Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: DA/02536/2013

THE IMMIGRATION ACTS

Heard at Field House **Decision & Reasons Promulgated**

On 8 July 2015 **On 19 August 2015**

Before

THE HONOURABLE MR JUSTICE COLLINS
UPPER TRIBUNAL JUDGE DAWSON
UPPER TRIBUNAL JUDGE O'CONNOR

Between

JOSE MANUEL RODRIGUES CORREIA
(ANONYMITY DIRECTION NOT MADE)

Appellant

And

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Ms L Hooper, Counsel instructed by Lawrence Lupin Solicitors
For the Respondent Mr P Greatorex, Counsel – instructed by Government Legal Dept

DECISION AND REASONS

1. The appellant is a Portuguese national born on 23 April 1969. He came to this country he says in 1985 and apart from two breaks, the last of which

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was for some three years between 1992 and 1994 when he was in Jersey, he has lived in this country. He was married sometime in the mid 1990s and has three children the eldest of whom is now some 18 years old and the youngest 10. His conduct towards his wife has led to the making of a deportation order and the appeal is against the refusal to revoke that order.

2. In 2006 the appellant was convicted on nine counts of rape, attempted rape and sexual assault on his wife. He was sentenced in October 2006 to nine years' imprisonment. These were serious offences committed over a number of years between 2004 and 2006. We have not seen a copy of the indictment and the precise dates covered for these were all specimen offences but observations by the judge who sentenced him and information in a report dealing with the risk of re-offending suggests as we say that the offences were committed between 2004 and 2006. In addition to the sentence of imprisonment he was ordered to be placed on the Sex Offenders' Register for life. That was a compulsory requirement pursuant to Section 82 of the Criminal Justice Act 2003 and does not, as the Home Office letter of 12 December 2013 giving reasons for deportation mistakenly states show that the sentencing judge considered that he posed a continuing risk to women. He is also whilst on licence until September 2015 subject to what is known as MAPPA2. This was a means of endeavouring to provide some way of avoiding further offending but inevitably it would not be of more than a limited barrier to the commission of further offences. He is required to notify his supervising officer of any relationship and to address material behavioural problems and to fail to do so would constitute a breach of his licence.

3. This appeal has a somewhat lengthy history. It was originally heard by the First-tier Tribunal on 16 June 2014 when the appeal was dismissed. It was approached on the basis which had been accepted in the Home Office decision letter that the appellant was entitled to the protection provided by paragraph 28 of the EU Directive 2004/38 as transposed by the relevant Regulations at the level appropriate for an EU national who had resided here permanently for a period of at least ten years. We should start by referring to the relevant law. It is convenient to refer to the Articles of the Directive rather than the Regulations since we will have to refer to cases decided by the European Court of Justice in which of course they refer to the paragraphs of the Directive. The relevant Regulations are the Immigration EEC Regulations 2006, Statutory Instrument 2006 No. 1003.

4. The Directive by Article 16 deals with the right of permanent residence. It provides by Article 16(1), so far as material:

> "Union citizens who have resided legally for a continuous period of five years in the host Member State shall have the right of permanent residence there … "

Article 16(2) refers to family members and (3) deals with how continuity of residence is to be affected by short absences. We then come to (4) which

provides – "once acquired the right of permanent residence shall be lost only through absence from the host Member State for a period exceeding two consecutive years".

5. So far as removal is concerned, we turn to Article 27. This so far as material provides:

    (1) Subject to the provisions of this Chapter Member States may restrict the freedom of movement and residence of Union citizens and their family members irrespective of nationality on grounds of public policy, public security or public health. These grounds shall not be invoked to serve economic ends.

    (2) Measures taken on grounds of public policy or public security shall comply with the principle of proportionality and shall be based exclusively on the personal conduct of the individual concerned. Previous criminal convictions shall not in themselves constitute grounds for taking such measures. The personal conduct of the individual concerned must represent a genuine, present and sufficiently serious threat affecting one of the fundamental interests of society, justifications that are isolated from the particulars of the case or that rely on considerations of general prevention shall not be accepted."

    Article 27(3) we do not think we need to refer to. It deals essentially with procedural matters and therefore is not material for the purposes of this case.

