**Upper Tribunal**
**(Immigration and Asylum Chamber)** Appeal Numbers: DA/00579/2012

**THE IMMIGRATION ACTS**

| **Heard at Field House** | **Determination Promulgated** |
|---|---|
| **On 29 August 2013** | **On 6 September 2013** |

**Before**

**UPPER TRIBUNAL JUDGE O'CONNOR**
**UPPER TRIBUNAL JUDGE RINTOUL**

**Between**

**ROY EDWARDS**
**(ANONYMITY ORDER NOT MADE)[1]**

Appellant

**and**

**SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Respondent

Representation:

For the Appellant: Mr D Bazini, Counsel, instructed by Duncan Lewis Solicitors
For the Respondent: Mr C Avery, Presenting Officer

**DETERMINATION AND REASONS**

1 The Appellant appeals with permission against the decision of the First-tier Tribunal promulgated on 9 January 2012 dismissing his appeal against the respondent's decision

[1] There is, however, an order in place preventing the identification of the appellant's minor children – see paragraph 2

made on 23 August 2012 that he is a person to whom section 32 (5) of the UK Borders Act 2007 applies. A deportation order against him was signed on the same day.

2 We make an order in respect of the minor children in this case preventing them from being identified. That order includes a prohibition on the disclosure of any information that might identify the address or school of that child. We consider that this order is in the interests of the children. Any breach of this order occasioned by putting the information in the public domain, such conduct might be punishable as a contempt of court either by the Upper Tribunal exercising the powers of the High Court under section 25 (2) (c) of the Tribunals, Courts and Enforcement Act 2007 or by any other court of competent jurisdiction.

3 The appellant is a citizen of Jamaica. He first entered the United Kingdom as a visitor in May 1997 using the name "Paul Williams" and was the next year joined by his partner, Ms H (also a Jamaican citizen) and their son, J, born in Jamaica in 1996. Their second son, K, was born in 1999. Later that year, the appellant was stopped by police and returned to Jamaica. He had by then begun a relationship with Bernadette Taylor, a British citizen, and they were married on 8 December 2000, the appellant by then having returned to the United Kingdom using false documentation in the name "Isaac Walters". That marriage was later dissolved.

4 The appellant was again arrested in February 2001, and again removed to Jamaica. He was by this time in a relationship with Lesley Shattock-Flynn who travelled to Jamaica in 2002 to marry him. He then returned to the United Kingdom as a visitor; a subsequent application for leave to remain as the spouse of Ms Shattock-Flynn was refused on 22 October 2002 after being initially rejected.

5 On 18 December 2003 the appellant was convicted on six counts of supplying Class A drugs and sentenced to 45 months' imprisonment. He was released in November 2005 but although he returned to live with Ms Shattock-Flynn, the marriage had broken down, and in 2006 he met his current partner, whom we refer to as Ms P to avoid their child being identified. Ms P is a British citizen.

6 On 25 July 2005, while the appellant was in prison, the respondent made a decision to deport the appellant. The appeal against that decision was unsuccessful, and finally on 10 January 2008, permission to appeal to the Court of Appeal was refused by Sedley LJ after an oral hearing.

7 By late 2006, Ms H had become unable to look after J or K and, although Ms Shattock-Flynn had been content for them to stay at weekend, she did not want them to stay permanently. The appellant and Ms P then set up home together; J and K moved in with them. On 13 September 2008 the couple's son, N was born.

8 Some four months later the appellant was arrested and was later on 11 May 2009 convicted of being involved with the fraudulent importation of cocaine and the possession of a false Belgian passport for which he was sentenced to consecutive

periods of 6 years and 6 months', and 6 months' imprisonment, making a total of 7 years imprisonment. On completion of his criminal sentence, the appellant was and remains in detention under immigration powers.

9 Since his imprisonment, J and K have returned to live with their mother, but have continued to visit the appellant in prison. Ms H is now in a relationship with a British citizen, and she and the children have Discretionary Leave to Remain in the United Kingdom. Ms P has also maintained contact with the appellant and has taken their son to visit him.

