Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: DA/00686/2013

THE IMMIGRATION ACTS

Heard at Royal Courts of Justice	**Determination Promulgated**
On 11 November 2013	**On 5 December 2013**
Prepared 11 and 12 November 2013	

Before

UPPER TRIBUNAL JUDGE MCGEACHY

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

EMMANUEL DAMOLA ODUSOLA

Respondent

Representation:

For the Appellant: Mr S Walker, Senior Home Office Presenting Officer
For the Respondent: Mr M Olubisose of Messrs M Olubi Solicitors

DETERMINATION AND REASONS

1. The Secretary of State appeals, with permission, against a decision of the First-tier Tribunal (Judge of the First-tier Tribunal Devittie and Sir Geoffrey James (lay member)) who, in a determination promulgated on 9 September 2013 allowed the appellant's appeal against a decision made by the respondent on 25 March 2013 to

make a deportation order against him under the provisions of Section 32(5) of the UK Borders Act.

2. Although the Secretary of State was the appellant before me I, for ease of reference, refer to her as the respondent as she was the respondent before the First-tier Tribunal. Similarly, although Mr Emmanuel Damola Odusola is the respondent I will, for ease of reference, refer to him as the appellant as he was the appellant in the First-tier Tribunal.

3. The appellant is a citizen of Nigeria born on 30 April 1992 who came to Britain on 16 March 2004 with entry clearance for settlement as a dependant of his parents.

4. On 22 December 2011 he was convicted at Woolwich Crown Court of three counts of possession with intent to supply a controlled class A drug (crack cocaine) and one count of possession with intent to supply a controlled class A drug (heroin) and was sentenced in respect of both offences in January 2012 to a total of four years' detention in a young offenders' institution.

5. The trial judge, His Honour Judge Saggerston stated in his sentencing remarks:-

> "You were found guilty of very serious offences. Only an immediate sentence of detention can be justified for supplying on this scale. You were in my judgment, quite clearly retailing appreciable quantities of class A drugs to a large group of customers, but I do bear in mind that, in this case, no stock or stash of drugs was found, either at your home or anywhere else attributable to you, other than what was found discarded as you tried to escape from the police. I bear in mind that, in your case, the level of retailing which was involved, does not appear to have given rise to large cash profits, they being only £451 in your possession clearly related to drugs dealing.
>
> I also bear in mind that at the time of all this, although you were subject to a suspended sentence, you are only 18 years old and all these factors mean that I can pass a sentence of detention that is notably lower than that which would otherwise have been the case had you been 21 years or older.
>
> In all the circumstances, for each of these offences, you will serve a sentence of detention of four years. Those sentences will all be concurrent, one with the other, making a total of four years' detention. The suspended sentence that you have admitted to being in breach of shall be activated. I am going to activate as to four weeks and I am going to order that the suspended sentence is activated to four weeks and should be served concurrently."

6. The Tribunal noted the terms of paragraphs 362, 363, 397, 398 and 399 of the Rules and concluded that the appellant could not succeed in an argument that his rights under Article 8 of the ECHR would be infringed by the decision within the context of the Rules. They however allowed the appeal on human rights grounds on the basis that the removal of the appellant would be a disproportionate interference with his rights under Article 8 when considered within the context of the European Convention on Human Rights.

7. The Tribunal heard evidence from the appellant's father, his mother, the appellant's fiancé, his sister and his brother, which they set out in paragraphs 9 onwards of the determination. It was the appellant's father's evidence that the appellant was genuine in his remorse and that they are a close family and that he had not been aware before the appellant's conviction that he had been involved in drugs. He did not believe that the appellant would be able to survive in Nigeria without the support of his immediate family. He stated that his own mother lived in Nigeria but was aged 86 and not in a position to offer any support to the appellant. The appellant's mother also gave evidence as to the closeness of the family and his fiancée had said that she was very close to him. His brother and sister gave similar evidence.

8. In paragraph 14 onwards the Tribunal set out their assessment of the evidence, referring to the headnote in **Green (Article 8 – new Rules) [2013] UKUT 251 (IAC)** which they quoted, and referring also to the determinations in **Masih (deportation – public interest – basic principles) Pakistan [2012] UKUT 46 (IAC)**.

