



Upper Tribunal  
(Immigration and Asylum Chamber)

Appeal Number: HU/11360/2017

**THE IMMIGRATION ACTS**

Heard at The Royal Courts of Justice  
Promulgated  
On 25<sup>th</sup> June 2018

Decision and Reasons

On 02<sup>nd</sup> July 2018

Before

UPPER TRIBUNAL JUDGE RIMINGTON

Between

GIASH UDDIN  
(ANONYMITY DIRECTION NOT MADE)

Appellant

And

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

**Representation:**

For the Appellant: Mr Murphy instructed by 1 MCB Solicitors  
For the Respondent: Mr I Jarvis, Senior Home Office Presenting Officer

**DECISION AND REASONS**

1. The appellant claimed he should not be deported to his home country of Bangladesh further to Section 32(5) of the UK Borders Act 2007. He is classified as a foreign criminal as he is not a British citizen and has been sentenced to a period of imprisonment of at least 12 months. He had been convicted of three separate sexual offences on 19<sup>th</sup> October 2015 and 1<sup>st</sup> September 2016 and was sentenced to 8 months for the first offence and 12 months imprisonment on each count of the two later offences, those sentences to run concurrently.

2. The appellant was born in 1966 and a national of Bangladesh. He claimed he could not return to Bangladesh because of his (a) integration into the UK (b) insurmountable obstacles owing to his lack of any family members there and his abandonment of all ways of Bangladesh life (c) his sexual offences may be known to the wider community (d) his recent recognition of his bi-sexuality. The Secretary of State countered that by pointing to the inconsistencies in his evidence. He had committed serious sexual offences on more than one occasion and lied about his family in Bangladesh and his family ties in the UK.
3. He appealed against the refusal on 25<sup>th</sup> September 2017 of his protection and human rights claim and First Tribunal Judge Telford dismissed his appeal on 9<sup>th</sup> November 2017.
4. The judge made the following findings
  - i. The appellant had been convicted on three counts of sexual offences as outlined above and sentenced to 12 months imprisonment.
  - ii. The witness statement from his aunt was signed on an unreferenced page. She did not attend court.
  - iii. His wife did not submit any evidence and nor did his son
  - iv. On credibility the lack of action by the authorities against the appellant when in Bangladesh undermined his claim. His account was inconsistent and vague.
  - v. At paragraph [21] the judge noted that the respondent referred to the lack of evidence as to how he entered the UK. He did not produce any sound evidence. The references in the Secretary's letters to entry did not indicate acceptance of his claims. He had failed to show that his entry was lawful or what visa he used. The appellant's thinking on this was jumbled and he had failed to show the facts as the appellant stated.
  - vi. His wife and son did not live with him. They did not 'sort of live with him' as he claimed or would do so shortly. In sum he had not established a family life in the UK.
  - vii. Counsel accepted that there was no medical evidence to indicate the psychiatric condition as claimed.
  - viii. His article 3 claim in respect of his offences in the UK being known in Bangladesh was not pursued.
  - ix. His bisexuality claim was not maintained bearing in mind he had signed statements to the effect that he was heterosexual.
  - x. He was not integrated into the UK society, apart from poor his command of the English language, his offending indicated that he was not integrated. The Secretary of State was, because of his offending bound to make a deportation order.
  - xi. Contrary to his earlier witness statement, in oral evidence the appellant admitted that he did have an uncle in Bangladesh. His aunt and uncle would assist him. He has money and assets and income in the UK he could draw upon.

- xii. He speaks Bengali.
- xiii. There were no insurmountable obstacles to his return
- xiv. His case had not shown to amount to an exception to the making of a deportation order.
- xv. His case did not attract the protection of the Convention or human rights.
- xvi. There was no family relationship in the UK to attract Article 8 protection. His status was precarious. There was no exceptional reason to depart from the Rules to consider article 8 outside the Rules.
- xvii. The claim of bisexuality was not evidenced by his offence, rather a power trip and an attempt to 'jump on the bandwagon' of current fashion.
- xviii. The judge rejected the fact that his ILR carried with it the necessary implication that he had family life in the UK as at today's date.
- xix. The appellant had a poor command of the English language and no qualifications to show otherwise (Section 117)

### **Application for Permission to Appeal**

5. The application for permission outlined the material errors of law. The judge in the decision
- (i) failed to set out the legal context either by way of the rules or the case law to explain how the assessment had been made. There was no reference to the relevant immigration rules.
  - (ii) failed to assess the evidence of the applicant adequately. The judge erroneously attributed the index as part of his evidence when referring to his convictions. Pages 39-40 were the only evidence the applicant produced relating to his first offence.
  - (iii) failed to make an assessment of proportionality in accordance with the **Maslov v Austria** [2009] INLR 47, factors. Time had elapsed since the commission of the offence and his conduct during that period was one of the factors relevant. There was no reference to the applicant's lawful presence since he was granted ILR.
  - (iv) erred in her assessment of the public interest. McLarty [2014] UKUT 00315 confirmed that the weight to be attached to the public interest had a variable content.

