Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: DA/00590/2013

THE IMMIGRATION ACTS

Heard at Field House	**Determination Promulgated**
On 4 December 2013	**On 28 January 2014**
And 9 January 2014	

Before

UPPER TRIBUNAL JUDGE RINTOUL

Between

MR ROLAND CALVIN STEWART

Claimant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Claimant: Miss E King, Counsel, instructed by J D Spicer Zeb, Solicitors
For the Respondent: Mr I Jarvis, Home Office Presenting Officer (4 December 2013)
Mr S Whitwell, Home Office Presenting Officer (9 January 2014)

DETERMINATION AND REASONS

1. The Secretary of State (the respondent) appeals with permission against the determination of the First-tier Tribunal (First-tier Tribunal Judge Stanford and Miss R I Emblin sitting as a panel) promulgated on 23 August 2013. In that determination they allowed the claimant's appeal against the decision of the respondent made on 12

March 2013 to deport him as a foreign criminal pursuant to Section 32(5) of the UK Borders Act 2007.

2. The claimant is a citizen of Jamaica born on 6 November 1986. He entered the United Kingdom on 13 July 2002 as a visitor and was granted leave to enter for six months. He was later granted leave to remain as a student, and that was extended until 30 September 2004. He later became an overstayer but in May 2011 was granted indefinite leave to remain outside the Immigration Rules on the basis of his relationship with Sian Brown, a Jamaican national, who had first been granted leave to remain in September 2001. There are three children of the family; the claimant is the father of the two youngest. The oldest child has no contact with her biological father.

3. The family have not always lived together in the same place. At present the claimant is not living with Ms Brown owing to restrictions and conditions as to residence imposed upon his release from prison and due to restrictions imposed by the local authority from which Ms Brown rents a flat.

4. On 22 June 2012 the claimant was convicted of assault occasioning actual bodily harm and the possession of offensive weapon for which he was sentenced to two years' imprisonment.

5. On 12 March 2013 the respondent made a deportation order against the claimant on the basis that he was a foreign criminal as defined by Section 32(1) of the 2007 Act. He considered that, as he did not fall within any of the exceptions set out in Section 33 of that Act specifically those set out in paragraphs 398, 399 and 399A of the Immigration Rules, that he should be deported. The respondent considered:-

   (a) that as Ms Brown's older daughter is a British citizen, that it would be unreasonable to expect her to leave the United Kingdom, but that her mother would be able to care for her in the United Kingdom;

   (b) that as the claimant's daughter, S, had been living in the United Kingdom continuously for seven years preceding the date of immigration decision, it would be unreasonable to expect her to leave the United Kingdom but that she too could be looked after by her mother;

   (c) that the claimant is in a genuine subsisting relationship with Ms Brown but that she was not British or settled in the United Kingdom and that there were no insurmountable obstacles to family life with her being continued outside the United Kingdom;

   (d) that it would be open to the children and Ms Brown to relocate to Jamaica with the claimant and that if they chose not to do so the claimant could continue his relationship with his children and partner through modern channels of communication and that they could adapt to living apart from him;

(e) that there were no exceptional circumstances which would outweigh the public interest in deporting the claimant given that his offences are regarded as very serious, despite the fact that he arrived in the United Kingdom at the age of 15 as a minor, that it was likely that he would reoffend if he was put in the same situation as before and that he would receive assistance on return to Jamaica.

6. The First-tier Tribunal found;

(i) that the claimant did not fall within the provisions of paragraph 399(a), paragraph 399(b) or 399A of the immigration rules [49] to [51];

(ii) that the claimant has committed to his role as a father and has supported his partner in bringing them up [41]; that he has roots in the community [43]; that the core of his family are all in the United Kingdom [44] and that there is no subsisting relationship between the claimant and his father in Jamaica [45];

(iii) that deporting the claimant would interfere with his right to respect for his family life [61] and it would be difficult for Ms Brown and the children to move to Jamaica; that the eldest daughter is now a British citizen and the right of that child exercises citizenship is a factor [67] and that it is in the best interests of the children to be brought up by both parents to continue the stability they currently experience within their nuclear and extended family [68];

(iv) that the interests of the children are not the only factors to be weighed in determining proportionality, noting that the obligation of the respondent to deport the claimant is established by statute, the offence committed being regarded as extremely serious [69];

(v) that the claimant is at low risk of reoffending and that he had expressed remorse for what he had done [71] and whilst noting that the obligation on the respondent to deport the claimant was established by statute [69] deportation would be a disproportionate interference with the right to family life of the claimant and his family [73], they therefore allowed the appeal on human rights grounds.