9. In paragraph 19 they stated that the appellant had established private life in Britain and that his deportation would constitute interference of such gravity as to engage his Article 8 rights under the Convention. In paragraph 20 they wrote:-

> "20. The evidence of the appellant's parents demonstrates the very close and mutual bond that exists between parents and son. We recognise that the appellant has a close relationship with his siblings. He derives significant support from all the members of his immediate family. The appellant has been living with his parents and is likely to continue to do so upon his release. At the age of 21 however, he is an adult who is capable of leading an independent life, and there is nothing at all in the evidence that demonstrates his incapacity to do so. His parents are both in full-time employment and are not dependent on him for their daily needs. Apart from the evidence of the close relationship he has with his siblings, there is no evidence to show a degree of dependency with any of his family members, that amounts to more than normal emotional ties. We do not therefore consider that the appellant's relationship with his family members constitutes family life that would be sufficient to invoke the protection of article 8. We acknowledge that the appellant is in a genuine relationship with his fiancée. She has yet to complete her studies. They live apart and have done so since the commencement of the relationship. We do not consider that his relationship with his fiancée has demonstrated a level of durability sufficient to constitute established family life in the United Kingdom."

10. They then referred to the decision in **Uner v the Netherlands 46410/99 [2006] ECHR 873** and to the judgment of the Court of Appeal in **Maslov [2008] ECHR 546**.

11. They referred to the judgment in the Court of Appeal in **JO (Uganda) [2010] EWCA Civ 10** where it was held that an important factor was whether or not an appellant was a young adult.

12. In paragraphs 26, 27 and 28 they wrote:-

> "26. We begin our assessment of proportionality by considering firstly, those factors personal to the appellant and his family, which weigh in his favour in the balancing exercise.
>
> (i) The appellant arrived in the United Kingdom at the age of 12, and is now aged 21. It is clear therefore that he spent at least half his life in the United Kingdom, including his period of incarceration. The appellant has not yet established independent family life. He committed the offences in question when he was still a juvenile, aged 16, and consequently was sentenced to detention in a young offender's institution. We also take note that the appellant does not have any ties, including social, cultural or family with Nigeria. We accept that his parents have retained strong ties in Nigeria, and that they have visited Nigeria not infrequently. The appellant has not returned to Nigeria since his arrival in the United Kingdom. There is no suggestion that since his arrival he has retained close links with the persons of Nigerian origin and culture in the United Kingdom. We find therefore that there is no basis in the evidence before us upon which he would reach a conclusion that the appellant does have social, cultural and family ties in Nigeria. The respondent's counsel did not, as we understood her submissions, argue to the contrary. This is therefore clearly a case, where, in accordance with accepted authority, very serious reasons are required in order to justify the appellant's deportation.
>
> (ii) We recognise that the appellant is part of a strong family unit comprising his parents and siblings. We accept the emotional stress that his incarceration has caused his family and that his deportation would add to the agony that they have endured. We share the appellant's mother's concern that he would have some hardship in adjusting to life in Nigeria. We do not however accept that the relationship between the appellant and his parents, and siblings, engages article 8, as it has not been demonstrated that there are degrees of dependency that go beyond normal emotional ties.
>
> 27. In so far as the public interest consideration that support the appellant's deportation are concerned, the following factors are relevant, in our view:
> (i) The appellant has been convicted of a very serious offence. The potential harm to society in general caused by the supply of class A drugs is a feature that does cause us real concern and to which we attach significant weight. The trial court drew attention to several aggravating features, including, the fact that the appellant was retailing appreciable quantities of class A drugs to a large group of customers, and, the fact that at the time of the offence, the appellant was subject to a suspended sentence, on a related offence. Indeed, the gravity of the offence is demonstrated by the length of sentence that the appellant received. There are very compelling public interest considerations in our view, for deporting foreign criminals who commit serious offences, as the appellant has done. Firstly, deportation expresses society's condemnation of serious criminal activity, and equally important, it promotes public confidence in the treatment of foreign criminals who commit serious crimes.