### **The Hearing**

6. At the hearing, Mr Murphy indicated that the appellant had entered the UK at the age of 19 years and was given Leave to remain in 1995 and Indefinite Leave to Remain in 1996. This had not been factored into the judge's decision. There were no clear findings on how long the appellant had remained in the UK.
7. Mr Jarvis advanced that the judge understood the appellant had ILR as evidenced by paragraphs 21 and 22 of the decision. The judge had directed himself correctly and within the prism of **Maslov**. The judge's findings were permissible as to the lack of social and cultural integration and paragraph 30 was not challenge. This was an assessment of very significant obstacles. The appellant did not fulfil the requirements of paragraph 399A and would have to put forward a very strong case to meet the 'compelling circumstances' test under the Rules. The threshold of compelling circumstances was also set out by statute. The appellant had no family life and a weak private life.

### Conclusions

8. The key criticism of the decision was that it was devoid of the legal context of the Rules or relevant case law. I set out the relevant Immigration Rules relating to deportation and the pertinent parts of Section 117 of the Nationality Immigration and Asylum Act 2002, below for reference.

*398. These rules apply where:*

*(a) a foreign criminal liable to deportation claims that his deportation would be contrary to the United Kingdom's obligations under Article 8 of the Human Rights Convention;*

*(b) a foreign criminal applies for a deportation order made against him to be revoked.*

*398. Where a person claims that their deportation would be contrary to the UK's obligations under Article 8 of the Human Rights Convention, and*

*(a) the deportation of the person from the UK is conducive to the public good and in the public interest because they have been convicted of an offence for which they have been sentenced to a period of imprisonment of at least 4 years;*

*(b) the deportation of the person from the UK is conducive to the public good and in the public interest because they have been convicted of an offence for which they have been sentenced to a period of imprisonment of less than 4 years but at least 12 months; or*

*(c) the deportation of the person from the UK is conducive to the public good and in the public interest because, in the view of the Secretary of State, their offending has caused serious harm or they are a persistent offender who shows a particular disregard for the law, the Secretary of State in assessing that claim will consider whether paragraph 399 or 399A applies and, if it does not, the*

*public interest in deportation will only be outweighed by other factors where there are very compelling circumstances over and above those described in paragraphs 399 and 399A.*

399. *This paragraph applies where paragraph 398 (b) or (c) applies if –*  
*(a) the person has a genuine and subsisting parental relationship with a child under the age of 18 years who is in the UK, and*

- (i) the child is a British Citizen; or*
- (ii) the child has lived in the UK continuously for at least the 7 years immediately preceding the date of the immigration decision; and in either case*
  - (a) it would be unduly harsh for the child to live in the country to which the person is to be deported; and*
  - (b) it would be unduly harsh for the child to remain in the UK without the person who is to be deported; or*

*(b) the person has a genuine and subsisting relationship with a partner who is in the UK and is a British Citizen or settled in the UK, and*

- (i) the relationship was formed at a time when the person (deportee) was in the UK lawfully and their immigration status was not precarious; and*
- (ii) it would be unduly harsh for that partner to live in the country to which the person is to be deported, because of compelling circumstances over and above those described in paragraph EX.2. of Appendix FM; and*
- (iii) it would be unduly harsh for that partner to remain in the UK without the person who is to be deported.*

399A. *This paragraph This paragraph applies where paragraph 398(b) or (c) applies if –*

- (a) the person has been lawfully resident in the UK for most of his life; and*
- (b) he is socially and culturally integrated in the UK; and*
- (c) there would be very significant obstacles to his integration into the country to which it is proposed he is deported.*

399B. *Where an Article 8 claim from a foreign criminal is successful:*

- (a) in the case of a person who is in the UK unlawfully or whose leave to enter or remain has been cancelled by a deportation order, limited leave may be granted for periods not exceeding 30 months and subject to such conditions as the Secretary of State considers appropriate;*
- (b) in the case of a person who has not been served with a deportation order, any limited leave to enter or remain may be curtailed to a period not exceeding 30 months and conditions may*