7. The respondent sought permission to appeal against that decision on the grounds that;

(i) that the Tribunal's conclusion had been reached without giving adequate consideration for public interest, thereby misdirecting itself in law (see **SS (Nigeria)** [2013] EWCA Civ 550), the Tribunal having failed to give adequate reasons for finding that the claimant's circumstances amount to the extremely unusual circumstances envisaged in that decision;

(ii) that although referring to the public interest the Tribunal had failed to give adequate reasons for finding that the claimant's Article 8 rights outweighed the public interest in the circumstances, deportation of foreign criminals also

having the deterrent effect and preserving public confidence in the system of control;

(iii) that the panel had failed to identify any exceptional circumstances rendering the claimant's deportation disproportionate having misdirected themselves as to the meaning of exceptional, relying on **HH v Deputy Prosecutor of the Italian Republic, Genoa** [2012] UKSC.

8. On 7 November 2013 Upper Tribunal Judge Kekic granted permission to appeal on all grounds.

Hearing on 4 December 2013

9. Mr Jarvis submitted that the Tribunal had failed to show in their determination what weight they had attached to the public interest in deporting the claimant, failing in particular to take note that automatic deport provisions attach special weight. He submitted also that the Tribunal's approach to proportionality was flawed as although they do make reference to deterrence, there is no indication that they had taken into account that the purpose of deportation extends beyond that. He submitted further that the Tribunal had attached too much weight to the best interests of the children.

10. In reply Miss King submitted that the latter point was not one which could be made given that that had not formed a ground of appeal. She submitted, relying on her Rule 24 response that the respondent was seeking to reargue the case. She submitted it was evident from the determination [46] and [58] that the Tribunal were mindful of the public interest, were aware of the legitimate aim in deporting the claimant and indicated that they were aware there has to be very substantive reasons before a deportation order should not be proceeded with [59]. She submitted that if the words the importance of the deportation is given considerable weight were added, it would not alter the sense of the decision and it was unfair and unreasonable to argue that the Tribunal had not placed sufficient weight on the public interest in reaching their decision. She submitted when reading paragraph [69] of the determination it was clear that the panel had in mind that the children's best interests were capable of being outweighed.

11. In reply Mr Jarvis said that there was little reference to the public interest and that it was insufficient merely to state the legal basis.

12. In light of the decision in **MF (Nigeria)** [2013] EWCA Civ 1192 the panel erred in considering Article 8 outside the code of the Rules and that, having found that the claimant did not fall within paragraphs 399 or 399A, should have considered whether, within paragraph 398 of the Immigration Rules, there were exceptional circumstances such that the claimant should not be deported. That error is not necessarily material, a proportionality exercise under Article 8 differing from that within paragraph 398 more in form than in substance.

13. In **MF (Nigeria)** the Court of Appeal held [40] to [41]

> 40 Does it follow that the new rules have effected no change other than to spell out the circumstances in which a foreign criminal's claim that deportation would breach his article 8 rights will *succeed*? At this point, it is necessary to focus on the statement that it will only be "in exceptional circumstances that the public interest in deportation will be outweighed by other factors". Ms Giovannetti submits that the reference to exceptional circumstances serves the purpose of emphasising that, in the balancing exercise, great weight should be given to the public interest in deporting foreign criminals who do not satisfy paras 398 and 399 or 399A. It is only exceptionally that such foreign criminals will succeed in showing that their rights under article 8(1) trump the public interest in their deportation.
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> 41 We accept this submission. In view of the strictures contained at para 20 of *Huang*, it would have been surprising if the Secretary of State had intended to reintroduce an exceptionality test, thereby flouting the Strasbourg jurisprudence. At first sight, the choice of the phrase "in exceptional circumstances" might suggest that this is what she purported to do. But the phrase has been used in a way which was not intended to have this effect in all cases where a state wishes to remove a foreign national who relies on family life which he established at a time when he knew it to be "precarious" (because he had no right to remain in the UK). The cases were helpfully reviewed by Sales J in *R (Nagre) v Secretary of State for the Home Department* [2013] EWHC 720 (Admin). The fact that *Nagre* was not a case involving deportation of a foreign criminal is immaterial. The significance of the case law lies in the repeated use by the ECtHR of the phrase "exceptional circumstances".