(ii) The respondent's representative Ms McAllister submitted that we should find that there is a real risk of the appellant reoffending. She submitted that there was no documentary evidence to demonstrate the appellant had done any courses in prison. He committed the offences in question for financial gain, and the evidence as a whole did not demonstrate that he has taken any real steps to address the causes of his offending behaviour by taking courses then by considering options for employment. These submissions merit serious consideration. The appellant did not produce any evidence of courses he had done in prison. He stated that he was genuinely remorseful. He stated that he had done cannabis awareness courses but provided no documentary evidence to prove this. We do not have the benefit of an OASYS report and there is very little evidence from the appellant to demonstrate a genuine commitment to rehabilitation. The one factor though, which weighs heavily in his favour in this regard, and perhaps tips the balance, is the very strong family support that he enjoys from both his parents, who are British citizens and whom have been employed for a significant period in the health industry, and his siblings, all of whom have excelled in their studies, and are established in professional careers. We are satisfied the appellant would continue to receive support from his family, and that this would operate as a significant factor in reducing risk of reoffending. We find therefore on the evidence before us that there is a risk of the appellant reoffending, which we would assess as between low and medium.

28. The appellant has failed to meet the requirements of the immigration rules. Therefore, although not required to meet the test of exceptionality, exceptional circumstances have to be shown for him to succeed outside the immigration rules. The appellant arrived in the United Kingdom at a young age; he is a young adult who committed the offence at the young age of 17; he has spent the major part of his youth and at least half his life in the United Kingdom, and does not have any social, cultural or family ties in Nigeria. These circumstances are in our view exceptional and, having regard to all relevant considerations, we are satisfied that the decision to deport the appellant is not proportionate."

13. The Tribunal therefore allowed the appeal on Article 8 grounds.

14. The Secretary of State appealed. The first ground of appeal was that the Tribunal had erred in applying a two stage test in following the Tribunal decision in **MF (Nigeria) [2012] UKUT 00393 (IAC)** stating that the conclusion in that determination that the Immigration Rules did not fully reflect the "**Maslov**/**Boultif**" principles was a misinterpretation of the Rules as those principles were reflected in the Rules in the way that ensures consistency of assessment. It was argued that the Tribunal should not have simply regarded the Rules as a starting point before moving on to a second freestanding Article 8 assessment, and that if the Tribunal had considered that factors not addressed in paragraphs 339 or 399A merited allowing a deportation appeal it should have considered them when looking at whether there were any exceptional circumstances under paragraph 397 or 398 of the Rules that meant that the

consequences of deportation produced an unjustifiably harsh outcome incompatible with Article 8 despite the public interest in deportation.

15. They referred to the fact that the determination in **MF (Nigeria)** had indicated that judges had much more limited scope when considering the public interest in deportation as the Rules were now a clear expression of public interest and the weight attached to it, as set out by the Secretary of State and endorsed by Parliament. The grounds asserted that a reading of the determination **MF (Nigeria)** meant that even where the Tribunal was considering whether the outcome was unjustifiably harsh, the reflection of the public interest contained in the Rules should be given significant weight in that assessment.

16. The second ground of appeal stated that the Tribunal had failed to give adequate reasons for findings on material matters. Firstly, it was pointed out that the Tribunal had in paragraph 27(i) found that despite there being "very little evidence from the appellant to demonstrate a genuine commitment to rehabilitation", but had then gone on to find that the appellant had the support of his family which would prevent him reoffending. It was submitted that the Tribunal had failed to provide adequate reasons for their findings as there was little evidence as to what support the appellant's family could give him and, even if his family were providing him with support it was submitted that the Tribunal had failed to provide adequate reasons as to why that would reduce his risk of reoffending in future or risk of harm to the public, especially given that his family had been unable to exert any sufficient influence over him in the past, and there was no evidence that they would be able to do so now.