*be varied to such conditions as the Secretary of State considers appropriate;*

*(c) indefinite leave to enter or remain may be revoked under section 76 of the 2002 Act and limited leave to enter or remain granted for a period not exceeding 30 months subject to such conditions as the Secretary of State considers appropriate;*

*(d) revocation of a deportation order does not confer entry clearance or leave to enter or remain or re-instate any previous leave."*

9. Part 5 of the Nationality Immigration and Asylum Act introduced further provisions that must be considered where a court is required to determine whether a decision under the Immigration Act breaches a person's right to respect under Article 8, would be unlawful under Section 6 of the Human Rights Act 1998. In all cases the Tribunal must have regard to the considerations listed in Section 117B and in cases concerning the deportation of foreign criminals to the considerations listed in section 117C.

***117B Article 8: public interest considerations applicable in all cases***

*(1) The maintenance of effective immigration controls is in the public interest.*

*(2) It is in the public interest, and in particular in the interests of the economic well-being of the United Kingdom, that persons who seek to enter or remain in the United Kingdom are able to speak English, because persons who can speak English –*

*(a) are less of a burden on taxpayers, and*

*(b) are better able to integrate into society.*

*(3) It is in the public interest, and in particular in the interests of the economic well-being of the United Kingdom, that persons who seek to enter or remain in the United Kingdom are financially independent, because such persons –*

*(a) are not a burden on taxpayers, and*

*(b) are better able to integrate into society.*

*(4) Little weight should be given to –*

*(a) a private life, or*

*(b) a relationship formed with a qualifying partner, that is established by a person at a time when the person is in the United Kingdom unlawfully.*

*(5) Little weight should be given to a private life established by a person at a time when the person's immigration status is precarious.*

*(6) In the case of a person who is not liable to deportation, the public interest does not require the person's removal where –*

*(a) the person has a genuine and subsisting parental relationship with a qualifying child, and*

*(b) it would not be reasonable to expect the child to leave the United Kingdom.*

**117C Article 8: additional considerations in cases involving foreign criminals**

- (1) *The deportation of foreign criminals is in the public interest.*
- (2) *The more serious the offence committed by a foreign criminal, the greater is the public interest in deportation of the criminal.*
- (3) *In the case of a foreign criminal ("C") who has not been sentenced to a period of imprisonment of four years or more, the public interest requires C's deportation unless Exception 1 or Exception 2 applies.*
- (4) *Exception 1 applies where –*
  - (a) *C has been lawfully resident in the United Kingdom for most of C's life,*
  - (b) *C is socially and culturally integrated in the United Kingdom, and*
  - (c) *there would be very significant obstacles to C's integration into the country to which C is proposed to be deported.*
- (5) *Exception 2 applies where C has a genuine and subsisting relationship with a qualifying partner, or a genuine and subsisting parental relationship with a qualifying child, and the effect of C's deportation on the partner or child would be unduly harsh.*
- (6) *In the case of a foreign criminal who has been sentenced to a period of imprisonment of at least four years, the public interest requires deportation unless there are very compelling circumstances, over and above those described in Exceptions 1 and 2.*
- (7) *The considerations in subsections (1) to (6) are to be taken into account where a court or tribunal is considering a decision to deport a foreign criminal only to the extent that the reason for the decision was the offence or offences for which the criminal has been convicted.*

**117D Interpretation of this Part**

- (1) *In this Part –*
  - "Article 8" means Article 8 of the European Convention on Human Rights;*
  - "qualifying child" means a person who is under the age of 18 and who –*
    - (a) *is a British citizen, or*
    - (b) *has lived in the United Kingdom for a continuous period of seven years or more;*
  - "qualifying partner" means a partner who –*
    - (a) *is a British citizen, or*
    - (b) *who is settled in the United Kingdom (within the meaning of the Immigration Act 1971 – see section 33(2A) of that Act).*
- (2) *In this Part, "foreign criminal" means a person –*

- (a) *who is not a British citizen,*
  - (b) *who has been convicted in the United Kingdom of an offence, and*
  - (c) *who –*
    - (i) *has been sentenced to a period of imprisonment of at least 12 months,*
    - (ii) *has been convicted of an offence that has caused serious harm, or*
    - (iii) *is a persistent offender.*
- ..."