14. The importance of the public interest in deporting foreign criminals was noted in **Richards v SSHD** [2013] EWCA Civ **244** at [19] and [20] where Laws LJ said [21]:

> 21 What in my judgment needs emphasis is that the strong public interest in deporting foreign criminals is now not merely the policy of the Secretary of State but the judgment of Parliament. That gives it special weight, which the courts ought to recognise, as no doubt the Strasbourg court will. This approach sits with the well established approach to proportionality questions in European Union law where Acts of the primary legislator enjoy a wider margin of discretion (see R v Secretary of State for Health ex parte Eastside Cheese [1999] 3 CMLR 123 per Lord Bingham, especially at paragraph 48)

15. Whilst the Tribunal does [46] state that it is in the public interest to deport a foreign criminal who falls within the provisions of the Act and note that the obligation on the respondent to deport the claimant is established by statute [69], it is not evident from their determination what weight they attached to that factor and whilst they did acknowledge that the best interests of the children were to be weighed [69], it does not follow from that that they attached significant weight to the public interest in or of what factors had been taken into account in reaching the conclusion that the public interest was outweighed given that the factors on which they appear to rely, the interests of the children, his relationship with his partner, are matters which are provided for within paragraph 399 and 399A along with length of residence and limited ties to his country of nationality.

16. I consider also that it cannot be deduced from the determination that the Tribunal directed themselves properly in law as to the significance to be attached to the public interest and it would have been open to them, on the facts of this case, to have

concluded, had they attached significant and serious weight to the public interest, that they would have concluded that it was proportionate to deport the claimant.

17. I do not, however, accept Mr Jarvis' submission that they attached too much weight to the best interests of the children. That is not a matter which was pleaded in the grounds of appeal and no application was made to amend them. Further, it is not a necessary corollary of any of the grounds as pleaded.

18. For these reasons, the determination of the First-tier Tribunal did involve the making of an error of law and I set it aside. I do, however, preserve the findings of fact which have been made, given that there was no challenge to these set out in the grounds of appeal. It will be necessary to remake the proportionality exercise but, given that four months had now elapsed since the initial hearing, it is appropriate that the claimant be allowed to adduce further oral evidence updating the circumstances and so I adjourned the matter until 9 January 2014 to hear further evidence and submissions as to how the decision should be remade.

The Hearing on 9 January 2014

19. I heard oral evidence from the claimant as well as his fiancée, Sharon Brown and his mother, Mrs Althea Degannes. In addition I heard submissions from both representatives. Despite the directions made in this matter on 12 December 2013, no additional material was adduced.

20. The claimant adopted his witness statement adding that he has now been given permission by the local authority to live with his partner and their children but is waiting confirmation that his bail address can be changed to permit this. He spends time with them all day.

21. He explained that he had on a previous occasion in the First-tier given different names for the children's teachers as they were the names he had known before him going into prison. He takes the children to school every day. He said that, due to being nervous, he had not recalled at the last occasion when his younger daughter had had her adenoids removed. He said that his children are everything to him and they spend so much time together.

22. In cross-examination the claimant said his younger daughter had her adenoids removed in early 2003, initially thinking it was prior to his release and said that he did remember and that it took place in Lewisham Hospital. He, when asked, said he had been taken into custody in October 2011 but was sentenced in June 2012.

23. The claimant said that his partner had taken the tenancy at 7 Pemberton House just after his arrest and before that had lived with his mother. The children had lived with them too. She had also previously applied for her accommodation in a hostel first but when she was there they came over to stay with him at his mother's house to sleep on several nights a week as he was not allowed to stay in the hostel overnight. They had not applied for accommodation together as at the time he did not have

leave to remain in the United Kingdom so the application could not be made. He said the application for bail had been to stay with his mother as he had lived at that address for ten years and as his name was not on the tenancy agreement at the time, he had been misled by the authorities into believing that he could not live there although what in reality was the case was that he simply could not be put on a tenancy agreement. He said that moving around had when they were in the hostel affected the children but now he goes to visit his family during the week and they come to spend time with him at the weekends. He said that he and his partner had first lived together since 2004 and continued to live there until 2010. He explained that the other addresses mentioned in the birth certificate are properties which belonged to his mother, in one case, and in the other, property which belonged to Ms Brown's aunt.

