Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: DA/01319/2012

THE IMMIGRATION ACTS

Heard at Field House	**Determination Promulgated**
On 31 July 2013	**On 19 August 2013**
Prepared on 1 August 2013	

Before

UPPER TRIBUNAL JUDGE CRAIG

Between

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

SAMUEL KOUFIE

Respondent

Representation:

For the Appellant (Secretary of State): Mr I Jarvis, Home Office Presenting Officer
For the Secretary of State: Mr R Singer, Counsel, instructed by Nasim & Co Solicitors

DETERMINATION AND REASONS

1. This is the Secretary of State's appeal against the decision of the First-tier Tribunal (First-tier Tribunal Judge Fitzgibbon QC and Mr G H Getlevog). For ease of reference, I shall throughout this determination refer to the Secretary of State, who

was the original Secretary of State, as "the Secretary of State", to Mr Koufie, who was the original appellant, as "the claimant", and to the First-tier Tribunal as "the panel".

2. The claimant, who is a national of Ghana, was born on 14 August 1975. His immigration history is set out in the panel's determination at paragraph 2, and is as follows. He entered this country on 23 October 2000, with a student visa initially valid until 16 October 2000, which was extended by the Secretary of State until 30 January 2004. He made an application for further leave to remain on the basis of his marriage in January 2004 to a British citizen, Ms Sharon Wilson. After an initial refusal the Secretary of State granted this application, and the claimant was granted leave to remain until 28 February 2008. Then, he made two applications in 2008 for indefinite leave to remain as the spouse of a British citizen, but each application was refused because he had not paid the fees. He applied again on 13 December 2010 and paid the fees. This application was refused at the same time as the Secretary of State made the decision to deport him, under paragraph 322(5) of the Immigration Rules (that is on the ground that it was undesirable to permit him to remain in the United Kingdom in the light of his character, conduct or associations).

3. After the claimant (whilst here, as noted by the panel, without leave) had made his application for indefinite leave to remain in December 2010, but before the Secretary of State had made a decision, he was sentenced to fifteen months' imprisonment on 12 January 2012 at Teeside Crown Court, following a plea of guilty to an offence of converting criminal property (money laundering). The sentencing remarks of the Judge (HH Judge Taylor) are set out at paragraph 27 of the panel's determination, as follows:

> *"I accept that you are a hardworking young businessman. You knew none of the other fraudsters in the case. Your involvement came about as the result of the involvement with a man… who was, or masqueraded as, a solicitor, who should be standing in the dock alongside everyone else except he has escaped the jurisdiction… You have been involved in legitimate land deals in Africa and you have been involved with him. You have pleaded guilty to laundering £60,000. Your difficulty on the face of it is that you, a matter of weeks before you laundered the £60,000 had an earlier advance of £60,000 from the same man. He had requested the money back within days and you gave the money back, and it is good for you that you did, but you were suspicious of that. Within days another £60,000 arrives, it goes into your account and I accept that you thought some of it was going towards land deal transactions, but from that account money went back out to him and was used by you also. I have already said… that Courts always take a dim view of money laundering. The three of you are lower down the scale."*

4. The panel noted that it was clear from the sentencing remarks that the judge regarded the claimant's offence as a serious one, although he did refer to the "courage" shown by those including the claimant who pleaded guilty.

5. The parole report was positive, speaking of his remorse, and his willingness to take responsibility for his offence, and he was found to have a low risk of re-offending. The claimant was also of previous good character. Also, although he was on bail for

over a year before he was sentenced, he did not commit any further offences either then or during the period since his release from custody (see paragraph 28 of the panel's determination).

6. This was an automatic deportation under Section 32 of the UK Borders Act 2007, but the claimant's appeal was on the basis that he came within the exception in Section 33(2)(a) of the Act, in that his removal in pursuance of the deportation order would breach his rights under Article 8 of the ECHR.

7. For reasons which will be discussed below, the panel found, at paragraph 45 of its determination, that the claimant did come within the exception in Section 33(2)(a) "in that deportation would breach his ECHR rights", and the claimant's appeal was accordingly allowed.

8. The Secretary of State now appeals against this decision, permission having been granted by Designated First-tier Tribunal Judge Murray on 20 June 2013.