10. In **Hesham Ali v SSHD** [2016] UKSC 60, the Supreme Court set out the approach to be taken as follows.

50. *In summary, therefore, the tribunal carries out its task on the basis of the facts as it finds them to be on the evidence before it, and the law as established by statute and case law. Ultimately, it has to decide whether deportation is proportionate in the particular case before it, balancing the strength of the public interest in the deportation of the offender against the impact on private and family life. In doing so, it should give appropriate weight to Parliament's and the Secretary of State's assessments of the strength of the general public interest in the deportation of foreign offenders, as explained in paras 14, 37-38 and 46 above, and also consider all factors relevant to the specific case in question. The critical issue for the tribunal will generally be whether, giving due weight to the strength of the public interest in the deportation of the offender in the case before it, the article 8 claim is sufficiently strong to outweigh it. In general, only a claim which is very strong indeed - very compelling, as it was put in MF (Nigeria) - will succeed.*

*A complete code?*

51. *In MF (Nigeria) [2014] 1 WLR 544 the Court of Appeal described the new rules set out in para 23 above as "a complete code" for article 8 claims (para 44). That expression reflected the view that the concluding words of rule 398 required the application of a proportionality test in accordance with the Strasbourg jurisprudence, taking into account all the article 8 criteria and all other factors which were relevant to proportionality (para 39). On that basis, the court commented that the result should be the same whether the proportionality assessment was carried out within or outside the new rules: it was a sterile question whether it was required by the rules or by the general law (para 45).*



52. *The idea that the new rules comprise a complete code appears to have been mistakenly interpreted in some later cases as meaning that the Rules, and the Rules alone, govern appellate decision-making. Dicta seemingly to that effect can be found, for example, in LC (China) v Secretary of State for the Home Department [2014] EWCA Civ 1310; [2015] Imm AR 227, para 17, and AJ (Angola) v Secretary of State for the Home Department [2014] EWCA Civ 1636, para 39.*

53. *As explained at para 17 above, the Rules are not law (although they are treated as law for the purposes of section 86(3)(a) of the 2002 Act), and therefore do not govern the determination of appeals, other than appeals brought on the ground that the decision is not in accordance with the Rules: see para 7 above. The policies adopted by the Secretary of State, and given effect by the Rules, are nevertheless a relevant and important consideration for tribunals determining appeals brought on Convention grounds, because they reflect the assessment of the general public interest made by the responsible minister and endorsed by Parliament. In particular, tribunals should accord respect to the Secretary of State's assessment of the strength of the general public interest in the deportation of foreign offenders, and also consider all factors relevant to the specific case before them, as explained at paras 37-38, 46 and 50 above. It remains for them to judge whether, on the facts as they have found them, and giving due weight to the strength of the public interest in deportation in the case before them, the factors brought into account on the other side lead to the conclusion that deportation would be disproportionate.*

11. In effect if a medium offender (over 12 months imprisonment) falls outside the exceptions there must be 'very compelling circumstances' to warrant resisting the deportation order.
12. For clarity **Hesham Ali** at paragraph 26 referred to the judgments relevant to deportation with regards a settled migrant and the relevant factors to be addressed as per **Maslov**.

*'In a well-known series of judgments the court has set out the guiding principles which it applies when assessing the likelihood that the deportation of a settled migrant would interfere with family life and, if so, its proportionality to the legitimate aim pursued. In Boultif v Switzerland (2001) 33 EHRR 50, para 48, the court said that it would consider the nature and seriousness of the offence committed by the applicant; the length of the applicant's stay in the country from which he or she is to be expelled; the time elapsed since the offence was committed and the applicant's conduct during that period; the nationalities of the various persons concerned; the applicant's family situation, such as the length of the marriage, and other factors expressing the effectiveness of a couple's family life; whether the spouse knew about*

*the offence at the time when he or she entered into a family relationship; whether there are children of the marriage, and if so, their age; and the seriousness of the difficulties which the spouse is likely to encounter in the country to which the applicant is to be expelled. Two further factors were mentioned in Üner v Netherlands (2007) 45 EHRR 14, para 58: the best interests and well-being of the children, in particular the seriousness of the difficulties which any children of the applicant are likely to encounter in the country to which the applicant is to be expelled; and the solidity of the social, cultural and family ties with the host country and with the country of destination. In Maslov v Austria [2009] INLR 47, paras 72-75, the court added that the age of the person concerned can play a role when applying some of these criteria. For instance, when assessing the nature and seriousness of the offences, it has to be taken into account whether the person committed them as a juvenile or as an adult. Equally, when assessing the length of the person's stay in the country from which he or she is to be expelled and the solidity of the social, cultural and family ties with the host country, it makes a difference whether the person came to the country during his or her childhood or youth, or was even born there, or whether he or she only came as an adult. Some of the factors listed in these cases relate to the strength of the public interest in deportation: that is to say, the extent to which the deportation of the person concerned will promote the legitimate aim pursued. Others relate to the strength of the countervailing interests in private and family life. They are not exhaustive.'*