24. In re-examination the claimant said that he had been present at the hospital for his daughter's operation, he remembered bringing soup for her in the morning and it had been after he had been released. He said he was not named as the father initially on her birth certificate as at the time he had no status and was scared that there would be difficulties for him if he put his name on the certificate. He decided to change this after he made an application for leave to remain in 2010 and they decided to re-register the birth.

25. I then heard evidence from Sian Brown who adopted her witness statement adding that the claimant sees the children every day taking them to and from school, cooks for them and helps them with the homework. She said she is still on maternity leave and will in fact start back to work next week. She said she would be working four days a week staring at 7.30 in the morning until 7 p.m. or 8.30 in the morning. She said that the claimant would be looking after the children and if he has a job they would have to rearrange matters. She said that the older girl is at secondary school and that he drops her off first then takes the younger child to her primary school. She said there was no one else in the family who would be able to do that as they all work and they would need to pay someone to do it. She said that her younger daughter had had her adenoids removed in April 2013 in Lewisham Hospital just after she had given birth to her baby. She said that she, the claimant and Ms Degannes had all been there.

26. Ms Brown said that when the claimant had been taken into custody the children would go to school and cry and would eventually confide in the teachers. She said that they would talk to her about it, would wait for him to call as they knew the time he would call and they would talk to their grandmother about it. She said that the older girl had never had any contact with her biological father. She said that there would be a big hole in their life and they would be back to square one and it would be more difficult this time as the older daughter is in high school and needs a father to look up to. She said the younger girl is a Daddy's girl and there are no words to explain how difficult it would be for them.

27. In cross-examination Ms Brown confirmed that she had taken a year's maternity leave but only got paid for nine months. She said that she was on income support

until she returns to work next month and is currently in receipt of child tax credit. She said she had until November 2013 received working tax credit and that HMRC were aware that she was in a relationship. She was not quite sure when she had applied for accommodation separate from living with the claimant and his mother but thought that it was the year that he had been arrested. She said that she had had a hostel place initially and then moved to her current address.

28. Ms Brown explained that she and the claimant had discussed putting his name on the younger daughter's birth certificate but he was not available to attend at the appointment she had booked to register the birth. He had no stay at the time and he had not wanted to put on it as he got scared of putting his name on things due to his status at the time. She explained that the additional addresses on the form were in one case her aunt's address and in the other an address of a property which belonged to the claimant's mother. She said contrary to the address the impression given that they were in fact living together. She said that she could not get family to help out with the children on a long-term basis. She said she could not imagine how she would be able to cope as a single parent looking after three girls. She said they have a family life, that the children seemed to understand it would be more difficult to be separated now. She said she did not want to depend on the state to look after her and her family and that although she was doing so at the moment it was only on a temporary basis of two months.

29. I then heard evidence from Althea Degannes, the claimant's mother, who adopted her witness statement. She said that the children were very affected when her son had been taken into prison. At the time they were staying with her and it was very emotional. She said that the first visit they had been on was very emotional. The elder girl started screaming when she had to go, hanging onto her. She said the younger girl cried all the time at night and she had to look after her asking her what was wrong and that it had been heartbreaking. She also said she had come back from school saying that she had broken down and had to confide in teachers.

30. In cross-examination Ms Degannes said that she was still working full-time and had only once been back to Jamaica since she left and that was for the funeral of her nephew. She explained that that nephew had been her brother's child and had been brought up with her initially by her mother and then by her aunt. She said that after they had come to the United Kingdom they had sent money to him but it would be very expensive now to visit Jamaica, it would cost over £1,000 a time. She explained that the flat at Culverley Road was owned by her husband who really looked after the matter but it had been in the past let out to friends and family including the claimant. She said that the children and Ms Brown had stayed with her until Ms Brown got her own flat but she could not recall exactly when that was and when she had moved there.

