown court of offences of possession of a firearm and ammunition. The firearm was "packaged up", to borrow the phrase used by the sentencing judge, with ammunition and a

silencer. Forensic tests demonstrated that the firearm had been fired. Those offences were committed while the appellant was subject to a suspended sentence of imprisonment for an offence of dishonesty. He was sentenced to five years' imprisonment.

3. Given his immigration status, that conviction meant that the appellant became a foreign criminal for the purposes of s.32 of the UK Borders Act 2007, whose deportation is deemed to be conducive to the public good. S.32(5) provides that the respondent must make a deportation order unless an exception within s.33 applies, those exceptions include that deportation would breach the appellant's rights under the ECHR. Although the appellant claimed that would indeed be the consequence, because of his private and family life, the respondent was unable to accept that and so a deportation order was made.

4. The appellant has been granted permission to appeal against the decision of First-tier Tribunal Judge Khan who, by a determination promulgated on 28 August 2014, dismissed his appeal against the decision to make a deportation order. The grounds upon which the appellant sought and was granted permission may be summarised as follows:

    a. The judge failed properly to weigh the factors speaking in the appellant's favour against the public interest in his deportation;

    b. In particular, the judge erred in that he failed to give adequate reasons for finding that the public interest in deportation was not outweighed, in this case, by the fact that the appellant had been in the United Kingdom since he was 3 months old;

    c. In considering whether the appellant retained any ties with Bangladesh, the judge erred in saying that there had been family visits there when the evidence had been that the appellant, his mother and his siblings had made no such visits. As all the evidence pointed to the fact that the appellant had no ties with Bangladesh the finding to the contrary was not reasonably open to the judge;

    d. The judge made a flawed and inadequate assessment of the article 8 claim in that he failed to carry out an assessment of the claim "over and above the rules and primary legislation", failed to have regard to relevant case law that should have informed and guided that assessment and failed to adequately address the progress made by the appellant while in prison serving his sentence.

5. In opening his submissions, Mr Alexander has refined the last of those grounds. The challenged pursued is not that the judge should have carried out an assessment "over and above the rules and the primary legislation" but that the assessment carried out within that framework was legally flawed because he did not have regard to any of the case law to which he had been referred.

6. Before examining those grounds and the further submissions advanced today at the hearing on the appellant's behalf by Mr Alexander, It is necessary to discuss the relevant parts of the determination under challenge.

7. The judge first set out the relevant factual background to the appeal. He noted that the offence which triggered the deportation decision was not the appellant's first. He referred to the respondent's decision letter which set out a comprehensive list of the appellant's previous convictions. These began with his conviction in February 2009 for offences of criminal damage. He received a community order but was twice subsequently found to have failed to comply with the requirements of that order. Similarly, although he was disqualified from driving for various driving offences, he twice disregarded the order of the court that he should not drive and in February 2011 and May 2011 was convicted of offences of driving while disqualified and so, necessarily, driving whilst uninsured. In May 2011 the appellant received a suspended sentence of imprisonment for making false representations with a view to gain for himself.

8. The significance of those convictions is that the appellant had, by his conduct, placed himself in a different position than applied to his siblings and his mother, all of whom became entitled to British citizenship. Because of his record of offending, the appellant remained subject to immigration control and so liable to be made subject to a deportation order should he commit a qualifying offence.

9. The judge then summarised the respondent's case. Although the respondent accepted, as plainly was the case, that the appellant had family ties in the United Kingdom, it was not accepted that he had family life for the purposes of rights protected by article 8 of the ECHR because these were relationships between adult family members that disclosed no aspects of particular dependency beyond the normal emotional ties to be expected. Further, the respondent did not accept that the appellant was in a subsisting relationship with Ms Kholi Begum, who the appellant had described as his fiancée. In respect of private life, again, the respondent accepted that the appellant had, obviously, built a private life here, but said that there were no exceptional circumstances arising from that such as to outweigh the public interest in his deportation, given the serious nature of the offences.