The Hearing

9. I heard submissions on behalf of both parties, and was also assisted by a skeleton argument which had been carefully prepared by Mr Singer on behalf of the claimant. I made a contemporaneous note of the arguments advanced before me, which is contained in the Record of Proceedings, and so I shall not set out below everything which was said during the course of the hearing. However, I have had regard to everything which was said, and to all the documents contained within the file, when reaching my decision, whether or not the same is specifically set out below.

10. I should record at the outset that the arguments which were ably advanced on behalf of the Secretary of State by Mr Jarvis were for the most part not contained within the grounds, and that Mr Jarvis made little or no attempt to develop any of the arguments which had been contained in the grounds. Although Mr Singer had had no advance notice of these arguments, and initially expressed his concern that Mr Jarvis was relying on arguments which had not been contained within the grounds, after having heard what these arguments were, he considered that he could deal with them, and that if Mr Jarvis on behalf of the Secretary of State wished to raise them, he could.

11. In light of this very fair approach taken on behalf of the claimant by Mr Singer, I allowed Mr Jarvis to develop the arguments as he choose.

Secretary of State's Submissions

12. I set out the gist of the Secretary of State's submissions, as argued before me. As already noted, the submissions are very different from those advanced within the grounds.

13. Mr Jarvis agreed with what had been said on the claimant's behalf in the skeleton argument prepared by Mr Singer, that the issue boiled down to a challenge over proportionality. This was a decision made under Section 32 of the UK Borders Act 2007, and at paragraph 20 of its determination, the panel had found that the claimant did not meet the requirements of the Immigration Rules. Accordingly, he had to rely on an argument under Article 8 outside the Rules.

14. Under the Rules, even if a person seeking to avoid deportation had been sentenced to a period of over a year in prison, he would still be permitted to raise Article 8 arguments in reliance on the interference with a relationship, but this would only be considered if he had previously had valid leave for fifteen years. So while the Presidential Tribunal in *MF (Article 8 – new rules) Nigeria [2012] UKUT 00393* had decided that there should be a two stage approach, being first consideration under the Rules and then consideration under Article 8 outside the Rules, that Tribunal had also stated that the Rules were indicative of a ramping up of the Secretary of State's position and this had to be taken into account. The Tribunal must acknowledge the Secretary of State's position through the Rules, although that was not the end of the discussion.

15. When this panel set out the Article 8(2) statutory argument, that is the Article 8 argument outside the Rules, it made no reference to the Secretary of State's policy.

16. In looking at Article 8(2) the panel, in understanding the weight of the public interest against the claimant, needed properly to recognise what that pubic interest consisted of, even if ultimately it was to find that the claimant's rights outweighed the public interest in this case. If the panel did not properly appreciate the nature of the public interest, then that was a material error of law.

17. In the Rules, the Secretary of State says that the question of interference has no real bearing unless an applicant had had fifteen years' valid leave. That was a strong declaration of what was now a relatively new executive policy, and for the Tribunal not to acknowledge this later on in the judgment was not properly to recognise the nature of the Secretary of State's case. Although the new policy would not bind the Tribunal, it must be weighed into the balance properly, otherwise the proportionality exercise had not properly been carried out.

18. Equally, (and this argument also was not contained within the grounds), Mr Jarvis's reading of the claimant's immigration history was that he had been an overstayer from 2008. The panel in its judgment says that there were no particular immigration history issues (at paragraph 33), which must be wrong. If it was the case that the claimant was an overstayer from 2008, and this was not dealt with in the determination, then this also was a material error of law.

19. Although the panel noted that the offence was a serious offence (at paragraph 20) what the panel had not done – which was a criticism made generally by the Court of Appeal in *SS (Nigeria) [2013] WLR(D) 192* – was to recognise properly that, in the words used by Laws LJ at paragraph 28 of *SS (Nigeria)* "the weight to be attached in

an Article 8 case to the state's policy of deporting foreign criminals may be greater where the policy is made, not by the executive government, but by the legislature". Where referring, as it did in paragraph 31 of the determination, to the various previous Court of Appeal decisions, the panel had not appreciated that these decisions had been made when the executive's policy on deportation had been expressed solely through the Rules. So when the panel was relying on an analysis of society's revulsion towards serious crime, this was on the basis of the policy as it then was, rather than as it is now, as laid out by Parliament.