6. We then turn to Article 28 which is central to the issues arising in this appeal. It provides under the heading "Protection against Expulsion" as follows:-

    "1. Before taking an expulsion decision on grounds of public policy or public security, the host Member State shall take account of considerations such as how long the individual concerned has resided on its territory, his/her age, state of health, family and economic situation, social and cultural integration into the host Member State and the extent of his/her links with the country of origin.

    2. The host Member State may not take an expulsion decision against Union citizens or their family members, irrespective of nationality, who have the right of permanent residence on its territory, except on serious grounds of public policy or public security.

    3. An expulsion decision may not be taken against Union citizens, except if the decision is based on imperative grounds of public security, as defined by Member States, if they:

(a) have resided in the host Member State for the previous ten years; or

(b) are a minor, which of course does not apply in this case."

7. The provisions of Articles 27 and 28 reflect what is set out in the preamble to the Directive, paragraphs 23 and 24, which we ought to cite:

"23. Expulsion of Union citizens and their family members on grounds of public policy or public security is a measure that can seriously harm persons who, having availed themselves of the rights and freedoms conferred on them by the Treaty, have become genuinely integrated into the host Member State. The scope for such measures should therefore be limited in accordance with the principle of proportionality to take account of the degree of integration of the persons concerned, the length of their residence in the host Member State, their age, state of health, family and economic situation and the links with their country of origin.

24. Accordingly, the greater the degree of integration of Union citizens and their family members in the host Member State, the greater the degree of protection against expulsion should be. Only in exceptional circumstances, where there are imperative grounds of public security, should an expulsion measure be taken against Union citizens who have resided for many years in the territory of the host Member State, in particular when they were born and have resided there throughout their life. In addition, such exceptional circumstances should also apply to an expulsion measure taken against minors" - again that we do not need to consider.

8. In April 2007 the appellant was served with a notice of liability to deportation. He took no action on that.

9. In March 2012 there was an interview, again he took no action so that in October 2012 a deportation order was made. There was an application to revoke that order. It seems that the Portuguese Embassy was behind it to some extent and that led to the decision of 12 December 2013 giving reasons for refusing to revoke and in those reasons for refusal the Secretary of State in paragraph 24 stated:

"It is accepted that you have obtained a permanent right to reside by virtue of a five year period of continuous residence in accordance with the EEA Regulations between 1994 and 2006. Although it is also accepted that you have resided in the UK for at least ten years the Home Office takes the view that you do not automatically qualify for the protection of imperative grounds of public security. The Home Office has applied the 'integration test' set out at recitals 23 and 24 of the Directive and in the CJEU case of **Tsakouridis** to establish

whether the highest level of protection is available to you. The following factors have been considered."

Then there are seven bullet points which reads:

- The cumulative duration of and the frequency of any absences from the UK during the qualifying period and the reasons for those absences;
- Time spent in prison;
- The overall length of your residence in the UK;
- Your family connections in the UK;
- Your links with your country of origin;
- Your age on arrival in the UK;
- Having assessed all these factors, the Home Office takes the view that you meet the integration criteria, as set out in **Tsakouridis**. As a result it is necessary to establish that your deportation is warranted on imperative grounds of public security."

The decision letter went on to state that the imperative grounds of public security were in the circumstances met and thus the deportation order should be maintained.

10. Consideration was further given to any family considerations and Article 8 rights and Section 55 of the Borders, Citizenship and Immigration Act 2009 insofar as the children of the family were concerned. We will come back to that in due course.

11. The First-tier Tribunal dismissed the appeal applying as we have indicated, the test set in Article 28(3)(a), that is, imperative grounds of public security. This Tribunal allowed an appeal against that decision. That was on 30 September 2014. What led the Tribunal to allow the appeal was that the First-tier Tribunal had not considered whether there were grounds for indicating that removal was not required because there was sufficient protection available for the public by other less strict means. They relied on what was stated by the European Court in the **Tsakouridis** case. That is reported in [2011] Imm AR at page 276. The questions that had been put to the court in **Tsakouridis** involved by question 1 "whether the expression imperative grounds of public security" is to be interpreted as meaning that only irrefutable threats to the external or internal security of a Member State could justify expulsion, that is only to the existence of the state and its essential institutions, their ability to function, the survival of the population, external relations and the peaceful co-existence of nations. Clearly if that was the appropriate test set a very high level indeed.