13. The question is whether the judge, although not citing in detail, the relevant law effectively applied it in substance when determining the claim.
14. The courts have consistently stated that the legal structure should be set out in order to give a decision focus and ensure that the relevant material elements are considered and **Bossade (Section 117A-D -interrelationship with Rules** [2015] UKUT 415 sets out the relationship between the rules and Section 117, confirming that ordinarily a court will as a first stage consider an Appellant's Article 8 claim by reference to the Immigration Rules and then Part 5A consideration to the second stage. This spells out that the two sets of provisions have differing functions.
15. **Bossade** helpfully adds that the new paragraph 399A considers the situation of the appellant in both the UK and the country of return but that time in the UK is no longer relevant as such except in the context of lawful residence (399A(a)) and paragraph 399A(b) introduces the criteria on social and cultural integration in the UK. Paragraph 399A looks at 'integration' and 'obstacles' thereto. There is a requirement to focus on both circumstances of integration in the UK and as well as the country to which a foreign criminal will be deported.
16. The judge did, substantively, address the exceptions as set out in the Immigration Rules relating to deportation.

17. The judge noted that the appellant was born in 1966 and a national of Bangladesh. He was thus was 52 years at the date of decision – not an elderly person, and there was no finding of any significant health issues. Indeed, the judge at [26] found ‘nothing in the evidence to indicate the psychiatric condition allegedly developed by the appellant’.
18. With reference to paragraph 399 and life with a child or partner, the judge noted at [22] in his findings that the appellant did not live with his wife and child (who was at the date of decision 22 years old) and further there was no evidence submitted from his wife or from his son. Thus, it was open to the judge to find that there was no family life. That was, in effect a finding in relation to the exception of paragraph 399. Clearly the judge did not accept that the appellant had a protected family life with his aunt.
19. Paragraph 399A refers in effect to private life and I repeat the relevant considerations.
- (a) the person has been lawfully resident in the UK for most of his life;  
and*
- (b) he is socially and culturally integrated in the UK; **and***
- (c) there would be very significant obstacles to his integration into  
the country to which it is proposed he is deported.*
20. As explained at paragraph 4 of the decision the judge was aware that integration in the UK and ‘insurmountable obstacles’ to return to Bangladesh was a relevant factor. ‘Insurmountable obstacles’ have been equated by the Supreme Court in **Agyarko & Ors v SSHD [2017] UKSC 11** with ‘very significant difficulties’ (albeit in a non-deportation context). With regards length of residence and integration in the UK, the judge did not accept that the appellant had shown lawful entry into the UK or indeed the date on which he claimed he entered. He was granted leave to remain as a spouse in 1994 but granted ILR in 1996. He had thus shown he had lived in the UK for only 24 years. The courts have made clear that the relevant date is the date from which he can show permitted by law to remain (even by temporary leave), **SSHD v SC (Jamaica) [2017] EWCA Civ 2112**. As the judge noted the entry was not proven: it was therefore not possible to determine that the appellant had been in the UK for a longer period or for most of his life. That is clear from paragraphs 22 and 29 of the decision. The judge refers to the appellant’s poor immigration history but it is clear that he is aware that the appellant was granted Indefinite Leave to Remain and the ‘immigration history’ refers to his previous leave or lack of it. I would add that length of residence does not feature, without more, as a compelling reason for not deporting someone, **LW (Jamaica) [2016] EWCA Civ 369 [35]**.
21. **Kamara v SSHD [2016] EWCA Civ 813**, confirmed at paragraph 14 that the concept of a foreign criminal’s integration into the country to which he

is to be removed is a broad one and not confined to the mere ability to find a job or to sustain life. It called for a 'broad evaluative judgment' to be made as to whether the individual will be 'enough of an insider in terms of understanding how life in the society in that other country is carried on and a capacity to participate in it 'so as to have a reasonable opportunity to be accepted there, to be able to operate on a day-to-day basis in that society and to build up within a reasonable time a variety of human relationships to give substance to the individual's private or family life'.