17. Moreover, the Tribunal had found that the appellant's family members' work, studies and careers were a positive factor but had failed to provide any reasons as to why that had any relevance in reducing the appellant's risk factors. It was submitted that his family circumstances were similar to those when he was committing his offences, and his family had failed to have any influence on him, and there was no evidence that they would do so now. It was pointed out, moreover, that the appellant had stated in his evidence that his grandparents had died, whereas his father had stated that his mother was alive in Nigeria. The Tribunal had failed to take that into account and provide adequate reasons as to why the appellant and his family's evidence was credible given that discrepancy.

18. It was pointed out that the Tribunal had stated that very serious grounds were required to justify deportation but that they had found that there was no evidence that the appellant had reformed and no evidence that his family would be able to reduce his risk of reoffending and risk of harm to the public. It was submitted that he had committed serious crimes which justified the appellant's deportation and that it was proportionate to deport him given those continuing risks.

19. It was further argued that the Tribunal had found that the appellant had established private life here but it was submitted the Tribunal had failed to provide any reasons

as to what private life the appellant had established here and why this could not be continued in Nigeria. It was submitted that there was nothing exceptional about his private life here that could not be continued in Nigeria.

20. It was also argued that the Tribunal had failed to give any reasons why they had concluded that the appellant had no ties in Nigeria as he had spent the first twelve years of his life there including his formative years and part of his education there, and would be familiar with the culture and customs there. He had family ties in Nigeria as his grandmother still lived there. As the Tribunal had found that the appellant was an adult capable of leading an independent life, there was no reason why he could not stay with his grandmother in Nigeria until he readapted to life there. It was submitted the appellant's family could provide him with financial support if needed and he could maintain contact with them in the UK through modern methods of communication as he had been able to do so whilst in prison, and they could visit him as his father had shown he was able to do so when he visited his mother.

21. It was submitted that the Tribunal had failed to provide any reasons why the appellant's interests outweighed the public interest in deportation. Given these factors it was argued that the Tribunal should have found that the deportation of the appellant was proportionate.

22. At the hearing of the appeal before me Mr Walker relied on the grounds of appeal. He stated that there were really no specific findings regarding the appellant's family or cultural ties in Nigeria. He referred to the fact that in the decision letter details were given of the appellant's parents' travels to Nigeria – his mother had returned to Nigeria in 2006, 2007 and 2008 to visit relatives, and his father had sponsored various relatives and friends from Nigeria between 2005 and October 2012 to visit him which clearly indicated that the family still maintained strong links to Nigeria. Moreover, the letter had stated that as the appellant had spent around twelve years in Nigeria and was therefore familiar with the native language it was not considered that language would be a barrier to his returning.

23. The Tribunal had failed, moreover, to consider and place weight on the fact that the appellant's parents had not been able to stop the appellant turning to crime in 2008 and there was no reason why they should have any further influence over him now, particularly as he was now an adult.

24. He therefore asked me to find that there were material errors of law in the determination and to set the determination aside.

25. In reply Mr Olubisose referred to the length of time that the appellant had lived in Britain and what he said were the appellant's substantial connections with this country. He stated that the appellant had passed a number of exams here aside from the certificates which he had obtained while in prison and that could have looked forward to a good career in this country.

26. He argued that the Tribunal had "meticulously" considered the appellant's circumstances and their assessment of the facts was comprehensive and followed authority, and that they were correct to find that there were exceptional circumstances which would mean that the deportation of the appellant would be disproportionate. He argued that they properly referred to and weighed up relevant public interest factors. He emphasised that the appellant was remorseful and stated that the Tribunal had taken into account that he had been rehabilitated while detained. He emphasised that the appellant's parents had been unaware of his involvement with drugs but now that they were they would make sure that he did not become involved in drugs or drug trafficking again.

27. He stated that the appellant would have no one with whom he could live in Nigeria because his grandmother was now very old and could die at any moment. The appellant was the youngest in his family and the one who the other members of the family would look after and that in the future they would ensure that he pursued his career and did not commit any further offences.

28. In any event he emphasised the young age at which the appellant had committed the index offences and stated that the Tribunal had taken a balanced view in their assessment of the evidence, taking into account the sentencing remarks and relevant case law.