20. What the Court of Appeal was saying in *SS (Nigeria)* was that where a decision was taken on the basis of an express parliamentary declaration of social policy, the public interest was not just expressed through public or society's revulsion, but by Parliament. At paragraph 41 of *SS (Nigeria)*, decision makers were reminded that when considering the applicability of Article 8, a policy of minimal interference with Parliament's will should be recognised. The public interest in deporting foreign criminals had greater weight because it was now derived from legislation.

21. To this extent, this Tribunal in *MF* had missed the point, because it was not just the importance which the Secretary of State attached to the deportation of foreign criminals which had to be recognised, but the importance which Parliament attached to this.

22. While it was accepted on behalf of the Secretary of State that unless and until the decision in *MF* was overturned, this Tribunal had to adopt a two stage approach, the Tribunal must also recognise first that, in accordance with the decision in *MF*, considerable weight must be attached to the executive's view, but also, secondly, as expressed in *SS (Nigeria)*, even greater weight should be attached to the importance of deporting foreign criminals, because that was what Parliament intended.

23. Even if an applicant relied on Article 8, he or she could still be deported if his/her sentence was one of twelve months' imprisonment or more. This was a significant ramping up of the lawful expression of the public interest. So, for example, when the panel contrasted this offence, where the claimant had received a sentence of imprisonment of a little over a year, with the sentence in *RU (Bangladesh)* where the applicant had been in prison for fifteen years, it should have appreciated that under the legislative scheme now, the length of sentence does not have the same role to play as it did then, when the policy of the executive was a discretionary one expressed through the Rules.

24. For these reasons, it was argued on behalf of the Secretary of State that the panel had not properly understood the strength of the Secretary of State's case.

Submissions on behalf of the Claimant

25. Insofar as the Secretary of State intended to rely on the arguments set out in the grounds, which had not been developed by Mr Jarvis in his submissions, the

claimant relied upon the skeleton argument which Mr Singer had prepared prior to the hearing. Essentially, in the skeleton, it was argued, in reliance on a number of authorities such as *R (Iran) [2005] EWCA Civ 92* and *Miftari v SSHD [2005] EWCA Civ 481* that the only basis upon which an error of law could be found was if the panel had failed correctly to apply the relevant legal principles or had failed to have regard to the facts before it.

26. Reliance was also placed on the decision in *Mukarkar v SSHD [2006] EWCA Civ 1045*, where it had been noted, at paragraph 30, that "the mere fact that one Tribunal had reached what may seem an unusually generous view of the facts of a particular case does not mean that it has made an error of law, so as to justify an appeal under the old system, or an order for reconsideration under the new".

27. Insofar as the Secretary of State wished to argue that the decision was perverse, perversity was "a question which has always to be scrupulously disentangled from the question whether the second decision maker simply entertains a strong disagreement with the first" – see Sedley LJ in *RP (Zimbabwe) v SSHD [2008] EWCA Civ 825*.

28. Even though the Secretary of State had not developed the arguments set out in the grounds, Mr Singer felt he should deal with them. Insofar as it was suggested that the "seriousness test" had not properly been considered, clearly the panel had looked at this. They had had in mind the unchallenged evidence from the claimant's wife, who was 54 and had lived in the UK for 40 years since emigrating from Jamaica. She was a British citizen, and she had an elderly infirm mother for whom she cared, and a strong bond with her son and grandchild. The panel had had in mind that the obstacles to the claimant's wife leaving this country to go to Ghana where she had never been were so serious as to be beyond mere hardship, difficulty or obstacle. Otherwise the panel would have said so. As the panel made clear at paragraph 43, this was a case where the consequence of deporting this claimant was that he would be separated from his family in this country. This was accordingly a factor which had to be balanced against the factors in favour of his being deported.