10 On 23 August 2012, following the convictions on 11 May 2009, the respondent concluded that the appellant was a person to whom section 32(5) of the UK Borders Act 2007 applies, and that none of the exceptions set out in section 33 applied to him. She noted that, applying paragraph 398 of the Immigration Rules it would only be in exceptional circumstances that a persons right to family and/or private life would outweigh the public interest in deporting a person who had been sentenced to a period of imprisonment of over 4 years. She concluded that there were no exceptional circumstances

11 The respondent considered that the appellant had not established a family life in the United Kingdom, and that any interference with his right to respect for his private life was proportionate, given the need to prevent disorder and crime, protect health and morals, and maintain effective immigration control. She considered that, while the interests of the appellant's children were a primary consideration, the appellant's removal was still proportionate given his offences.

12 The respondent concluded that the appellant was no longer in a relationship with Ms H, Ms Taylor or Ms Shattock-Flynn, and so had no family life with any of them. She noted also that although there were in place court orders in respect of J and K granting a joint residence order and a parental responsibility order ("PRO") to the appellant and Ms Shattock-Flynn, the terms of the former are no longer being maintained; that there was no need for the appellant to be present in the United Kingdom for the terms of the PRO to be fulfilled; and, that the orders would not prevent the appellant's deportation. She considered also that his removal would not have a significant impact on the children, although it was accepted that they visit him in prison.

13 The respondent considered that Ms P would have been aware of the appellant's status when their relationship commenced. She considered also that contact between the appellant and N must necessarily have been very limited, given he has been in custody since N was five months old; and, that the appellant's removal would not have a significant impact on his day to day life or well-being.

14 Turning to the consideration of the best interests of the children, the respondent considered that J and K were no longer dependent on their father; that they now formed part of Ms H's new family unit which included a British-born sibling; and, that it was in their best interests to remain with their mother in the United Kingdom, the

appellant having shown by his conduct that he had not considered his children's best interests and was not a suitable role model for them or for N. She considered that N's best interests were to remain in the United Kingdom in his mother's care.

15 The respondent considered further that the appellant had made no attempt to rehabilitate himself after his first conviction, and that the addition of 28 days on to his sentence on account of adjudications against him suggests he poses a serious risk of re-offending.

16 The appeal against the respondent's decision came before the First-tier Tribunal on 1 November 2013, the panel consisting of First-tier Tribunal Judge Herlihy and Mr B Yates. With regard to paragraph 398(a) of the Immigration Rules, they concluded [42] that there were no exceptional circumstances. The panel concluded also [53] that the appellant had a son, R, living in Jamaica with whom he was in contact, and that he had not given a truthful account of his family in Jamaica or the level of contact he has with them.

17 The panel considered that it would not be reasonable to expect Ms P or the appellant's children to leave the United Kingdom [56] but concluded that the impact on J and K would not be much. They concluded that, notwithstanding the children's best interests, it would be proportionate to deport the appellant.

18 The appellant sought permission to appeal to the Upper Tribunal on the grounds that the First-tier Tribunal had erred in law by failing:

(i) to make credibility findings [2];
(ii) to make proper assessments of the best interests of the children [6];
(iii) to make a proper assessment of the impact on them of the appellant's removal [9];
(iv) to consider if the children would benefit from their father being here [10] (Peart [2012] EWCA Civ 568);
(v) to consider properly the impact of the appellant's removal on other family members [14];
(vi) to assess properly the risk of re-offending [17 -22].

Permission to appeal was granted on all grounds.

19 The appeal then came before the Upper Tribunal on 12 March 2013. For the reasons set out in the annexe to this determination, Lord Turnbull and Upper Tribunal Judge McKee found that the determination of the First-tier Tribunal did involve the making of an error of law. Subsequent to a transfer order, this appeal comes before us to remake the determination.

20 The matter came before us on 29 August 2013, after a number of adjournments occasioned by failures by the Probation service to produce an up-to-date OASYs report. We are somewhat dismayed that it was only after we had indicated in

directions to the Probation Service that a witness summons in the name of the responsible officer would be issued, that this report was forthcoming.

21 We heard evidence from the appellant, his partner and his partner's sister, and in addition heard submissions from both representatives.