10. In the refusal letter the respondent had said that the appellant was someone who could "understand and speak Bengali language among your family and extended families" something that the appellant disputes. Pausing there, Mr Alexander accepted in his oral submissions at the hearing today that the elder members of the appellant's family do indeed speak Bengali and there is a modest level of communication possible between them and the appellant but, he points out, that is very different from being fluent in a language. The respondent said also in the decision letter that the appellant had been raised in a household with other nationals of Bangladesh and it was noted that English is widely spoken in Bangladesh. This meant, according to the respondent, that there were no insurmountable obstacles to deportation.

11. The judge heard oral evidence from the appellant and from Ms Begum and had regard to witness statements from other family members, including the appellant's parents and siblings.

12. In oral evidence the appellant said that he had been rehabilitated in prison and insisted that he did not speak Bengali nor did he have an extended family in Bangladesh. He spoke of courses he had completed in prison.

13. Ms Begum confirmed that the contents of her witness statement were correct and that she and the appellant did plan to marry. She had left Bangladesh in 2002 to move to the United Kingdom and had not returned there since.

14. Having set out the legal framework the judge proceeded to make his findings. He took as his starting point the comments of the sentencing judge who said that the appellant has been found to be in possession of "a very serious weapon together with ammunition and a silencer". He then had regard to the OAsys report and, at paragraph 17 of his determination the judge said:

> "The OAsys assessment of 5th August 2014 states that the appellant poses a medium risk to the public but a low risk in the community in all other respects. It is said that he was to undertake relevant offending behaviour work in custody as set by his offender supervisor. The report states that the appellant has seven convictions in relation to fifteen offences which would indicate "an amount of pro-criminal attitudes" and that he was aware that the man he borrowed money off to buy his van was a drug dealer. The appellant said that he was holding the weapon because the man who owns the gun was a drug dealer from London and the appellant was in debt to him as he had borrowed money to buy a van to help him start up his own business….. The offence was an escalation in seriousness due to the potential impact of gun would have should it have been used…. Had the gun not been found, the consequences could have been fatal."

15. The judge observed that the appellant appeared still to be in denial, despite his claim to have been rehabilitated, as he continued to take issue with some of the facts relating to the offence on the basis of which he was sentenced.

16. At paragraph 19 of the determination the judge set out his approach:

> "Counsel accepted in his skeleton argument that neither paragraphs 399 nor 399A of the Immigration Rules apply to the appellant because he falls into the first category of paragraph 398, namely a person whose deportation from the UK is conducive to the public good because he has been sentenced to a period of imprisonment of at least four years, in this case five years imprisonment. The appellant is liable to automatic deportation under section 32(5) of the UK Borders Act 2007. The appellants pleads that automatic deportation would breach his human rights under article 8 in respect of his family and private life that he has established in the UK and therefore the exception under section 33(2)(a) applies. However, I am now bound to consider part 5A which has been inserted into the Nationality, Immigration and Asylum Act 2002 and therefore the public interest considerations under article 8 which are to be found in section 19 of the Immigration Act 2014…."

The judge then set out the reasoning that led to his decision to dismiss the appeal. As this is the focus of the challenge being pursued, I will reproduce this part of the determination in some detail:

> "I therefore look to see whether, notwithstanding the primary legislation, the appellant can succeed under article 8. I therefore have taken into account section 117C in

> respect of the additional considerations in cases involving foreign criminals in which it is said that it is in the public interest for foreign criminals to be deported and the more serious the offence committed, the greater is the public interest in such deportation. Section 117C(6) applies because the appellant was sentenced to a period of imprisonment of at least four years and the public interest requires his deportation unless there are very compelling circumstances over and above those described in Exceptions 1 and 2. Whilst I accept that under section 117C(4), Exception 1 applies because the appellant has been lawfully resident in the UK for most of his life and he is socially and culturally integrated in the UK, I do not find that there would be very significant obstacles to the appellant's integration into the country to which he is proposed to be deported. The appellant has been brought up in a traditional Bangladeshi family and although he claims he did not speak Bengali, I find this hard to accept because it would be reasonable to expect the appellant to have some knowledge of Bengali which is the language of the older members of his family, including his parents and grandparents. In any event, taking into account section 117C(6), the public interest requires deportation unless there are very compelling circumstances over and above those described in Exception 1. I have looked to see whether such very compelling circumstances exist but I am not satisfied that they do exist because although the appellant came to the UK when he was only 3 months old, he is not a stranger to Bengali culture and customs and it would be reasonable to assume that he has retained links with Bangladesh. Both his parents were born in Bangladesh and although they and the appellant's siblings are British citizens, there have been family visits to Bangladesh and it would be unrealistic to assume that all ties to Bangladesh have been severed, even though the appellant may not have visited the country since his arrival in the UK. I find that the appellant has exaggerated his lack of ties to Bangladesh to suit the purposes of his appeal."