29. Insofar as it was now argued on behalf of the Secretary of State that the panel had given insufficient weight to the claimant having been an overstayer, at paragraph 33, the panel had merely stated that "there is no complaint about his immigration history", which was correct. The panel did not say he had had a blameless immigration history, far from it, because at paragraph 2 of the determination his immigration history had been set out, including the facts that he had made applications which had failed in 2008 and that his application in 2010 had been made while he was in this country without leave. So it was plain from the determination that the panel was aware of his immigration history. There was a two year period when the claimant did not have leave and did not apply to regularise his position, but the panel was aware of this. Its observation was that the Secretary of State had not made any specific complaint with regard to this factor. Although the claimant's immigration history is referred to in the refusal letter it is not even relied on in this

letter as a factor justifying his deportation. Further, the Presenting Officer was not recorded as having relied on this factor in his argument before the panel.

30. Dealing with the arguments advanced on behalf of the Secretary of State relying on the Court of Appeal decision in *SS (Nigeria)*, it was submitted that the panel's decision had dealt properly with the public interest in deporting foreign criminals. Obviously, the panel had not referred specifically to the decision in *SS (Nigeria)* because that decision had not been promulgated by the time of this decision. *SS (Nigeria)* was not promulgated until 22 May 2013, which was some eight days after this decision had been promulgated. Nonetheless, at paragraph 7 of the determination, this panel had set out the relevant provisions of sections 32 and 33 of the UK Borders Act 2007 including in particular section 33(7) which is the section referred to by Laws LJ in *SS (Nigeria)* as the relevant public interest provision enacted by Parliament. At paragraph 25 of the determination, in the first sentence, the panel had stated in terms that "we recognise that there is a powerful public interest in the deportation of foreign national offenders and that Section 32 of the 2007 Act gives effect to it". While the panel does not specifically say in terms that it took account of the fact that the public interest in the deportation of foreign criminals was not now just contained within the Rules but was the will of Parliament, it is obvious from paragraph 25 that this was in their minds. The fact that this provision was enshrined in legislation and not just in the Rules was also referred to at paragraph 41, where it was stated that the panel took full account of the Secretary of State's view of the public interest which was "now enshrined in the automatic deportation legislation".

31. It did not appear, because there is no record within the determination, that the Secretary of State's representative at the hearing had argued that the panel should give even more weight to the Secretary of State's view because it was now enshrined within legislation. This argument did not seem to have been advanced, beyond a general reference to Section 32, which is what this Tribunal was dealing with, but nonetheless the panel gave specific reference to the fact that the policy was now contained within primary legislation.

32. Insofar as a judgment now has to be seen to be "*SS (Nigeria)* compliant", this decision was. Also, it should be noted that although the Court of Appeal in *SS (Nigeria)* focuses on the fact that the Secretary of State's policy, which was now enshrined in legislation was that it would be conducive for the public good to deport foreign criminals, it is also the law, as expressed by Parliament, in the same part of this statute, that exceptions can apply and that in these cases, an applicant should not be deported. So Parliament has itself decreed that there can be exceptions where although it is conducive to the public good to deport a foreign criminal, nonetheless he or she should not be deported.

33. In this case, the panel was well aware that the legislature was endorsing the Secretary of State's policy and this was properly taken into account. The argument advanced on behalf of the Secretary of State that more weight should have been given to this factor is a complaint about weight, and matters of weight are for the Tribunal. The arguments advanced on behalf of the Secretary of State did not make

out an arguable error of law. This was a well thought out and well-structured determination and the panel reached a decision that the legitimate public aim which clearly existed and had been endorsed by Parliament, when balanced against the claimant's family and private life rights, was outweighed by those Article 8 rights such that removal was disproportionate. The panel had looked at the totality of these facts, balanced them fairly and by no means perversely and had reached a conclusion which was reasonable and lawfully open to it.

34. In reply, Mr Jarvis stressed that overstaying was a criminal offence, and its seriousness could not be waived by a Presenting Officer. The panel had an obligation to take full account of this factor, even if it had not been specifically argued before it. Although it was referred to when the panel was setting out the claimant's immigration history, the panel had not made reference to this factor when considering proportionality. This was missed, even though it was clearly relevant.