12. In answering question 1, the court was concerned on the facts of that case with involvement in dealing in drugs but what the court stated was:

> "41. The concept of 'imperative grounds of public of public security' presupposes not only the existence of a threat to public security, but also that such a threat is of a particularly high degree of seriousness, as is reflected by the use of the words 'imperative reasons'.
>
> 42. It is in this context that the concept of 'public security' in Article 28(3) of the Directive 2004/38 should also be interpreted.
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> 43. As regards public security, the court has held that this covers both a Member States' internal and its external security (and it cites a number of cases).
>
> 44. The court has also held that a threat to the functioning of the institutions and essential public services and the survival of the population, as well as the risk of a serious disturbance to foreign relations or to peaceful coexistence of nations, or a risk of military interests, may affect public security (and refers to a number of other cases).
>
> 45. It does not follow that objectives such as the fight against crime in connection with dealing in narcotics as part of an organised group are necessarily excluded from that concept and it appears that if one follows the language of that, that it was intended that the fight against dealing in narcotics was capable of being considered to be a threat to foreign relations or peaceful coexistence of foreign relations but it matters not because clearly it is not necessary from what the court says that there should be any cross-border element in the criminal conduct which leads to deportation on the basis of Article 28(3)."

But in paragraph 49 the court said this:

> 49. Consequently, an expulsion measure must be based on an individual examination of the specific case and can be justified on imperative grounds of public security within the meaning of Article 28(3) of the Directive only if, having regard to the exceptional seriousness of the threat, such a measure is necessary for the protection of the interests it aims to secure, provided that that objective cannot be attained by less strict means, having regard to the length of residence of the Union citizen in the host Member State and in particular to the serious negative consequences such a measure may have for Union citizens who had become genuinely integrated into the host Member State.

They continue:

50. In the application of the Directive a balance must be struck more particularly between the exceptional nature of the threat to public security as a result of the personal conduct of the person concerned, assessed if necessary at the time when the expulsion decision is to be made. [it refers to two cases] by reference in particular to the possible penalties and the sentences imposed, the degree of involvement in the criminal activity and, if appropriate, the risk of re-offending – see to that effect, inter alia, the case of _Bouchereau_ [1977] ECR 1999, paragraph 29, on the one hand, and on the other hand the risk of compromising the social rehabilitation of the Union citizen in the state in which he has become genuinely integrated which, as the Advocate General observes in point 95 of his Opinion, is not only in his interest but also in that of the European Union in general.

51. The sentence passed must be taken into account as one element in that complex of factors. A sentence of five years' imprisonment cannot lead to expulsion decisions as provided for in national law without the factors described in the preceding paragraph being taken into account which is for the national court to verify."

13. As we read that last paragraph it is indicating that the length of sentence is an indication of the serious nature of the offending and that is an obvious point and here of course the sentence was nine years' imprisonment which is a very substantial sentence indeed.

14. The Upper-tier Tribunal on 19 May 2015 in a directions hearing had asked Counsel to agree if they could a list of issues which would have to be determined by this Tribunal on this appeal and those issues were as follows:

(1) Whether the Secretary of State requires the permission of the UT to withdraw her concession that the appellant could only be deported on imperative grounds of public security and if so whether the UT should grant that permission.

(2) If the concession is withdrawn what level of protection is the appellant entitled to pursuant to the Immigration EEC Regulations 2006 and the Directive 2004/38 EC and what should the UT's decision then be on the appeal. For the avoidance of doubt this includes the issue of whether or not withstanding the Secretary of State's acceptance the appellant was granted a permanent right of residence, the appellant has lost that right and/or the enhanced protection against expulsion that right carries.

(3) If the concession is not withdrawn whether the protection regime in place by virtue of registration on the Sex Offenders' Register MAPPA level 2 arrangements could meet the relevant protection needs and it was indicated too in the decision allowing the appeal that this

Tribunal would deal with the matter afresh as if it were acting as the First-tier Tribunal would normally act.

15. Mr Greatorex submitted that in its decision allowing the appeal the Tribunal had indicated that the concession could be withdrawn. That is not what was intended and indeed is not what the Tribunal said. It certainly raised the question as to whether the concession was an appropriate concession and left it to the Secretary of State to seek to submit that it was not appropriate. It is apparent from the refusal letter that the Secretary of State then believed that residence within 28(3)(a) was not affected by imprisonment. That was a somewhat surprising belief since in January 2014 the cases of **Onuewkere** and **MG** had been decided by the European Union Court of Justice. However it is clear that the error stemmed from that view because it had not been appreciated that the fact that the appellant had been in prison for part of the ten years immediately preceding the decision to deport, would have meant that he had not been resident for the purposes of 28(3)(a) for the period of ten years and what could flow from that was an inability to rely on the enhanced level of protection provided by paragraph 28(3) of Article 28.