29. He emphasised the relationship of the appellant with his fiancée who was British of Ghanaian origin and had never lived in Nigeria. He asked me therefore to dismiss the Secretary of State's appeal.

30. Having withdrawn briefly I returned to court and gave my reasons for finding that there was a material error of law in the determination of the Tribunal.

Error of law decision

31. The reality is that although the Tribunal set out at some considerable length relevant case law such as the factors on which weight was placed in the judgment of the European Court of Human Rights in **Uner** and the headnote of the determination in **Masih**, they did not apply that case law. While in paragraph 27 they stated that the appellant had been convicted of a very serious offence and noted the potential harm to society caused by the supply of class A drugs, which they stated caused them real concern, and furthermore that the "trial court" drew attention to several aggravating features including the fact that the appellant was retailing appreciable quantities of class A drugs to a large group of customers, that he had been subjected to a suspended sentence at the time of the offence for a related offence and that the gravity of the appellant's offence was demonstrated by the length of sentence, and then gone on to note the very compelling public interest considerations for deporting foreign criminals who committed serious offences, that simply did not apply that gloss on case law and their assessment of the seriousness of the appellant's offences to the particular circumstances of the appellant. The reality is that in paragraph 20

they had made a clear finding that the appellant's relationship with his family members or indeed with his girlfriend did not constitute family life that would be sufficient to invoke the protection of Article 8 – a conclusion which they repeated in paragraph 26(ii). Moreover, they concluded their assessment of the appellant's circumstances in paragraph 27(ii) with a conclusion that there was a risk of the appellant re-offending, which they would assess as "between low and medium". They had also noted that there was "very little evidence from the appellant to demonstrate a genuine commitment to rehabilitation" and stated that the evidence as a whole "does not demonstrate that he had taken any real steps to address the causes of the offending behaviour by taking courses then by *(sic)* considering options for employment".

33. All these factors would surely have led them to conclude that the deportation of the appellant was proportionate. However, the Tribunal decided that it would not be disproportionate on the basis that there was what they referred to as "one factor" which weighed heavily in the appellant's favour and "perhaps tips the balance, which was the strong family support that he enjoyed from his parents, who were British citizens, and his siblings". However, they simply did not appear to consider that support within the context of the fact that the appellant had been living at home when not only the index offence but the previous offence for which he received a suspended sentence had taken place. That is completely illogical. Having found that the appellant had shown very little evidence to demonstrate a genuine commitment to rehabilitation, and having assessed his risk of reoffending as between low and medium, and having noted the public interest in the deportation of foreign criminals, it was simply not open to the Tribunal to decide that the one factor which weighed in his favour and might tip the balance was his family here when they had found not only that the appellant was not exercising family life with his family here but they had been unable to assist him in the past.

34. It is correct of course that the Tribunal did go on to assess a number of other factors, including the appellant's young age, stating that he had committed the offence at the age of 17 and then incorrectly stating that the appellant had spent the major part of his youth, at least half his life, in Britain, before reaching a conclusion that he did not have any social, cultural or family ties to Nigeria – a factor which simply goes against his father's evidence which was that the appellant had a grandmother in Nigeria and further the evidence that the appellant's parents had travelled to Nigeria on a number of occasions in the previous few years. Again it was illogical for the Tribunal in paragraph 26(i) to conclude that the appellant's parents had retained strong ties to Nigeria but to state that there was nothing to suggest the appellant had retained close links with "persons of Nigerian origin and culture in the United Kingdom". The reality is of course that he had maintained strong links with his own family who were of Nigerian origin and that the family's links in this country appeared to be within the Nigerian diaspora, although it is correct that there was very little evidence for the appellant's involvement with any people here other than his own family and his girlfriend with whom, of course, he has never lived and who has a separate life from him as she is studying here.