22 We also had the following documentary evidence before us:

(i) Respondent's bundle ("RB")
(ii) Respondent's caselaw bundle
(iii) Appellant's consolidated bundle ("AB")
(iv) Additional appellant's bundle ("AB2") containing letters relating to K J and N
(v) Report from London Probation Trust dated 15 July 2013

*Oral evidence*

23 The appellant adopted his witness statements. He said that he has never taken illegal drugs, does not smoke and rarely drinks alcohol. He acknowledged that he has two cautions for possession of cannabis from 2001-3, the first occurring when he had said cannabis belonging to his then wife belong to him as he did not want her to be taken to the station. He said that he had undergone drugs testing in prison, regularly, and that this was obligatory before a family visit, of which there had been 4 or 5, would be permitted. He had never tested positive. The appellant said that he had not been eligible for a drugs awareness course as he had not taken drugs, but he had asked to do the course as he wanted to know the dangers and more about what they do to people. The appellant said that he had undertaken courses in prison to qualify as an electrician, and that he still has the practical part to do.

24 The appellant said that he had committed his offences in the past as he had had no money to provide for his children who had needed food and clothing; and, that if that situation arose again, he would go without, and would make sure that they lived on what his partner earns.

25 In cross-examination, the appellant said he could not recall how the second caution for possession of cannabis arose. He confirmed he had never taken illegal drugs, and had got into the business in 2003 following a friend whom he asked for money and who asked him to do work for him. He said he had thought of the consequences but went ahead as he was not earning, and had two boys to provide for. He said he had been aware of the effect drugs have, but since being in prison had learned more about it. He said he had not become involved again with drugs until shortly before he had been arrested again. He said he had approached a man, Marlon, whom he knew for money. Marlon had asked him to give his address, but had not given the money, and that is how he had become involved again with drugs.

26 The appellant said he did not think his imprisonment had made him a better role model for his children, but he had not been allowed to work.

27 In response to our questions the appellant said the he was not rejecting the 2009 sentencing judge's findings about his involvement with the importation of drugs.

28 We then heard evidence from Ms P, the appellant's partner who adopted her witness statements, adding that the appellant had not appeared to have a lot of money during the time they had lived together. She said he is anti-smoking and anti-drugs. She said also that if released he would work for her in her business as a part-time driver. The current driver is about to leave as he wants to do the "knowledge" and become a taxi-driver. The appellant would also seek to finish his training as an electrician. She said that she continues to visit the appellant once or twice a week, taking N with her; J and K are able to come on specific family visits but not generally as they are either at school or at weekends have football.

29 Ms P confirmed that N has a close bond with his father, and that N will be starting school in September. She said the appellant would not re-offend as he has help and support from her and her family and will be working.

30 Cross-examined, Ms P said that she knew the appellant had been in trouble with the police but that was not something she had focussed on at the time the relationship had started; although she had known through friends that he had been in prison, she had not known why. She said the appellant had not appeared to have money beyond day to day things.

31 In response to our questions, Ms P said she had started her business about 10 years ago, and that it was quiet now, profitability varying. She said she had not spoken to the appellant about why he had committed his most recent offences, but thought that it had been because he had not been able to contribute financially to the household.

32 Finally, Ms P's sister gave evidence, adopting her witness statements, adding that she did not believe the appellant had ever been a drug-user and had often in the past objected to her and her husband smoking. She did not think he had ever taken, for example, cannabis or cocaine.

*Submissions*

33 Mr Avery submitted that deporting the appellant was proportionate, given his appalling immigration history and offending, and that he now seemed to be trying to minimise his involvement with the index offence. He submitted that the OASys report is a little inaccurate, and had been prepared by someone not familiar with the appellant's background, and appeared not to reflect the appellant's current plans on release. He submitted that, in any event, a finding that the appellant was at low risk of re-offending was not a matter to which much weight should be attached, given the great weight to be attached to the public interest in deporting him. Mr Avery conceded that it would not be reasonable to expect the children to relocate, but did not accept that it was in their best interests that the appellant be permitted to remain here.

34 Mr Bazini accepted that this was a case which was finely balanced, submitting that it was in the children's best interests, given the close bond they have with their father, that he be allowed to remain. He submitted that although the appellant's offending was unquestionably serious, that was not, on the particular facts of this case sufficient to justify deportation.