16. Ms Hooper submitted that the decision in paragraph 24 of the refusal letter which we have already cited showed that independently as it were of any question whether there was a failure to have the continuous period of residence for the ten years, the grounds for providing the highest level of protection existed, that is to say that the integration criteria were, according to the view formed by the Secretary of State met. However, as we say, it is perfectly clear that the whole approach was based upon the assumption that indeed he did have the ten year residence which was essential for the automatic application of the protection provided by Article 28(3).

17. It is therefore a question in our judgment whether the appellant has been prejudiced or would be prejudiced if the concession, for want of a better word, is allowed to be withdrawn. The answer to that question in our judgment is all too clear: there is no prejudice. He has had some eight months to deal with or to put forward any material that he wishes to put forward to meet the issue that he now has to face on a correct interpretation of the law. Equally it has been open to those on his behalf to make all necessary and appropriate submissions to deal with the issue.

18. Ms Hooper submitted further that there was a requirement to give reasons for the application to withdraw the concession but it seems to us that the reason is all too obvious, it was a misunderstanding of the correct legal position. That it was a misunderstanding is clear in our view from consideration of the two cases which as we say are central to deciding whether the protection provided by 28(3) in the circumstances can apply.

19. The first is **Onuekwere v Secretary of State for the Home Department [2014] 1WLR,** page 2420. That as indeed was the case of **MG**, a reference by this Tribunal to the Court of Justice of the European Union and the questions that were raised in that case were related to the

achievement of a five year permanent residence and the questions were as follows:

(1) In what circumstances if any will a period of imprisonment constitute legal residence for the purposes of the acquisition of a permanent right of residence under Article 16 of the Directive?

(2) If a period of imprisonment does not qualify as legal residence is a person who has served a period of imprisonment admitted to aggregate periods of residence before and after his imprisonment for the purposes of calculating the period of five years needed to establish a permanent right of residence under the Directive?

20. The answer given to those questions was clear. First, a period of imprisonment does not constitute legal residence for the purposes of the acquisition of a permanent right and it is not possible to aggregate periods between any sentences of imprisonment. There have effectively to be five clear years by which we mean five years without any question of imprisonment in order to enable the qualification to arise. Those were the questions which were dealt with in **Onuekwere**. It did not consider at all the application of Article 28. However, in paragraph 25 of its decision the court said this:

> "Such integration which is a precondition of the acquisition of the right of a permanent residence laid down in Article 16(1) of the Directive is based not only on territorial and temporal factors but also on qualitative elements relating to the level of integration in the host Member State - see **Secretary of State for Work and Pensions v Dias [2011] ECR 1-6387**, paragraph 64 - to such an extent that the undermining of the link of integration between the person concerned and the host Member State justifies the loss of the right of permanent residence even outside the circumstances mentioned in Article 16(4) of the Directive". [It again refers to **Dias** case.]

21. It is in our view perhaps somewhat surprising that the court felt able to go beyond the clear restriction in the Directive on the circumstances in which a right of permanent residence can be lost. Of course imprisonment quite clearly prevents the formation of such a right but the question put to the court was not concerned with the issue whether such a right could be lost by for example imprisonment independently of the provision in Article 16(4). However the assertion in paragraph 25 is clear enough.

22. The question as to the correct approach in considering Article 28(3) when concerned with the period of imprisonment was raised in **Secretary of State for the Home Department v MG (Portugal), [2014] 1 WLR 2441**, a decision given by the same constitution of the Court of Justice of the European Union as had considered the case of **Onuekwere**. That again was a reference by this Tribunal. The questions that the court had to determine were as follows:

(1) Does a period in prison following sentence for commission of a criminal offence by a Union citizen break the resident's period in the

host Member State required for that person to benefit from the highest level of protection against expulsion under Article 28(3)(a) of the Directive or otherwise precludes a person relying on this level of protection?

(2) Does reference to previous ten years in Article 28(3)(a) mean that the residence has to be continuous in order for a Union citizen to be able to benefit from the highest level of protection against expulsion?