Submissions

31. It is accepted that the claimant does not fall within the requirements of paragraph 399 or 399A of the Immigration Rules. Mr Whitwell submitted that there were in this

case no exceptional circumstances such that the claimant's removal was not proportionate given the wide margin of appreciation accorded to the state in such matters. However he accepted that the best interests of the children may be to be with the parents, there are other matters which are to get equal weight and that attention should be paid closely to the sentencing remarks and the fact that the claimant had been here for fifteen years although most of that time had been unlawful.

32. In reply Miss King submitted that exceptionality is not a test but rather the outcome and that taking into account the decisions of the Court of Appeal in **SS (Nigeria)** and **MF (Nigeria)**, this case was still one of those which fell to be decided in the claimant's favour, given that the public interest is not necessarily fixed and that in this case, following the criteria in **Maslov** referred to in **MF (Nigeria)** the appeal falls to be allowed. She asked me to note also that the seriousness of the offence is the matter to be considered as was identified in **SS (Nigeria)** and that the facts of this case were considerably different from those in that case given the lack of criminal history and the fact that the claimant's presence here was lawful. She submitted also that the respondent's decision was somewhat confused in that they appeared to accept in one part that it was not reasonable to expect the children to go but in others that they should.

Decision and Reasons

33. I accept that the claimant was nervous at the hearing before the First-tier Tribunal and the issues regarding the operation on his daughter have, to a great extent, have been resolved, as have the issue over the difference addresses on her birth certificate. I accept the evidence of the witnesses, and I find that there is no material inconsistency in what they have said; there are some minor inconsistencies over dates and when Ms Brown was living where, but I find these are simply errors of recall over events now some years in the past. There are no material inconsistencies as to the nature of the relationships between the parties.

34. It is evident that the claimant has a very close bond with his children and with the older child, even though he is not her biological father. He is closely involved with their lives and spends a substantial amount of time caring for them. He does not, at present, live with them, but that appears to have been as a result of poor advice given to the family about his right to reside in Ms Brown's property and then to apply to vary the terms of bail.

35. I acknowledge that there is little direct evidence of how the deportation of the claimant would affect the children, but any expert evidence to that effect would of necessity be speculative. There is the direct evidence of how separation from him has affected them in the past, and I am satisfied that this would be likely to occur in the same way, not least as there would be no indication of when, if ever, they could be a family again.

36. As the claimant is unable to come within paragraphs 399 or 399A of the immigration rules, the question then is whether there are "exceptional circumstances that the public interest in deportation will be outweighed". I have followed the guidance given in **MF (Nigeria)** which clarifies at [44] that the immigration 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". This brings into play the application of article 8 jurisprudence as considered at [39]-[40] of **MF (Nigeria)** In considering "exceptional circumstances", it is important to note the observation made by the Master of the Rolls. He cited with approve the decision of Sales J in **Nagre v SSHD** [2013] EWHC 720 (Admin) in the context of his observations of the repeated use by the ECtHR of the phrase "exceptional circumstances" , stating [42] and [43]:

> 42. At para 40, Sales J referred to a statement in the case law that, in "precarious" cases, "it is likely to be only in the most exceptional circumstances that the removal of the non-national family member will constitute a violation of art 8". This has been repeated and adopted by the ECtHR in near identical terms in many cases. At paras 41 and 42, he said that in a "precarious" family life case, it is only in "exceptional" or "the most exceptional circumstances" that removal of the non-national family member will constitute a violation of article 8. In our view, that is not to say that a test of exceptionality is being applied. Rather it is that, in approaching the question of whether removal is a proportionate interference with an individual's article 8 rights, the scales are heavily weighted in favour of deportation and something very compelling (which will be "exceptional") is required to outweigh the public interest in removal. In our view, it is no coincidence that the phrase "exceptional circumstances" is used in the new rules in the context of weighing the competing factors for and against deportation of foreign criminals.
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> 43. The word "exceptional" is often used to denote a departure from a general rule. The general rule in the present context is that, in the case of a foreign prisoner to whom paras 399 and 399A do not apply, very compelling reasons will be required to outweigh the public interest in deportation. These compelling reasons are the "exceptional circumstances".

