



**Upper Tribunal  
(Immigration and Asylum Chamber)      Appeal Number: IA/22254/2014**

**THE IMMIGRATION ACTS**

**Heard at Field House  
On 29 October 2015**

**Decision and Reasons  
Promulgated  
On 30 October 2015**

**Before**

**Deputy Upper Tribunal Judge MANUELL**

**Between**

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

Appellant

**and**

**Mr WALTER JEFFREY WOODS  
(NO ANONYMITY DIRECTION MADE)**

Respondent

**Representation:**

For the Appellant: Ms A Fijiwala, Home Office Presenting Officer

For the Respondent: In person

**DETERMINATION AND REASONS**

*Introduction*

1. The Appellant (the Secretary of State) appealed to the Upper Tribunal with permission granted by First-tier Tribunal Judge McDade on 23 July 2015 against the decision and reasons of First-tier Tribunal Judge A E Walker who had allowed the Respondent's appeal against the revocation on 27 November 2013 of his Indefinite Leave to Remain

the United Kingdom. (That ILR was replaced by a grant of limited leave to remain of 30 months, which the Appellant would be required to apply to extend.) The judge's decision and reasons was promulgated on 15 May 2015.

2. The Respondent is a national of Zimbabwe, born on 23 July 1959. The Respondent had appealed successfully to the First-tier Tribunal against the automatic deportation order dated 5 March 2012 made against him under section 32(5) of the UK Borders Act 2007. On 30 July 2010 the Appellant had been convicted on three counts of possession of class A drugs with intent to supply and had been sentenced to two years' imprisonment on each charge, concurrently. Following the Appellant's appeal to the First-tier Tribunal, the Secretary of State had thereafter applied section 76 of the Nationality, Immigration and Asylum Act 2002 and had revoked the Appellant's ILR.
3. Permission to appeal was granted by Judge McDade because he considered that it was arguable that the judge had misunderstood the effect of section 76 of the Nationality, Immigration and Asylum Act 2002. The Appellant remained liable to deportation despite the revocation of the order made. The effect of section 76 was not to reinstate the pre-existing ILR.
4. Standard directions were made by the tribunal, indicating that the decision would be remade in the event that a material error of law were found.

### *Submissions*

5. Ms Fijiwala for the Appellant relied on the grounds of onwards appeal and the grant of permission to appeal. She submitted that the judge had misdirected herself in law and had failed to apply George v SSHD [2014] UKSC 28. Ali (s.76 -"liable to deportation") Pakistan [2011] UKUT 00250 (IAC) should be noted by the Upper Tribunal as it stated that a person subject to the automatic deportation provisions whose leave was to be revoked could only have that leave revoked if the Secretary of State had deemed his deportation conducive to the public good. The Secretary of State contended that that had been done in this case. The decision and reasons should be set aside, remade and dismissed.
6. The Appellant was unrepresented and there was nothing he wished to say, other than his circumstances as previously found by Judge Walker had not changed.
7. The tribunal indicated at the conclusion of submissions that it found that there were material errors of law, such that the decision and reasons had to be set aside.

*Material error of law finding*

8. The tribunal accepts the submissions made on behalf of the Secretary of State. It must however be said that it was most regrettable that the Secretary of State had been unable to provide a presenting officer for the original appeal hearing, given that it was an appeal of some importance and legal issues arose. The Respondent had also been unrepresented. The judge was thus without any assistance from the parties. It must be questioned whether this was a sensible use of public resources. It certainly had the appearance of a failure by the Secretary of State to comply with the overriding objective of the 2014 Procedure Rules.
9. No doubt the judge did her best in the circumstances but, in short, the tribunal finds that the judge fell into material error of law at [21] of her decision when considering the effect of s.76 of the Nationality, Immigration and Asylum Act 2002. The judge's starting point was incorrect. The effect of the deportation order was to revoke the Appellant's ILR. That was made plain by the Supreme Court in George v SSHD [2014] UKSC 28, per Lord Hughes. The fact that the Appellant had succeeded in his appeal against deportation to the First-tier Tribunal meant only that he could not be deported for legal reasons, i.e., the Article 8 ECHR grounds which rendered implementation of the deportation order disproportionate and therefore unlawful. The First-tier Tribunal (as upheld by the Upper Tribunal) had not, for example, found that there was no power in law to make the deportation order. The effect of the judicial decision did not revive the Appellant's pre deportation leave.
10. Ali (above) was not cited to the judge at first instance nor was it referred to by Lord Hughes in George (above). Its authority is thus doubtful in the light of George. In any event, the reasons for refusal letter states in terms that the Appellant's conduct is so serious that it warrants the revocation of his status: see page 2 of the letter dated 7 May 2014. That amounts to a reasoned decision that the Appellant's deportation was deemed conducive to the public good. That was hardly a surprising view to take of class A drugs offences.
11. It follows that the judge's application of and reliance on RD (Cessation - burden of proof - procedure) Algeria [2007] UKAIT 00066 was mistaken. Her reasoning was invalid and failed to reflect George (above). The decision and reasons must be set aside for material error of law and remade.
12. There had been no challenge by the Secretary of State to the judge's findings of fact. The decision and reasons is otherwise set aside.

*Remaking the decision*

13. Given that the judge's findings of fact stood and that there was no real dispute of fact, neither side wished to make any further submissions. For clarity and convenience the tribunal will now refer to the parties by their original designations in the First-tier Tribunal.
14. In the tribunal's view, following the ending of the Appellant's ILR brought about by his own criminal conduct, it was appropriate for the Secretary of State to review what should happen next. Her decision was that the Appellant's claimed reform was by no means safely established, in effect that his deportation, which could not be effected for the legal reason of the First-tier Tribunal's decision, remained conducive to the public good.
15. In the tribunal's judgment, notwithstanding the low risk of reoffending, the Appellant's offences were serious enough to warrant him to in effect be placed on probation by a period of limited leave to remain. That does not marginalise the Appellant, but rather gives him every incentive to demonstrate his complete rehabilitation. He will have the opportunity in due course to seek ILR again.
16. There is no reason for an anonymity direction in this appeal, which would be pointless given the public nature of the Appellant's previous criminal trial.
17. The Appellant's appeal is dismissed.

### **DECISION**

The making of the previous decision involved the making of an error on a point of law and is set aside.

The tribunal makes a fresh decision as follows: The appeal is DISMISSED

**Signed**

**Dated**

**Deputy Upper Tribunal Judge Manuell**

### **TO THE RESPONDENT** **FEE AWARD**

The appeal was dismissed so there can be no fee award

**Signed**

**Dated**

**Deputy Upper Tribunal Judge Manuell**