22. The judge at [29] found the appellant was not integrated in UK society, noting apart from his lack of command of the English language, he had acted in a criminal manner in a persistent way attracting a serious sentence. As indicated above, it was specifically not accepted that he had a family life in the UK. At paragraph 30 there was a finding that he did have family in Bangladesh, and that his aunt in the UK travelled to Bangladesh to see his uncle. The judge found the appellant had the option of assistance and assets to draw on to assist him in Bangladesh in order to set up life there. There was a specific finding that there would be no insurmountable obstacles to his return to Bangladesh.
23. The structure of paragraph 399A dictates that the appellant needs to fulfil all three of the requirements (a), (b) and (c). The judge's findings at paragraph 30, and in relation to (c) were not challenged. The appellant could not succeed under paragraph 399A. That is clear from the findings of the First-tier Tribunal Judge.
24. I am not persuaded that the judge erred in the assessment of the criminal convictions. He was passing comment on the construction of the case papers. The fact is that the appellant was convicted of three serious sexual offences which were reflected as the judge stated at paragraph 29 in the sentence passed.
25. Nor am I persuaded that the judge omitted a relevant factor in terms of reoffending. The appellant has repeated his offences. He had, since his conviction and sentence in 2015, repeated a sexual offence and indeed his last conviction was on 1<sup>st</sup> September 2016. He was convicted in September 2016 and sentenced to 12 months in prison and has remained in detention.
26. It was not accepted that the appellant was bisexual, and those findings were not challenged. The judge does use the wrong test in relation to the proportionality of the decision to remove him. He did note at paragraph 29 that the Secretary of State was bound to make a deportation order, but the decision could be criticised for, if anything, failing to give proper weight to the public interest. The judge finds at paragraph 32 that the appellant's case 'was not shown to amount to an exception to the making of a deportation order'. The omission of Section 117 at this point is, if anything, to the appellant's advantage and references to his immigration history are not taken into account. It had already been found, in essence,

that the appellant did not fall within the exceptions in relation to Section 117C (4) and (5). The judge at this point failed, having already found the offences to be serious, to make specific reference to the fact that deportation of foreign criminals is in the public interest and the more serious the offence committed the greater is the public interest in deportation of the criminal. That too was to the appellant's advantage. If anything the 'variability' in relation to the assessment of proportionality weighed too far in favour of the appellant.

27. The legitimate aim is described by the judge as 'immigration control', although the rule of law is also mentioned. In fact, the legitimate aim pursued by deportation, on the basis of a conviction for a criminal offence, is the "prevention of disorder or crime". The judge, however, did refer to the appellant's criminal convictions for serious offences. The test of 'very compelling circumstances' was not applied having found that none of the exceptions applied. That said, this is again to the appellant's advantage. The judge did consider and made reference to and 'exception' and 'exceptional reason' to the making a deportation order. The judge did proceed to consider paragraph 276ADE (although this does not undermine his findings overall) and found no exceptional reasons for departing from the Rules in relation to paragraph 276ADE, applied Section 117B, but, ultimately applied a 'normal' proportionality balancing exercise.

28. As set out in **Hesham Ali** at paragraph 38

*'Cases not covered by those rules (that is to say, foreign offenders who have received sentences of at least four years, or who have received sentences of between 12 months and four years but whose private or family life does not meet the requirements of rules 399 and 399A) will be dealt with on the basis that great weight should generally be given to the public interest in the deportation of such offenders, but that it can be outweighed, applying a proportionality test, by very compelling circumstances: in other words, by a very strong claim indeed, as Laws LJ put it in SS (Nigeria). The countervailing considerations must be very compelling in order to outweigh the general public interest in the deportation of such offenders, as assessed by Parliament and the Secretary of State'.*

29. On the basis of the findings of the judge, although there was a lack of specific legal reference in the approach, I find no material error, because in substance the judge applied the law. The structure of the decision may have been clearer and more focussed, but this appellant's convictions were serious, his asylum claim clearly foundered on his own evidence and he did not fall into any of the exceptions to deportation. He came nowhere near fulfilling the requirements for 'very compelling circumstances'.
30. For the reasons given I find there is no material error of law in the judge's decision which incorporated adequately reasoned findings for dismissing the appellant's claim. The First-Tier Tribunal decision will stand. The appellant's appeal is dismissed on all grounds.

Signed

*Helen Rimington*

Date 28<sup>th</sup> June 2018

Upper Tribunal Judge Rimington