35. While it is the case that the Tribunal referred to some relevant case law they did not have regard to the leading case of **SS (Nigeria) [2013] EWCA Civ 550** which emphasised the importance of accepting that the public interest as defined in the 2007 Act and indeed in the Rules severely limited the scope for a Tribunal to find that deportation could be avoided by an assessment that removal was disproportionate rather than the fact that in cases of the deportation of a criminal the more pressing public interest in removal, the stronger must be the claim under Article 8 if it is to prevail.

36. Having set aside the determination of the Tribunal, I asked both representatives whether or not they were able to go ahead with the hearing so that I could remake the decision. I rose for ten minutes to enable Mr Olubisose to take instructions and prepare for the hearing.

37. Mr Walker did submit the PNC record which showed that the appellant had first been reprimanded in June 2006 for an offence against property and then had received a postponed sentence for having an offensive weapon in public in October 2010, the sentence being suspended for twelve months on the basis that he was required ro attend at an attendance centre. He had been charged with possession of cannabis in June 2011 and thereafter in January 2012 had been sentenced to the index offences. Mr Walker also put forward a "sponsor search results list" which showed a number of fifteen people being sponsored by the appellant's father for visits to Britain, a number of whom were of a type known as "other relative" or "friend".

38. The appellant was asked about those that his father had sponsored and said that he had not realised that his father had sponsored people to come into Britain but he had not been close to any of them. He said that he had never met his grandmother. With regard to how the regime at the young offenders' institution had changed him, he said that he had improved and that he was getting a lot of time with probation and getting certificates and being put in the right direction. He had undertaken a business skills set up course and was currently doing plumbing, carpentry and painting and decorating courses, each of which would give him skills to help him get work – there was a possibility that he could become a British Gas fitter if he could be taken on as an apprentice.

39. He was asked why he had offended when he was living with his parents and why he would no longer offend if he returned to live with them. He replied that he had grown up and had received guidance from his brother and sister who had now finished university. He wanted to contribute to society. Mr Walker asked him what relatives he knew when he had lived in Nigeria. He replied that he could not remember what any relatives he had met looked like but there had not been many.

40. He was then asked if he could return to Nigeria with the skills which he had learned. He said he did not know his way around the country and it would be hard for him to start over there. When asked whether or not his family would be able to support him he said it would be different from them.

41. He stated the reason his family had not known about what he was doing was that he had done it all outside the house. They had known some of his friends but not necessarily those with whom he was mixing. None of his other friends had been convicted of drugs offences.

42. He was then asked about the two other reprimands. He said he could only remember the first one which was for criminal damage. His parents had known of this.

43. He said that he had been on a number of drugs awareness courses.

44. Asked about his family members he emphasised that all his family members are in Britain.

45. His father Nathaneal Odusola then gave evidence, stating that he believed that the appellant had committed the offences when he had been at home, off school after having been in hospital with rickets. He and the appellant's mother had been out at work and therefore the appellant had been left on his own and that was when he had got into trouble.

46. He said that he and his family were connected with the local church and that he had been round to see the parents of people with whom his son had associated, telling them that he did not want those children to have anything to do with the appellant. He had spoken to the appellant and he said it was clear that his son had changed. He emphasised that his mother was too old to look after the appellant given that she was aged 86 and in poor health.

47. In reply to questions from Mr Walker he said that the family had lived in Ibadun which was a large city, before they came to Britain. He was asked what other relatives he had in Nigeria and he said that there was nobody there as his senior brother was in America. It was then put to him that he had sponsored a number of people including relatives to come to Britain. He denied that he had sponsored any relatives here. Asked about a visitor in August last year he said it was a medical doctor who was no relation. The people he had sponsored were not people he could ask to help with his son.

48. With regard to the appellant's first conviction he said that he believed that the appellant had been throwing a ball around with friends and the ball had gone through a window. He had been asked to collect the appellant from the police station.

49. He went on to say that he did not know that his son had become involved in drugs. He added that he would not be able to support the appellant financially if he returned to Nigeria because of his own financial commitments and would have difficulty in visiting his son because of their own economic struggles to pay the mortgage.

50. The appellant's mother then gave evidence and said that they would wish to do the right thing by their son and would ensure that he did not re-offend. She said she had last visited Nigeria in 2010 when a family friend was getting married. She knew nothing about the people whom her husband had sponsored to come to Britain.