The judge then went on to address the relationships upon which the appellant's claim was founded:

> "in considering section 117C(5), I am not satisfied that Exception 2 applies because I do not find that the appellant has a genuine and subsisting relationship with a qualifying partner, in other words in Ms Begum's case a partner who is a British citizen, because I do not find that the evidence supports the appellant's claim that she is genuinely his fiancée. There is little, if any, evidence of meaningful contact. It is extremely surprising that Ms Begum said that she had only visited the appellant once in prison and could not say when, the prison was too far away and she did not like travelling on the Underground. It is also incredible that Ms Begum did not attend the appellant's sentence at Luton Crown Court because she did not know about it. She claimed she was not lying about the relationship in evidence but I do not accept that this is a genuine relationship…. I thus conclude that there is no family life between the appellant and Ms Begum."

17. The judge then found that in the absence of any evidence of "any special dependency, emotional, financial or otherwise", family life, for the purposes of article 8, did not exist between the appellant and the members of his immediate family.

18. At paragraph 24 of his determination the judge set out this conclusion:

> "Thus, in carrying out the balancing exercise under section 117A(3), taking into account the gravity of the appellant's offence and balancing that with the article 8 family life claim and the appellant's private life, including the length of time that he has

> been living in the UK, I find that the appellant's deportation is in the public interest and is not outweighed by any article 8 considerations."

19. The first of the grounds upon which that conclusion is challenged is that the judge failed adequately or properly to weigh the factors speaking in the appellant's favour against the public interests in his favour and, in particular, failed to provide adequate reasons for his finding that the public interest in deportation was not outweighed by the fact that the appellant has lived in this country since he was a 3 month old child.

20. It cannot, sensibly, be suggested that the judge left out of account the fact of the appellant's residence in this country since arriving as a 3 month old child, since the judge made specific reference to that fact at paragraphs 1, 11, 21, 24 and 25 of his determination. By any view this was a thread that he weaved thorough the determination from start to finish. It is plain that the judge recognised that to be a powerful factor speaking in the appellant's favour, describing it at paragraph 25 of the determination as the strongest point of his case. It is plain also that the judge carried out a careful balancing exercise, having identified all relevant factors, as he struck a balance between the competing interests in play. It is clear that the judge did give considerable weight to that factor but that was one part of the balancing exercise, even if it was an important one. The striking of that balance was for the judge to do.

21. The point is that, notwithstanding that the judge recognised this to be a matter of cogent significance, in his view it was not, even when taken together with everything else the appellant relied upon, sufficient to outweigh the public interest in deportation of a person convicted of a particularly serious offence who continued to represent a risk of harm to the public. Even if that was not the only conclusion possible on the facts, I am unable to characterise that conclusions as being a perverse one that no reasonable judge could arrive at.

22. Mr Alexander was invited to identify what other factors were left out of account but he was unable to point to any specifically. It cannot be said that the judge failed to have regard to the progress the appellant had made in prison because, again, he has made specific reference to the courses the appellant had undertaken. He was not required to set out in detail a discussion of the individual courses, details of which were included in the appellant's bundle.

23. Mr Alexander accepted that the fact of the appellant having arrived in the United Kingdom as a 3 month old child could not properly be regarded as being a factor determinative of the appeal in his favour. He is right to make that acknowledgement. That means that a perversity challenge cannot succeed on that basis. Therefore, if the determination is to be disturbed, the appellant must demonstrate that some other error has been made by the judge which makes his assessment legally flawed.

24. The next ground is that the judge was wrong to say that there had been family visits when assessing whether the appellant had retained any ties with Bangladesh. It is submitted that the judge erred because of a mistake of fact. That was because the evidence was to the effect that the appellant, his siblings and his

mother had made no visits to Bangladesh since they moved to the United Kingdom. This ground is, with respect, simply misconceived as it misrepresents what the judge was saying. The point being made by the judge was that the appellant's own evidence was that he was a member of a close family and there had been visits by the family, if not by the appellant himself. That suggested family links with Bangladesh that the appellant would have the advantage of should he return to Bangladesh.