35 Mr Bazini submitted that in this case the motivation behind the appellant's offending had been to provide for his children, indicating the strength of the bond, and that he has the support of his partner, his ex-wife and his partner's family all of whom confirmed the strength of his good relationships with is children. He drew our attention to the sentencing remarks of HHJ Worsley indicating that the appellant is a good man, and, to the numerous visits the appellant's sons had made to him.

36 Mr Bazini submitted that deporting the appellant would effectively end the close bonds the appellant has with his children, and bring their family life to an end. He submitted that the offences committed here were not at the level of seriousness in N(Kenya) and that it was open to us to allow the appeal, there being no special reason why drug offences should require deportation.

37 Mr Bazini also submitted that it is particularly important in this case to take into account the special bond between a father and son, directing us to Peart, and that as there, the whole extended family will be torn apart. He submitted also that, contrary to the respondent's submission, it is in the best interests of the children that the appellant be allowed to remain, given that he was at low risk of re-offending.

**Findings**

38 As is noted above, this appellant has already been the subject of deportation proceedings and his appeal against the respondent's decision to deport him made in 2005, was unsuccessful. While the factual situation considered in those proceedings has clearly changed, it is nonetheless useful to bear the earlier decisions in mind as a starting point and that it had been held proportionate to deport the appellant. In December 2007, after hearing the appellant who was by then acting in person, in refusing permission to appeal Sedley LJ observed (apparently in the belief that the appellant was at that point cohabiting with Lesley Shattock-Flynn and they were jointly applying for a residence order in respect of J and K), as follows[RB, K5]:

> 11. Dealing with it, however, as I must on the facts known to the Immigration Judge, I am driven to agree with Hooper LJ, that Mr Edwards's history of repeated cheating of the immigration system, without which he would not have been here at all, his ready resort to fraud when it suited him. His commission of a series of drug offences which even with mitigation earned him almost four years imprisonment, added up to a formidable case for deportation. To render deportation in such circumstances a disproportionate invasion of his Article 8 rights to respect for his family life, something more solid than his then current

relationships with Lesley and his two sons had to be shown. Tempting as it is to use hindsight, I am not able any more than the AIT was to do that.

39 That is, of course, a strong indicator that the appellant might, at that stage, have had a considerably stronger case than at the time the decision to deport him was made. There have of course since then been changes in the appellant's circumstances both adverse in terms of a subsequent conviction, and positive, in terms of relationships strengthened and developed.

40 In assessing the factual background to this case, although we accept that were there some discrepancies in the appellant's evidence, we note that these relate to the contact he has with family in Jamaica. We have not heard submissions on this.

41 The starting point for our consideration in this appeal is the Immigration Rules. Mr Bazini candidly accepted that there was nothing he could submit in support of the proposition that the appeal should be allowed under the immigration rules. The appellant has been sentenced to a term of imprisonment in excess of 4 years, and there is nothing in the case before us which persuades us that he meets the requirements of paragraph 398 and 399 of the Immigration Rules and so we dismiss the appeal under the Immigration Rules.

42 We therefore turn, in the light of MF (Article 8 – new rules) Nigeria [2012] UKUT 393 (IAC), Ogundimu (Article 8 – new rules) Nigeria [2013] UKUT 60 (IAC) and Izuazu Article 8 – new rules) [2013] UKUT 00045 (IAC), to the learning in respect of article 8. In turning to that, we bear in mind the questions set out by Lord Bingham at paragraph 17 of the opinions in Razgar. We bear in mind also the decisions in Üner v The Netherlands (2007) 45 EHRR 14 ("Üner") and Maslov [2009] INLR 47 which, with other cases, were summarised in Masih (deportation – public interest – basic principles) Pakistan [2012] UKUT 00046(IAC) at paragraph 11:

> 11. In our view those basic principles, on the public interest side of the balancing exercise, are as follows; we have set out the authorities on which they are based in foot-notes, to make it clear that there is no need for further reference to them by panels:
>
> (a) In a case of automatic deportation[1], full account must be taken of the strong public interest in removing foreign citizens convicted of serious offences, which lies not only in the prevention of further offences on the part of the individual concerned, but in deterring others from committing them in the first place[2];
>
> (b) Deportation of foreign criminals expresses society's condemnation of serious criminal activity and promotes public confidence in the treatment of foreign citizens who have committed them[3];
>
> (c) The starting-point for assessing the facts of the offence of which an individual has been committed, and their effect on others, and on the public as a whole, must be the view taken by the sentencing judge[4];
>
> (d) The appeal has to be dealt with on the basis of the situation at the date of the hearing;