(3) For the purposes of Article 28(3)(a) is the requisite period of ten years during which a Union citizen must have resided in the host Member State calculated –

(a) by counting back from the expulsion decision, or

(b) by counting forward from the commencement of the citizen’s residence in the host Member State.

(4) If the answer to question 3(a) is that the ten year period is calculated by counting backwards then does it make a difference if the person has accrued ten years’ residence prior to such imprisonment.

23. The answer to question 3 was that the period of ten years had to be considered by counting back from the expulsion decision and that the residence had to be one which was not tainted as it were by imprisonment. That second finding is qualified in an important way to which we will refer.

24. The answer to question 4, again putting it in general terms, was that it technically did not make a difference if ten years’ residence prior to such imprisonment had been accrued in the sense that it did not mean automatically that the individual was able to rely on such residence but it was a material factor.

25. The crucial finding in relation to the second and third questions was given in paragraph 28. This stated:

> “In the light of all the foregoing the answer to questions 2 and 3 is that on a proper construction of Article 28(3)(a) the ten year period of residence referred to in that provision must in principle be continuous and must be calculated by counting back from the date of the decision ordering the expulsion of the person concerned.”

26. When they went on to consider the answer to questions 1 and 4 they decided in paragraph 38 that Article 28(3)(a) must be interpreted as meaning that a period of imprisonment is in principle capable both of interrupting the continuity of the period of residence for the purposes of that provision and of effecting the decision regarding the grant of the enhanced protection provided for thereunder even where the person concerned resided in the host Member State for the ten years prior to imprisonment. However the fact that that person resided in the host Member State for the ten years prior to imprisonment may be taken into

consideration as part of the overall assessment required in order to determine whether the integrating links previously forged with the host Member State have been broken.

27. When the Tribunal had to consider **<u>MG</u>** on its return from the decision of the European Court it had some difficulty as indicated in its decision in applying what it believed **<u>MG</u>** had decided. It referred to paragraph 33 in which it was said:

> "It follows that periods of imprisonment cannot be taken into account for the purposes of granting the enhanced protection provided for in Article 28(3)(a) of the Directive and that in principle such periods interrupt the continuity of the period of residence for the purposes of that provision."

28. But it is to be noted that in every reference made to the effect of periods of imprisonment the words "in principle" are used and that in our view is clearly deliberate and intended to indicate that periods of imprisonment will not automatically mean that the highest level of protection is lost. It is necessary to consider the whole history of the individual's residence in this country and if he has for a period of at least ten years before any sentence of imprisonment resided in this country, has integrated into the country so as to fulfil the requirements set out in the preamble and indeed reflected in Article 16 of the Directive, then that can be taken into account and can, depending on all the circumstances, mean that despite his having been sentenced to a term of imprisonment he does not lose the enhanced protection. When one thinks of it, that is not in the least surprising. One can take the example of someone who has spent let us say virtually the whole of his life in this country, has fully integrated, has behaved in a perfectly satisfactory manner during that lengthy period and then commits what might be a serious enough offence in the Secretary of State's view to justify deportation. One can well see that there may well be circumstances in which it would be quite wrong to indicate that particular misbehaviour from an individual in the circumstances we have indicated should automatically deprive that individual of the right of enhanced protection and we do not doubt that it was in order to cover that sort of situation that the court made it clear that it was appropriate to include the words "in principle" and to make it clear that it was not to be regarded as an automatic loss. It is thus necessary in all cases to consider both the seriousness of the offending, the risk as a result of such offending behaviour the individual may pose to the security of pursuing in the state or the state itself and the extent to which the individual in question has fully integrated into the host state.

29. We are bound to say that in the circumstances we do not find any real difficulty in marrying up the decisions of **<u>Onuekwere</u>** and **<u>MG</u>** and indeed the **<u>Tsakouridis</u>** case to which we have also referred because as the court again made clear in **<u>MG</u>** the question whether enhanced protection should nonetheless still exist is a question which must be made on an overall assessment of the individual's situation at the precise time when the

question of expulsion arises and that is the question which we have to consider.