51. In summing up Mr Walker relied on the deportation letter which set out the appellant's immigration history. He emphasised the appellant's parents had not been able to influence him before conviction and therefore there was no reason why they would be able to influence him in the future. The appellant would be able to maintain contact by other means of communication from Nigeria and indeed the reality was that his parents had visited Nigeria on a number of occasions over the last few years and would be able to go on visiting. He asked me to find that the appellant's offence was such that his removal was entirely proportionate, particularly when viewed within the context of legislation and recent case law.

52. In reply Mr Olubisose stated that the evidence was that the appellant did not have family in Nigeria. He was the youngest member of the family and would have the full support of his parents, his brother and his sister here. He emphasised the appellant's fiancée would not be able to go to Nigeria as she was British but of Ghanaian origin and her whole life was here. He said that the appellant was full of remorse and stated that the facts in this case were exceptional, particularly given the young age at which the appellant had committed the offences. The other offences of which he had been charged were trivial – the first relating to an incident when playing with a ball with friends.

53. He stated there was clear evidence that the appellant had studied various courses here and was doing all he could in order to further his career in this country. He asked me to allow the appeal.

Discussion

54. In determining this appeal I have taken into account not only the evidence before me but also the various statements made by the appellant, his parents, his siblings and his girlfriend Jasmin Adjeiwaa Assanoh who referred to the appellant as her boyfriend. She is German and stated that she had been in a relationship with the appellant for over five years and that they wished to live together permanently.

55. The appellant's siblings set out their own career paths – they have both obtained considerable qualifications here. They stated they did not have family members in Nigeria. The appellant's father referred to the appellant having an important role in

church and in the youth department where he had organised different youth clubs and Bible quizzes and stated that he was "truly a role model to others".

56. The appellant's statement emphasised his remorse.

57. The appellant has been convicted of a very serious crime. The approach to a consideration of the rights of an appellant under Article 8 of the ECHR has been clarified in the judgment of the Court of Appeal in **MF (Nigeria) [2013] EWCA Civ 1192**. Firstly, it is relevant to consider the appeal under the terms of the Rules. The reality is that the Secretary of State has deemed the deportation of the appellant to be in the public interest because he has been convicted of an offence for which he has been sentenced to a period of imprisonment of four years. His claim should therefore be assessed under paragraphs 399 and 399A of the Rules. However, the appellant does not benefit from the terms of those Rules – he is not in a genuine and subsisting paternal relationship with a child under the age of 18 nor in a genuine and subsisting relationship with a partner who is in Britain as a British citizen settled here or here with refugee leave to remain who has lived here for fifteen years. I pause to state that the reality is that the appellant is the boyfriend of Ms Assanoh rather than the fiancée. There was no indication that they intend to get married, let alone that they could be described as being engaged – that is having stated that there would be a day which they would get married. They are not partners in that they have never lived together. The reality is, it appears, that they were a boyfriend and girlfriend – a relationship which, given the appellant's age, would be appropriate.

58. With regard to the provisions of paragraph 399A the appellant is aged 21 but he has not spent at least half of his life living continuously in Britain immediately proceeding the date of the immigration decision. Moreover, I would emphasise that I do not accept that he has no cultural or other ties with Nigeria. The reality is that he at least has one relative – his grandmother – in Nigeria and his family have other contacts there – at the very least those whom his father has sponsored for visits could surely be asked to look out for the appellant. His parents visited Nigeria on a number of occasions. They are part of the Nigerian diaspora. I simply do not believe that they do not have contacts there on which they could draw. In any event I would point out that the appellant is now aged 21 but has only lived in Britain since March 2004 and therefore can hardly be considered to be alienated from Nigerian society – it was in Nigeria that he received his early education.

59. It is clear, however, that the appellant cannot benefit from the terms of the Rules save that the Rules state that: "It will only be in exceptional circumstances that the public interest in deportation will be outweighed by other factors". As was indicated in the judgment in **MF (Nigeria)** that test is, in effect, akin to the issue of whether or not removal is a disproportionate interference with an appellant's rights under Article 8 of the ECHR. However, that exercise is informed by the importance that must be placed on the decision of the Government to institute the deportation regime in Section 32 of the 2007 Act.