(e) Full account should also be taken of any developments since sentence was passed, for example the result of any disciplinary adjudications in prison or detention, or any OASys or licence report;

(f) In considering the relevant facts on 'private and family life' under article 8 of the European Convention on Human Rights, "for a settled migrant[5] who has lawfully spent all or the major part of his or her childhood and youth in [this] country, very serious reasons are required to justify expulsion"[6];

(g) Such serious reasons are needed "all the more so where the person concerned committed the relevant offences as a juvenile" [7]; but "very serious violent offences can justify expulsion even if they were committed by a minor"[8] . Other very serious offending may also have this consequence.

43 We accept that the burden is on the Secretary of State to demonstrate that her actions are proportionate, but the balancing exercise can only be undertaken once facts are established. As a general principle, it is for the person asserting the fact to prove it; we find nothing in the submissions made to us to persuade us to the contrary and this approach is consistent with **Razgar.**

44 We accept the history of the appellant's relationships and immigration history as set out in the witness statements before us. We accept that he is the father of J, K and N. We accept also the J and K have continued to have contact with him, as shown by the prison visiting records, and also from the letters they have written in support [AB 15, 17].

45 J states in his letter that it became harder for him as he grew up not to have his father there to watch him play football, see how he is progressing and that was hard when his father was taken away. He also says that he tries to go to see him when he can; that it would be difficult for him to visit him if he were in Jamaica, and that he had always thought that he would be coming home.

46 In his letter [AB17], K says that he misses his father, and regrets that he is not able to come to see him play football, and does not want his father to go back to Jamaica as he would never see him again. He too had thought that his father would be coming home, and is scared that if he goes to Jamaica, he would never see him again.

47 The boys' mother says in her statement [AB14] that J and K miss their father, that he had been a good father to them, and loves them a lot; that they were heartbroken when the appellant was taken to prison; that they are struggling without him and that it is important that as they grow older that they have a father to support and advise them. It is also said that they are too young to go to Jamaica to visit him.

48 We have no reason to doubt the sincerity of this evidence. We accept that, despite the difficulties, and their relatively young age, J and K have travelled on a regular basis to see their father in prison, including when he was in HMP Dartmoor. They have continued to do so for a number of years. That is indicative of the closeness of their relationship, which is confirmed by the evidence of Ms P and also by the letter from their mother [AB 15].

49 We are satisfied, given the closeness of the relationship, that a family life exists between the appellant and J and K.

50 There is, understandably, no evidence from N given his age, but we do note that he and his mother have visited the appellant on a regular basis. That continues once or twice a week, with family visits where the appellant can play with N being less frequent. The evidence in AB2 from the relevant officials confirms the closeness of the bond with the appellant.

51 It is not suggested that there is a family relationship between the appellant and any of his former partners, although we accept there is some contact with Ms H incidental to the children, J and K. We accept that there is a strong, family relationship between the appellant and his partner, Ms P.

52 We accept that the appellant has a private life in this country which includes his partner's family, and the acquaintances and friendships he has developed here since his arrival. We accept also that he has a prospect of employment on release, and has usefully acquired qualifications which will lead to him qualifying as an electrician.

53 In the circumstances, we accept that the first four questions set out in Razgar fall to be answered in the affirmative, and we therefore turn to the issue of proportionality. We have also considered and applied the principles set out in the decisions of the Court of Appeal in N (Kenya) [2004] EWCA Civ 1094, OH Serbia [2008] EWCA Civ 694 and RU (Bangladesh) [2011] EWCA Civ 651; weighing in the balance 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. We have further placed in the balance 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.

54 The best interests of the children are a primary consideration and we have treated them as such. We are persuaded that, in light of the findings above, given the closeness to their father, and the continuing support they get from him, that it would be in their best interests for that to continue. We are not persuaded, despite Mr Avery's submissions, that the appellant's offending is such that it would not be in the children's best interests for them to remain in contact with him. We note that no evidence to that effect has been submitted, and that on the contrary, the weight of the evidence is that the appellant is a good father, and that his sons look up to him. We note in this regard the positive evidence from Ms P and her family, and from the older boys' mother, Ms H. We observe also that there is no indication in any of the sentencing remarks or probation reports that the appellant is a risk to his children.

