



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

Appeal Number: DA 01539 2013

**THE IMMIGRATION ACTS**

**Heard at Field House**

**On 9 December 2013**

**Determination**

**Promulgated**

**On 30 December 2013**

**Before**

**UPPER TRIBUNAL JUDGE PERKINS**

**Between**

**DEMOY CONIEF MCINTOSH**

Appellant

**and**

**SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Respondent

**Representation:**

For the Appellant: Ms S Parkes, Counsel instructed by Afrifa & Partners Sols

For the Respondent: Mr M<sup>c</sup>Girr Senior Home Office Presenting Officer

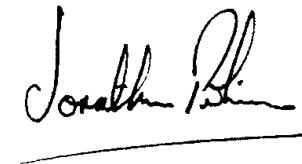
**DETERMINATION AND REASONS**

1. This is an appeal by a citizen of Jamaica against a decision of the First-tier Tribunal dismissing his appeal against the decision of the respondent not to revoke a deportation order made against him following his conviction for extremely serious criminal offences.
2. A difficulty with the determination is that the First-tier Tribunal not only failed to consider a statement from the appellant's wife but said at paragraphs 21 and 23 of the determination that no statement had been prepared, when in fact there was a statement from the appellant's wife setting out in considerable detail circumstances about the private and family life of the appellant. I think it is right to say I have considerable sympathy with the First-tier Tribunal judge missing this statement because it was not in any bundle provided from the appellant who was then representing himself. Rather, it was in a bundle provided by the

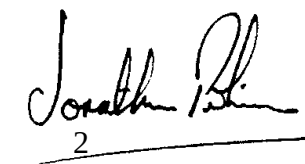
respondent and actually pinned upside down making it even harder to see. Without the benefit of a representative to draw it specifically to the First-tier Tribunal's attention it is perhaps not entirely surprising that it was missed.

3. I cannot see that there could be any way in which the determination can be salvaged. It is impossible to say that the matters listed there could not have made a difference and that is the test that has to be applied.
  4. I considered going ahead to decide the case today. Ms Parkes argued that I should not do that because the case has to be completely reheard. If I made a decision as primary decision maker it would unfairly limit the appellant's appeal rights.
  5. As I have indicated already, although there is much to this man's discredit it is not his fault that the judge did not read the statement that was on the file.
  6. I am therefore satisfied the appeal has to go back to the First-tier Tribunal to be decided again.
  7. I think it is necessary to emphasise, although I have no doubt that the appellant has been properly advised already, that my decision is not an indication that the First-tier Tribunal will necessarily reach a different decision when the case is reheard. It merely reflects that the First-tier Tribunal ignored evidence that could make a difference and the appellant is entitled to a proper decision.
4. I set aside the decision of the First-tier Tribunal and order it to be decided again in the First-tier Tribunal.

Signed  
Jonathan Perkins  
Judge of the Upper Tribunal

A handwritten signature in black ink, appearing to read 'Jonathan Perkins', written over a horizontal line.

Dated 23 December 2013

A handwritten signature in black ink, appearing to read 'Jonathan Perkins', written over a horizontal line with the number '2' written below it.