35. Although the panel had at paragraph 41 referred to the Secretary of State's view of the public interest being now "enshrined in the automatic deportation legislation", this still referred to the Secretary of State's view. The point which was being made on behalf of the Secretary of State was that this was not just the Secretary of State's view enshrined in legislation, but was the will of Parliament. Mr Jarvis appreciated that this was "a subtle point", but nonetheless this was what the Court of Appeal was saying in *SS (Nigeria)*. This was not just the Secretary of State's view. The Court of Appeal was not saying that exceptions were irrelevant, but that the balance should be got right, after proper weight had been given to Parliament's will. Again, the failure of the Presenting Officer to make this argument in terms was besides the point. The Court of Appeal in *SS (Nigeria)* was declaring what the law had always been and therefore any failure to make this point in argument did not mean that that law should not have been applied.

Discussion

36. I deal first with the argument advanced in the grounds, which was not developed before me in argument. It is suggested in the grounds that when considering whether or not the claimant's wife could reasonably be expected to accompany him to Ghana, the panel had "failed to consider that 'what must be shown was more than a mere hardship or a mere difficulty or mere obstacle. There is a seriousness test which requires the obstacles or difficulties to go beyond matters of choice or inconvenience'" (as per *VW (Uganda) [2009] EWCA Civ 5*). It is then said that the panel had "failed to consider whether family life could be continued through visits and other means of modern communication particularly with [the claimant's wife's] grandchild and son".

37. In my judgment, there is no merit in this argument. The panel considered the position of the claimant's wife very carefully at paragraph 40 of the determination and had in mind that the claimant's wife, who is aged 54, had lived in the UK for 40 years, since she had emigrated from Jamaica. She was a British citizen, had no

connection of her own with Ghana and cared for her elderly and infirm mother, who lived here. She also had a son in this country who was described as "immature" and was "closely involved with her granddaughter's upbringing". Having considered these factors, and concluded that it would not be reasonable to expect the claimant's wife to accompany him to Ghana, the panel made a finding, which was open to it, that "the proposed deportation of the [claimant] will effectively end [his] nine-year marriage and will terminate his contact with his stepson and granddaughter" (paragraph 43). It was for the panel to make findings of fact, which it did, and this particular finding is, in my judgment, properly reasoned.

38. I turn now to consider the arguments which were advanced on behalf of the Secretary of State for the first time before me by Mr Jarvis. The main thrust of Mr Jarvis's submissions was that the panel failed to have sufficient regard to the fact that it was not just the policy of the Secretary of State that the deportation of foreign criminals such as this claimant was conducive to the public good, but that this was an expression of the will of Parliament. The second argument advanced by Mr Jarvis was that the panel erred by not putting any weight on the undoubted fact that this claimant was an overstayer.

39. Prior to giving his judgment in *SS (Nigeria)*, Laws LJ had expressed similar views in the case of *Richards v SSHD [2013] EWCA Civ 244*, a judgment given in January this year. Although Mr Jarvis handed the Tribunal a copy of this judgment, he did not refer to it in argument. At paragraph 21, Laws LJ stated as follows:

> "What in my judgment needs emphasis is that the strong public interest in deporting foreign criminals is now not merely the policy of the Secretary of State but the judgment of Parliament. That gives it special weight, which the courts ought to recognise, as no doubt the Strasbourg Court will. This approach sits with the well-established approach to proportionality questions in European Union law where acts of the primary legislator enjoy a wider margin of discretion (see *R v Secretary of State for Health ex-parte Eastside Cheese [1999] 3 CMLR 123* per Lord Bingham, especially at paragraph 48)."

40. Mr Jarvis places particular reliance on the finding of the Court of Appeal in *SS (Nigeria)*, as expressed by Laws LJ at paragraph 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."

41. Mr Jarvis asks this Tribunal to find that the panel's consideration of the facts in this case was not, as he puts it "*SS (Nigeria)* compliant". He asks the Tribunal to find that the panel did not accord a sufficiently wide "margin of appreciation" to the fact that Parliament decreed that the deportation of offenders such as this claimant was conducive to the public good and that this was a factor which should be accorded very great weight.

42. Although Mr Jarvis appreciated that the panel had clearly recognised that the policy of the Secretary of State was now enshrined in an Act of Parliament, that was not the same as appreciating that this was in effect the will of Parliament, rather than just the Secretary of State's policy as endorsed by Parliament. While Mr Jarvis appreciated that this was perhaps a "subtle" distinction, nonetheless he asked the Tribunal to consider that it was a proper distinction to make.