25. The appellant's case in this respect may be thought to be lacking in frankness. While statements from the appellant, his siblings and his mother are at pains to stress the absence of any family visits to Bangladesh, it is striking that the witness statement of the appellant's father makes no such assertion. From that it is entirely reasonable for the judge to draw the inference that the appellant's father has made such visits, even if he and the appellant have chosen not to disclose them.

26. Once it is accepted that there have been family visits, even if only by one member of the family, it can readily be seen that the judge was entitled to take the view that, as he put it, it would be unrealistic to assume that all ties to Bangladesh have been severed. All this led to the finding that the appellant was"not a stranger to Bengali culture and customs".

27. Building upon that, the judge noted that the appellant had been brought up within a traditional Bangladeshi family setting and he did not accept the appellant's claim to have no ability at all in the Bengali language. The judge pointed out that, in any event, English was widely spoken in Bangladesh.

28. For the respondent Mr Walker submitted that the point being made by the judge could be illustrated by way of an example of something that could have, but did not happen. If soon after arrival as an unaccompanied migrant (which of course he was not) the appellant had been fostered to an English family with no connection to Bangladesh then he would have been raised to adulthood with nothing approaching any sort of tie with his country of nationality. But that was not the case at all. The applicant had been raised within a Bangladeshi family setting, with the older generations speaking Bengali. Thus the judge was entitled to find that he was "not a stranger to Bengali culture and customs".

29. Once again, while other judges may have come to other conclusions, I do not see that this was a perverse conclusion for the judge to reach, nor one unsupported by adequate reasoning.

30. The ground complaining that the judge was requested to determine the article 8 claim "over and above the rules and primary legislation" so that he erred in law in failing to do so is also one that is not made out and Mr Alexander is right not to pursue that ground on such a basis. The immigration rules, in the deportation context, are a complete code when addressing and dealing with an article 8 claim: see *MF (Nigeria) v SSHD* [2013] EWCA Civ 1192

> 44. We would, therefore, hold that the new rules are a complete code and that the exceptional circumstances to be considered in the balancing exercise involve the application of a proportionality test as required by the Strasbourg jurisprudence.

> We accordingly respectfully do not agree with the UT that the decision-maker is not "mandated or directed" to take all the relevant article 8 criteria into account (para 38).
>
> 45. Even if we were wrong about that, it would be necessary to apply a proportionality test outside the new rules as was done by the UT. Either way, the result should be the same. In these circumstances, it is a sterile question whether this is required by the new rules or it is a requirement of the general law. What matters is that it is required to be carried out if paras 399 or 399A do not apply.

31. The addition to the legal framework of 117 of the 2002 Act simply reinforces that statement of principle. That is because s117A(3) provides:

> … "the public interest question" means the question of whether an interference with a person's right to respect for private and family life is justified under Article 8(2)."

This makes clear that the public interest in deportation can prevail only if that is compliant with rights protected by article 8 of the ECHR. In any event, the judge did go on to carry out a quite separate assessment informed by the guidance of *R (Razgar) v SSHD* [2004] UKHL 27 and that assessment took him to the same conclusion thus reinforcing the answer delivered by his assessment under the statutory framework.

32. The final ground, and the main thrust of Mr Alexander's oral submissions, raises the complaint that the judge failed to have regard to case law relevant to the article 8 assessment to be carried out. The grounds refer to *Khan v United Kingdom* [2010] ECHR 27; *Maslov v Austria* [2008] ECHR 1638/03; *Uner v the Netherlands* [2006] ECHR 873 and *SS (India) v SSHD* [2010] EWCA Civ 288. But, for the reasons that follow, none of those takes the appellant any further.

33. It is not an error of law for a judge not to make specific reference to case law, even if he is referred to it in submissions. What matters is not that the judge recites the names of cases but that he applies the correct legal principles. It can be seen that the judge directed himself in terms of *R (Razgar) v SSHD* [2004] UKHL 24, but made no specific reference to any of the cases identified above.