55 We accept that they cannot be expected to go to live in Jamaica, and that in the case of J and K that they will want to maintain contact with him. We are persuaded also that, as they grow up, it may be of benefit to them to have continuing contact with their

father. It is not realistic to consider that this could be maintained at a distance by electronic means, and any visits are likely to be infrequent and short.

56 It is in the children's best interests that the appellant is not deported, and we accept that his deportation is likely permanently to sever the family life that exists. That said, we note that for a substantial time now, the children's relationship with their father has been severely constrained by his imprisonment, and thus the family life that exists between them is not one characterised by them living together, or by extended periods of time spent together, or the daily interaction between a parent and child. We do however accept that were the appellant freed, that this type of relationship would be re-established.

57 The most recent OASys report is not without its difficulties, highlighted by both representatives. We bear in mind it was prepared by someone who was less familiar with the case, and without some of the relevant papers. This may have led to the comments about the appellant's drug taking. We accept, in the light of the evidence led before us, that the appellant has not taken illegal drugs. We accept also that he will have a steady home life with his partner and son to return to; that he will have the support of his partner's family; that he has a realistic prospect of employment as a driver in his partner's business; and, that he has a realistic prospect of qualifying as an electrician, an occupation which would most likely provide a steady income. Bearing these positive factors in mind, we consider that the favourable conclusion that the appellant is of low risk of re-offending is if anything strengthened, and that this balances the omission of any less favourable factors.

58 The appellant has, as we noted above, been supported for a number of years by his partner, Ms P, who has shown her commitment to him and their life together by her unstinting visits to him over several years. That said, we bear in mind that the relationship began when the appellant had already committed a serious offence and was facing deportation. The decision to cohabit was taken when it would have been apparent that the appellant's position in this country was at best precarious given that his presence here was illegal even without the threat of deportation hanging over him. That is a factor we take into account.

59 The appellant's low risk of re-offending is a factor in his favour but is not determinative. In this case we bear in mind that he has committed two very serious crimes involving Class A drugs. We observe that in O**H (Serbia)** Wilson LJ summarised the relevant principles as follows at paragraph 15:

(a) The risk of reoffending is one facet of the public interest but, in the case of very serious crimes, not the most important facet.

(b) Another important facet is the need to deter foreign nationals from committing serious crimes by leading them to understand that, whatever the other circumstances, one consequence of them may well be deportation.

(c) A further important facet is 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.

(d) Primary responsibility for the public interest, whose view of it is likely to be wider and better informed than that of a tribunal, resides in the respondent and accordingly a tribunal hearing an appeal against a decision to deport should not only consider for itself all the facets of the public interest but should weigh, as a linked but independent feature, the approach to them adopted by the respondent in the context of the facts of the case. Speaking for myself, I would not however describe the tribunal's duty in this regard as being higher than 'to weigh' this feature."

60 The seriousness of the offences can be gauged from His Honour Judge Worsley's sentencing remarks on 2 June 2009:-

> Roy Edwards, you pleaded guilty to being involved the fraudulent importation of 483 grams of powder containing just under 400 grams of pure cocaine. A postal importation from Costa Rica. As I have said, following a Newton Hearing just now I am sure that you were involved in the organisation of it including in the sending of the money at the beginning of December; some £1700 not necessarily however involved on your own. There may well have been others. You were very closely involved in the collection that you went to take. That part at least you admitted.
>
> What makes it particularly serious and what is an aggravating factor is that in 2003 6 years ago for six offences of supplying in this country Class A drugs you had to be sentenced to 45 months' imprisonment. That makes your decision to have done this all the more wicked. Apart from this drug dealing, you seem a decent man, 40 years old, with a number of children to whom you are a good father. But as you know only a substantial prison sentence is possible. Not a day goes past in this court without us seeing the misery or the victims of crime and the addict, defendants whose lives were destroyed by the pernicious trading cocaine and its derivative crack cocaine.
>
> You have credit for having pleaded guilty, but only some credit. It was not a plea of guilty at the plea and case management hearing but was followed certainly to your solicitors within a month thereafter. That is to some extent undermined by you having maintained a false basis of plea which as I have found I am quite sure was untrue, saying you were just collecting the parcel and had no other involvement in doing it at the behest of somebody else. That is quite untrue.
>
> The sentence on Count 1 is 6.5 years' imprisonment. It would have been eight but for your plea and the credit which I can give you, though as I say I have to regard to the Newton basis you wrongly put forward. For Count 2, the passport offence with intent to use the passport - a serious offence in itself - there must be a sentence of six months. It would normally be more but I have to have regard to the totality.
>
> The 6 months in itself would have been 9 months had you not pleaded guilty at the first opportunity which you did. So the total is 6.5 years plus 6 months consecutive as it must be. The total is therefore 7 years' imprisonment. I direct under section 240 that you full credit to all the time of your remand in custody which I record I believe to be 109 days. But should that be inaccurate it can be corrected administratively. It is not for me to make

