



**Upper Tribunal
(Immigration and Asylum Chamber)**

Appeal Number: DA/01223/2013

THE IMMIGRATION ACTS

**Heard at North Shields
on 5th December 2013**

**Determination
Promulgated
on 16th December, 2013**

**Before
UPPER TRIBUNAL JUDGE HANSON**

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

**LIAQAT ALI
(Anonymity order not made)**

Respondent

Representation:

For the Appellant: Mr McVeety – Senior Home Office Presenting Officer.
For the Respondent: Miss Mears on the telephone due to travel disruption caused by adverse weather conditions.

DETERMINATION AND REASONS

1. This is an appeal against a determination of a panel of the First-tier Tribunal composed of First-tier Tribunal Judge Fisher and Dr C J Winstanley (hereinafter referred to as 'the Panel') who in a determination promulgated on 10th September 2013 allowed Mr Ali's appeal against the Secretary of State's decision to refuse to revoke a deportation order made by virtue of section 5 (2) of the Immigration Act 1971.
2. In paragraph 21 of their determination the Panel conclude that Mr Ali's fear of an individual named Jabal is sufficient to justify the revocation of the deportation order on Article 3 ECHR grounds and, in paragraph 24, they state:

24. The Appellant has no family life in the UK, and there was no evidence before us of any significant private life, friendships or ties to the community. Realistically, Mr Ficklin conceded that if we had been considering the appeal solely on Article 8 grounds because of the Appellant's private life, deportation would have been proportionate. However, given the Appellant's well founded fears of Jabal which engage Article 3, the absence of reoffending, and his mental health issues, we came to the clear conclusion that this appeal should be allowed.

3. The Secretary of State sought permission to appeal alleging that whilst it may be that Mr Ali has not reoffended and has engaged with supervision, the First-tier Tribunal have failed to show consideration for the historic nature of the criminality. It is alleged the First-tier Tribunal failed to have regard to (1) the need to deter foreign nationals from committing serious crime by leading them to understand that, whatever the other circumstances, one consequence of them may well be deportation and (2) that deportation expresses societies revulsion of serious crimes and builds public confidence in the treatment of foreign citizens who have committed serious crimes. The grounds also allege the First-tier Tribunal should have proper regard to the fact Mr Ali was placed on the sex offenders register as a result of his offence.
4. There is, in addition, appearing in brackets at the end of the grounds on which permission to appeal was sought the following: "The SSHD does not challenge the findings in relation to Article 3 ECHR". Permission was initially refused by the First-tier Tribunal but granted on a renewed application by a judge of the Upper Tribunal although one does wonder why this challenge was made in the first place if the Secretary of State was not seeking to challenge the finding that Mr Ali's removal will breach his rights under Article 3. Those matters set out in the grounds on which permission to appeal was sought may be relevant to the correct balance to be struck when undertaking a proportionality exercise under Article 8 but they have no place in an assessment of Article 3 which is absolute. As there is no challenge to the finding that Article 3 is engaged and that the deportation order should be revoked as a result, it cannot be said that the Panel committed any legal error material to their decision to allow the appeal.

Decision

5. **There is no material error of law in the First-tier Tribunal Judge's decision. The determination shall stand.**

Anonymity.

6. The First-tier Tribunal did not make an order pursuant to rule 45(4)(i) of the Asylum and Immigration Tribunal (Procedure) Rules 2005. I

make no such order (pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008).

Signed.....

Upper Tribunal Judge Hanson

Dated the 5th December 2013