34. *Khan* concerned a Pakistani national who successfully resisted deportation. One factor that spoke in his favour was his length of residence since arriving in the United Kingdom as a child aged 3 years old. But there were other factors that are absent in this case. In *Khan* the appellant had a British national partner and a child who's right to respect for family life fell to be considered as well. Also, in that case the appellant had committed no further offences during a significant post release period. A report confirmed a low risk of reoffending and members of his family suffered from significant ill-health. None of that can be said to be the case for this appellant.

35. It is submitted on the appellant's behalf that *Maslov* is relevant because the court found that regard had to be had to the special situation of aliens who have spent most, if not all, their childhood in the host country, were brought up and received their education there. However, it is now established that *Maslov* is not be taken as requiring any different approach or "laying down a new rule of law", and in any

event, it is of relevance that this appellant was not a juvenile offender but an adult: see *Akpinar v SSHD* [2014] EWVA Civ 937 at paragraph 43 *per Stanley Burnton LJ:*

> "My conclusion is that there is not a "clear and constant jurisprudence of the Strasbourg court" (see *R (Alconbury Developments Ltd) v Secretary of State for the Environment, Transport and the Regions* [2001] UKHL 23, [2003] 2 AC 295, paragraph 26, and *R v Special Adjudicator ex parte Ullah* [2004] UKHL 26 [2004] 2 AC 323 at paragraph 20) requiring this Court to treat "very serious reasons", if the phrase means "very serious offences", as a precondition of deportation of someone who is a "settled migrant who has lawfully spent all or the major part of his or her childhood and youth" in this country."

36. In any event, it is plain from a reading of the determination that the judge kept in mind throughout "the special situation of aliens who have spent most, if not all, their childhood in the host country, were brought up there and received their education there" because he repeatedly referred to those matters.

37. Mr Alexander relies upon *dicta* from *AJ (Angola) v SSHD* [2014] EWCA Civ 1636 at paragraph 46, the effect of which is that the assessment of the article 8 claim is to be carried out within the legal framework of the immigration rules, and that such assessment should be informed by the guidance found in *Maslov*. But this appellant was 22 years old when sentenced to imprisonment and so was not a juvenile offender and it can be seen from the determination read as a whole that the judge has kept in mind throughout all of the *Maslov and Uner* criteria although in doing so he has arrived at a conclusion other than that sought by the appellant.

38. The grounds draw on *Uner* to support the proposition that when looking at whether it would be reasonable to expect family members to relocate with the appellant, factors to be borne in mind include the best interests and well-being of children and solidity of social, cultural and family ties with the host country and the country of destination. But in this case no such relocation is contemplated, the respondent accepting there will be an interruption with established family and private life relationships but maintaining that would be a proportionate outcome.

39. In referring to *SS (India)* the grounds introduce into the discussion something that did not loom large in the reasoning of the judge but which is a very significant factor speaking against the appellant's case. There are two planks to the public interest argument. The first is the need to protect the community from the acts of the foreign criminal. The other is the need to deter others from offending by demonstrating the severe consequences that can follow serious offending for those subject to immigration control.

40. That has been made clear, consistently, in guidance given by the superior courts. In *N (Kenya) v SSHD* [2004] EWCA Civ Judge LJ (as he then was) said at para 83:

> "83. The "public good" and the "public interest" are wide ranging but undefined concepts. In my judgment (whether expressly referred to in any decision letter or not), broad issues of social cohesion and public confidence in the administration of the system by which control is exercised over non-British citizens who enter and remain

> in the United Kingdom are engaged. They include an element of deterrence, to non-British citizens who are already here, even if they are genuine refugees and to those minded to come, so as to ensure that they clearly understand that whatever the circumstances, one of the consequences of serious crime may well be deportation …"

At paragraph 64 May LJ said:

> "Where a person who is not a British citizen commits a number of very serious crimes, the public interest side of the balance will include importantly, although not exclusively, the public policy need to deter and to express society's revulsion at the seriousness of the criminality."

So that, in the case under consideration:

> "…I consider that a proper reading of the determination as a whole does not support the submission that the adjudicator took properly into account the public interest considerations. If he had, it is, in my view, plain that he would not have reversed the Secretary of State's decision as to deportation.".