> any recommendation in relation to immigration matters as the sentence well exceeds one year. The immigration authorities will decide it themselves.

61 We consider also that factors (b) and (c) identified in OH (Serbia) are of considerable importance here, not least because of the seriousness of the most recent offences, and the effect on the public as a whole. We are concerned also that the appellant in his evidence before us sought to diminish his involvement in the offence, contrary to HHJ's findings after a Newton hearing. This, we find, is indicative of a lack of remorse on his part, and while we note the appellant now says he realises the effect of drugs on society, there is little evidence that this has lead him to identify with the victims of the pernicious trade in illegal drugs, the suffering of those who are addicted, or of the damage they and their families undergo.

62 We consider that the seriousness of the offences and the need to mark society's revulsion at serious crimes weigh significantly against the respondent. Further, the offences were committed when the Appellant had already been convicted of a serious offence for which he had been sentenced to 45 months' imprisonment and when he had already lost his appeal against conviction. We consider that this, his poor immigration history, and the possession of a false passport demonstrate a disregard for the laws of this country.

63 It is very ably put by Mr Bazini that the reason the appellant committed the offences was to provide for his family. Certainly, there is no evidence before us that the appellant himself benefited financially to any significant degree, but it is worrying that the appellant, having been convicted of a serious offence in connection with the supply of class A drugs, should repeat his offending when faced with the same situation. We accept that the appellant was not allowed to work but that does not excuse his choice on two occasions to become involved in trade in drugs.

64 That said, we bear in mind the positive observations in the sentencing remarks. It is not in doubt that the appellant is a good father who has, despite his imprisonment, been able to maintain a good and supportive relationship with his sons, against the odds.

65 We accept that, as was eloquently submitted by Mr Bazini, the stark reality here is that deporting the appellant will sever the relationship and the family life that exists between the appellant and his sons, and between the appellant and his partner. The effect will, we have no doubt, be profound both on them, and on those close to them, although we not that there is no medical or other expert evidence to suggest any lasting psychological impact or any significant impact on the children's education or development.

66 It is for the respondent to show that this decision is proportionate, relying as she properly does on the public interest in deporting foreign nationals who have committed serious crimes. That, we find, is a matter to which significant weight is attached, all the more so where, as here, there is a history of the appellant being sentenced to a lengthy term of imprisonment resulting in deportation proceedings, and him going on to commit an even more serious crime. In this case, there is a significant

public interest in deportation as an expression of revulsion in the commission of such crimes; and, building public confidence in the treatment of foreign nationals who have committed serious crimes, particularly when they go on to commit further offences.

67 We find that on the facts of this case, bearing in mind the very serious nature of the offences committed, the second occurring after a decision to deport the appellant, that deportation of the appellant is proportionate, even bearing in mind the low risk of reoffending and the strong family and private life the appellant has developed here, with the consequence that his family ties with his partner and sons will be permanently severed.

**Conclusions**

1 We find that the determination of the First-Tier Tribunal did involve the making of an error of law, and we set it aside.

2 We remake the decision, dismissing the appeal on all grounds.

3 The parties are reminded of the anonymity order in respect of the appellant's minor children.

Signed Date: 5 September 2013

J K H Rintoul
Judge of the Upper Tribunal

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

No fee is paid or payable and therefore there can be no fee award.

Signed Dated: 5 September 2013

J K H Rintoul
Judge of the Upper Tribunal