43. I have within this determination attempted to set out Mr Jarvis's argument on this point fully, because it is an important one which must be considered in light of the guidance given by the Court of Appeal. However, in this case, I do not think this argument is well-founded. It is undoubtedly the case, as Laws LJ stated both in *Richards* and *SS (Nigeria)* that any fact-finder must accord great weight to the fact that Parliament has enacted that the deportation of foreign criminals such as this claimant is conducive to the public good. It is not open to an applicant to argue that in his or her case it would not be conducive to the public good to deport him because, for example, he no longer presented a risk of further offending. Parliament has decided that the deportation of foreign criminals is conducive to the public good and a fact-finder must give weight to this factor.

44. However, in this case, the panel did precisely this. At paragraph 7 of its determination the panel set out the relevant sections of the UK Borders Act, and it is apparent from this paragraph that the panel had regard in particular to the provisions of Section 32(4) that the deportation of this claimant was conducive to the public good (because this is what Parliament has decreed) and also to Section 32(5) that the Secretary of State must make a deportation order in respect of this claimant (because he is, in the terms of this statute, a "foreign criminal") unless he comes within one of the exceptions set out within Section 33. By Section 33(2)(a) such a person should not be deported where his deportation would be in breach of his Convention rights (in this case his Article 8 rights), although by Section 33(7) that would not mean that his deportation would not be conducive to the public good. In other words, even though Parliament has enacted that the deportation of people such as this claimant will be conducive to the public good, it has also recognised that there will be cases where there are factors relating to an individual's Article 8 rights which outweigh the need for deportation. It follows that the courts must continue to carry out a balancing exercise.

45. It is apparent from paragraph 41 of the panel's determination, in which it is said that "we take full account of the Secretary of State's view of the public interest, now enshrined in the automatic deportation legislation" that the panel appreciated that the Secretary of State's view of the need to deport foreign criminals, which is to say

the public interest in deporting foreign criminals, was a view which represented the will of Parliament. However, as provided by Section 33, this does not mean that there will never be cases where the Article 8 factors which must be considered will outweigh this public interest. To this end, the panel was both entitled and obliged to consider just how strong in this case the public interest was in deporting this particular claimant. Although it is clearly (because Parliament had said it is) in the public interest, and is conducive to the public good to deport this claimant, it is not as conducive to the public good as it would be were his offence more serious, as was the offending in other cases cited within the determination.

46. In my judgment, this was a thorough and detailed determination, in which the panel analysed all the competing factors with care, and reached a decision on proportionality which was entirely open to it.

47. I can deal briefly with the other argument advanced on behalf of the Secretary of State by Mr Jarvis. It is simply not correct to say that the panel did not have in mind that this claimant was an overstayer. This is stated in terms at paragraph 2 of the determination. The panel was fully aware of this claimant's immigration history. However, the panel was entitled, when considering the weight to be given to the fact that he was an overstayer, to take account of the fact that this was not a factor to which the Secretary of State herself appeared to attach much weight. Not only was this not raised as a serious factor in the refusal letter, but the Presenting Officer did not rely on this factor when addressing the panel. The panel was not obliged to repeat later in the determination the matters which had already been set out at paragraph 2.

48. In my judgment, it is precisely because the panel was so aware of the fact that Parliament has now decreed that deportation of people such as this claimant is in the public interest that it found, at paragraph 45, that "this case is finely balanced". Otherwise, the factors suggesting that the claimant's deportation would be disproportionate might well have been found to outweigh the public interest even more clearly than they did. However, even after taking full account of the will of Parliament, when enacting that deportation of foreign criminals was conducive to the public good (as I find the panel did) it was still able to find at paragraph 45 that it was "not satisfied that the public interest in the deportation of this [claimant] outweighs his right to continue to exercise his right to family life with his wife in the UK." In light of this finding, which I consider the panel was entitled to reach, the panel had no alternative other than to go on to find "that he comes within the exception in Section 32(2)(a), in that deportation would breach his ECHR rights". The panel considered the factors relating to proportionality entirely properly, and there is no arguable error of law in its determination. It follows that the Secretary of State's appeal must be dismissed.

Decision

There being no material error of law in the decision of the First-tier Tribunal, this appeal by the Secretary of State is dismissed.

Signed: Date: 13 August 2013

Upper Tribunal Judge Craig