41. More recently, in *AM v SSHD* [2012] EWCA Civ 1634 Pitchford LJ, having referred to this *dicta* said at paragraph 24:

> "Deportation in pursuit of the legitimate aim of preventing crime and disorder is not, therefore, to be seen as one-dimensional in its effect. It has the effect not only of removing the risk of re-offending by the deportee himself, but also of deterring other foreign nationals in a similar position. Furthermore, deportation of foreign criminals preserves public confidence in a system of control whose loss would itself tend towards crime and disorder."

42. The importance of these considerations was emphasised also in *JO (Uganda) v SSHD* [2010] EWCA Civ 10, *per* Richards LJ at paragraph 29:

> "…the factors in favour of expulsion are, in my view, capable of carrying greater weight in a deportation case than in a case of ordinary removal. The maintenance of effective immigration control is an important matter, but the protection of society against serious crime is even more important and can properly be given corresponding greater weight in the balancing exercise…"

43. The same approach was taken by a Presidential panel of the Upper Tribunal in the reported decision of *Masih (deportation-public interest-basic principles) Pakistan* [2012] UKUT 46 (IAC). The guidance is summarised in the head note as follows:

> *"The following basic principles can be derived from the present case law concerning the issue of the public interest in relation to the deportation of foreign criminals:*
>
> *(a) In a case of automatic deportation, full account must be taken of the strong public interest in removing foreign citizens convicted of serious offences, which lies not only in the prevention of further offences on the part of the individual concerned, but in deterring others from committing them in the first place.*
>
> *(b) Deportation of foreign criminals expresses society's condemnation of serious criminal activity and promotes public confidence in the treatment of foreign citizens who have committed them.*

> *(c) The starting-point for assessing the facts of the offence of which an individual has been committed, and their effect on others, and on the public as a whole, must be the view taken by the sentencing judge. ..*"

44. In *AJ (Angola)*Sales LJ explained the significance of the correct approach to assessment within the rules of the article 8 claim as follows:

> 39. The fact that the new rules are intended to operate as a comprehensive code is significant, because it means that an official or a tribunal should seek to take account of any Convention rights of an appellant through the lens of the new rules themselves, rather than looking to apply Convention rights for themselves in a free-standing way outside the new rules. …
>
> 40. … The requirement of assessment through the lens of the new rules also seeks to ensure that decisions are made in a way that is properly informed by the considerable weight to be given to the public interest in deportation of foreign criminals, as declared by Parliament in the 2007 Act and reinforced by the Secretary of State (as the relevant Minister with responsibility for operation of the immigration system), so as to promote public confidence in that system in this sensitive area.

45. Drawing all of this together, I return to a point I have made earlier in this determination. As has been recognised repeatedly, it is the nature of a proportionality balance that more than one outcome may be possible on any given set of facts. Indeed, this may be such a case. But that is not the question that I have to address. The issue to be confronted is whether the appellant has demonstrated that the judge made an error of law such as to require that his decision be set aside.

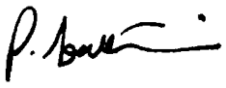
46. For the appellant's challenge to succeed as a perversity challenge it must be established that the facts admitted of just one conclusion, namely that there would be an impermissible infringement of rights protected by article 8 of the ECHR so that the answer delivered to the ultimate question of para 398 of HC395 must be one in the appellant's favour. Put another way, it must have been perverse for Judge Khan to have reached the conclusion he did. For the reasons I have given that has not been demonstrated.

47. Mr Alexander's principal challenge, though, is founded on the submission that the assessment carried out by the judge was legally deficient because it was not properly informed by guidance found in the case law discussed above. There are two difficulties with that submission. First, it is not evident that any applicable legal principle has been incorrectly applied by the judge and second given the findings of fact made by the judge it is impossible to see how a detailed recitation of extracts from the case law would have led him to any different conclusion. Once it is accepted, as I do accept, that this is not a case that admits of only one possible outcome, then the weight to be given to factors considered within a proportionality balance is a matter for the judge who, in this appeal, has not been shown to have committed legal error in carrying out that task.

48. For all of these reasons the appeal to the Upper Tribunal is dismissed.

Summary of decision

49. The First-tier Tribunal Judge did not make an error of law and his determination will stand.

Signed 

Judge of the Upper Tribunal

Date: 22 December 2014