30. We bear in mind of course the decision of the court in **Onuekwere** that even a right of permanent residence given by a five year period can be brought to an end as a result of a criminal conviction and Mr Greatorex relied on that to submit that even the protection provided by Article 38(2) was not in the circumstances open to this appellant. We have already indicated that we have some difficulty in following how the court could, having regard to the clear provision in Article 16(4) that it was only absence from the host Member State for a period of at least two years that could bring permanent residence to an end decide that the possibility existed of the removal of that right by virtue of conduct which was serious enough to justify it. However that is what the court has clearly decided. Nevertheless in the circumstances of this case we do not think that it makes any difference whether we approach it on the basis that the protection provided by Article 38(2) or merely that provided for a European Union citizen who is in this country but does not have any permanent right of residence which is at a lower level but nonetheless by virtue of Article 38(1) still requires consideration whether the conduct is sufficient to justify in all the circumstances the deportation.

31. The First-tier Tribunal set out the background and decided as we have indicated that even though in its view the enhanced protection provided for by Article 28(3)(a) applied, nonetheless this appellant did not qualify. If one lowers that to serious in our view the position is clear. First there is no question that this was serious offending. True that the appellant's risk of re-offending was it was said only a risk to any female with whom he might form a relationship. Nonetheless it was if he did form such relationship regarded as a risk of serious harm. It is significant in that regard that the appellant has failed to accept and still fails to accept that he has done anything wrong. He showed no remorse whatever as the sentencing judge made clear in his remarks on sentencing. It is obvious that that does indeed create a real risk because it appears that this appellant believes the sort of conduct which led to his conviction for the serious offending against his wife was conduct which he was entitled to undertake if he was in a relationship with any woman and that clearly indicates a mindset that creates a real risk to such women whether it is intended to be a permanent or perhaps even a casual relationship were he to be allowed to remain in this country.

32. So far as integration is concerned, we believe it is apparent that he has difficulty in understanding English. He needed an interpreter before the First-tier Tribunal. It was said that he did not need an interpreter for this hearing but we were handed a note during the course of the hearing which indicated that he was not able to understand what was going on and he did need an interpreter who was actually present in court to assist him. He has suffered unfortunately from a stroke and his health is not good. He said in a statement that he has produced that he has found as a result of his stroke he is unable now even to understand and speak properly in

Portuguese and thus he needs to communicate in English. We confess we are not impressed with that particular statement.

33. So far as his family is concerned he is now divorced from his wife. His three children had no contact with him for a considerable period and there is no indication that he effectively has a family life. He did indicate that he has been visited by the children on a couple of occasions and he alleges that the reason they had not before visited him was because their mother had told them not to come. Equally the children have been without him for a substantial period of time now because he was sentenced to imprisonment for the period of nine years and since his release he has been for a substantial time in immigration custody and equally he has accepted that he has not had any other contact with his children other than the couple of visits to which he has referred in his statement. Thus, it is difficult to see that there is any effective family life. Equally, so far as the children are concerned, they are not in the circumstances deprived if their father is removed to Portugal. True he has not been in Portugal for a substantial period of time but he still has brothers there. Equally he is concerned that his state of health is such that he needs to remain in this country but as the Tribunal indicated, there are undoubtedly proper facilities available to look after him in Portugal.

34. So far as the issue whether there are measures less than deportation which could achieve the necessary protection concerned Ms Hooper's submissions on that were set out in her skeleton argument and were not elaborated in the course of her oral argument. So far as the signing on the Sex Register is concerned that provides very little protection, it merely enables the police to know where he is. So far as the MAPPA 2 is concerned that will run out in September and equally his licence will expire then so there is no question of the requirement to address alcohol, sexual violence and offending behaviour problems will be maintained. We take the view in all the circumstances that it is quite impossible to say that there are indeed lesser means which would provide the necessary protection. Although we do not need to deal with it in any detail we can equally say that we are satisfied that even if we had to apply the enhanced level of protection under 28(3)(a) we would agree with the reasoning of the First-tier Tribunal that even in those circumstances the deportation was correct but as we say, for the reasons that we have given, it is not in our view necessary to go into that and equally it is not necessary to form a final conclusion on the effects of the observations of the European Court in **Onuekwere** that imprisonment can bring the five year right to an end can apply. It is not necessary as we say for us to deal with that issue in these reasons nor have we heard any very full argument on that issue. For those reasons, as we indicated yesterday, this appeal is dismissed.

Notice of Decision

35. The appeal is dismissed.

36. No anonymity direction is made.

Signed Date 10 August 2015

pp Mr Justice Collins