60. In his judgment in **SS (Nigeria) v SSHD [2013] EWCA Civ 550** Laws LJ stated:-

> "53. … An Act of Parliament is anyway to be specially respected; but all the more so when it declares policy of this kind. In this case, the policy is general and overarching. It is circumscribed only by five carefully drawn exceptions, of which the first is violation of a person's Convention/Refugee Convention rights. … Clearly, Parliament in the 2007 Act has attached very great weight to the policy as a well justified imperative for the protection of the public and to reflect the public's proper condemnation of serious wrongdoers. Sedley LJ was with respect right to state that 'in the case of a "foreign criminal" the Act places in the proportionality scales a markedly greater weight than in other cases'.
>
> 54. I would draw particular attention to the provision contained in s.33(7): 'section 32(4) applies despite the application of Exception 1...', that is to say, a foreign criminal's deportation remains conducive to the public good notwithstanding his successful reliance on Article 8. I said at paragraph 46 that while the authorities demonstrate that there is no rule of exceptionality for Article 8, they also clearly show that the more pressing the public interest in removal or deportation, the stronger must be the claim under Article 8 if it is to prevail. The pressing nature of the public interest here is vividly informed by the fact that by Parliament's express declaration the public interest is injured if the criminal's deportation is not effected. Such a result could in my judgment only be justified by a very strong claim indeed."

61. The reality is, of course, that the judgement in **SS (Nigeria)** comes after a long line of cases starting with the judgment in **N (Kenya) [2004] EWCA Civ 1094** which emphasised the necessity of considering the revulsion of the public against serious crime. The judgment in **DS (India) [2009] EWCA Civ 544** again emphasised the necessity of recognising the public abhorrence at serious crimes notwithstanding the likelihood that an offender might not reoffend. As Lord Justice Rix stated in paragraph 37 of that judgment:-

> "The public interest in deportation of those who commit serious crimes goes well beyond depriving the offender in question from the chance to re-offend in this country: it extends to deterring and preventing serious crime generally and to upholding public abhorrence of such offending."

62. The First-tier Tribunal found that the appellant was not exercising family life with his family here. I do place weight, however, on the fact that his parents, siblings and his girlfriend are here. Notwithstanding the certificates which he has obtained while in prison and the assertions of his father in his father's witness statement that the appellant took part in various activities at the church attended by the family, the appellant has nothing exceptional in his private life here such as to make deportation disproportionate – there is nothing to stop him attending a church in Nigeria or taking part in activities there. I am, of course, aware of the fact that the appellant committed the index offence when he was aged 17, and was therefore a minor and that he had entered Britain at the age of 12, but the reality is that, unlike the appellant in **Maslov**, the appellant's index offence was the extremely serious offence of drug

dealing for which he received a lengthy sentence which, as the judge stated, would have been longer had he been older. Moreover, the reality is that when considering the possibility of the appellant re-offending the First-tier Tribunal considered that the risk was low to medium. I see no reason notwithstanding that he has completed the Inclusion Recovery Programme and has a certificate in cannabis awareness, why the appellant would not now re-offend. The one factor on which the Tribunal relied was the ability of the appellant's parents to look after him here and stop him re-offending. The reality is of course that they did not do so in the past. Indeed, it could possibly be considered that by removing him to Nigeria away from his home area where he was involved in drug dealing might well mean that he would be far less likely to offend in the future.

63. There are simply no factors of any weight which would weigh against the public interest in the deportation of this appellant who has been convicted of the serious offence of dealing in class A drugs and therefore I find that his removal would not be disproportionate. Accordingly therefore, having set aside the decision of the First-tier Tribunal I remake this decision and dismiss the appellant's appeal against the decision to deport.

Decision

This appeal is dismissed on immigration and human rights grounds.

Signed Date

Upper Tribunal Judge McGeachy