37. I therefore turn to consider whether there are, on the particular facts of this appeal, exceptional circumstances that outweigh the public interest in deportation as provided for in paragraph 398. In doing so I bear in mind the factors identified in **Maslov** as referred to in **MF (Nigeria).**

38. A primary consideration is the best interests of the three children in this case but I bear in mind that it is one capable of being outweighed. Whilst the oldest girl is not the biological daughter of the claimant, nonetheless he has been the only father figure in her life since she was approximately 18 months of age. The younger girl has also had only one father in her life and there is now a baby of a few months. It is not suggested that the children should be expected to leave the United Kingdom, not least as the older is a British citizen, and the younger girl has lived here more than seven years. Whilst as was accepted below, the relationship has been through its

problems, nonetheless they have remained together as a family unit and they are also close to the claimant's mother. I consider that the claimant has shown a willingness to take his responsibility as a father seriously, whatever doubts there may also be as a result of his criminal background.

39. I bear in mind as also being a significant and weighty consideration the very strong public interest in the deportation of foreign criminals and the need to deter foreign nationals from committing serious crimes by leading them to understand that, whatever the other circumstances one consequence for them may well be deportation. The role of a deportation order 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 is also a weighty consideration to be taken into account.

40. In assessing these factors, I bear in mind fully that Parliament has given its expression of its will through the automatic deport provisions. It is also a primary consideration, along with the best interests of the children.

41. That is not to say that the public interest in deporting all those who meet that criteria is the same and it is to be noted from the decision of Laws LJ in **SS (Nigeria)** a significant proportion of the decision is taken up with a consideration of that claimant's poor immigration history, poor character and the extent of his criminal conduct.

42. The claimant has been involved as the father as a carer of three children. I am satisfied, given the evidence of the emotional effect of his imprisonment had on the children that it is highly to leave a powerful sense of an unexplained loss in the case of the two older girls and a loss which is difficult to rationalise in the end. In reality the children cannot be expected to go to Jamaica, they are likely to be raised without a father figure and by a single mother albeit with the help of the paternal grandmother.

43. The claimant has been in the United Kingdom for a significant part of his formative years and his connections with Jamaica to which he has not returned are slight. He has been integrated in this country and if returned it would be, in effect, as a stranger. There is no indication that he has any close family there. Whilst he may be able to fend for himself, I consider it is likely that he would find it difficult to integrate into the country again.

44. In contrast with what he would find in Jamaica, he has in the United Kingdom a strong set of family and other connections here whose presence is likely to be a positive factor. He has solid ties to this country in terms of his partner and children, and in his ties to his mother and her husband, as well as a network of other relatives. He has also, as the First-tier Tribunal found, shown remorse and is at low risk of re-offending. The serious offence of which he was convicted took place in 2011. He has not offended since then. I bear in mind the sentencing remarks of the judge and I attach significant weight to them in assessing the seriousness of the offending but he

has now as a result of the Probation report been found by the First-tier Tribunal to be at low risk.

45. The removal of the claimant will result in exclusion for a lengthy period, which will be of real significance given the ages of the children concerned. Here, the length of the parental relationship between the claimant and his two older children is of significant duration; he has in fact been present during the vast majority of their lives and they have lived with him, except while he was in prison. The reality is that their family life with the claimant will effectively be severed by his deportation.

46. These factors must, however, be balanced against the significant and weighty public interest in deporting foreign criminals, and the other factors in favour of deportation set out above. In addition, while the claimant has lived here for a substantial period, and was granted indefinite leave to remain, his presence here was not lawful prior to that. That is a factor which weighs against him, but not to any great degree; he was under 18 when he came here, and his status was regularised. It is not in his favour that he was convicted of a serious offence as an adult. That said, this is not a case in which the claimant's position here was "precarious", given that he had indefinite leave to remain.

47. I bear in mind the circumstances of the offence. This was a serious assault, and one which rightly attracted a significant sentence.

48. Weighing these factors, I find that the consequences of deportation to the claimant's children, when taken with the effect on his partner, are such that it would be unduly harsh and thus in all the circumstances of this case, I am satisfied that the undoubtedly strong public interest in deporting the claimant is outweighed in the particular circumstances of this appeal, given the effect on his children. I therefore find that there are exceptional circumstances, and thus the claimant meets the requirements of paragraph 398 of the Immigration Rules. I therefore allow the appeal on that basis.

Summary of Conclusions

(1) For the reasons set out above the determination of the First-tier Tribunal did involve the making of an error of law and it is set aside.

(2) I re-make the decision by allowing the appeal under the Immigration Rules.

Signed Date: 28 January 2014

Upper Tribunal Judge Rintoul