Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: AA/10078/2013

THE IMMIGRATION ACTS

Heard at Field House **Determination Sent**
On 11 April 2014

Before

UPPER TRIBUNAL JUDGE O'CONNOR

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

MR DANIEL LARYEA

Respondent

Representation:

For the Appellant: Mr G Saunders, Senior Presenting Officer
For the Respondent: Miss A Jones, instructed by Bhogal Partners, Solicitors

DETERMINATION AND REASONS

Introduction

1. The Secretary of State is the appellant before the Upper Tribunal. For the sake of convenience I shall refer herein to Mr Laryea as the claimant.

2. The claimant is a national of Ghana born on 18 June 1970. He arrived in the United Kingdom on 7 November 1996 and applied for asylum two days later. This claim was refused on 1 July 1997 and a subsequent appeal against that decision was dismissed by the Tribunal on 27 January 1998. On 21 April 2008 the claimant's current solicitors wrote to the Case Resolution Directorate of the Home Office enquiring as to whether the claimant satisfied the terms of the legacy programme. Further letters in the same regard were written to the Case Resolution Directorate on 18 June and 22 October 2008, and then again on 18 February 2009 and 21 April 2010.

3. The Secretary of State responded on 24 June 2010 requesting that the claimant forward specified documentation to the Case Preparation Team at the Case Resolution Directorate. This documentation was forwarded on 9 July 2010. By way of a letter of 26 August 2010 an officer at the Case Preparation Team requested yet further documents from the claimant. Further letters were written by the claimant's solicitors to the UK Border Agency on 7 September 2010, 13 September 2010, 8 November 2010, 7 December 2010, 11 May 2011, 23 August 2011 and 5 December 2011, each relating to a proposed consideration of the claimant's circumstances by the Secretary of State under the legacy programme. The Secretary of State substantively replied in this regard to Ms Malhotra MP in a letter of 20 June 2012. This decision prompted the claimant to lodge an application for judicial review, which was subsequently the subject of a compromise agreement.

4. The claimant submitted detailed representations to the Secretary of State on 9 July 2012 and again on 15 January 2013. There appears then to have been a decision made by the Secretary of State on 11 March 2013. This was the subject of an appeal to the First-tier Tribunal and, by way of a determination promulgated on 14 May 2013, First-tier Tribunal Judge Somal allowed the claimant's appeal to the extent that he remitted the matter back to the Secretary of State and directed that: *"a fresh decision be made with consideration of her own policy on the legacy programme with adequate reasons."*

5. On 10 June 2013 the Secretary of State decided that the claimant was to be removed from the United Kingdom pursuant to Section 10 of the Immigration and Asylum Act 1999. The claimant again appealed this decision to the First-tier Tribunal and that appeal was once again allowed – this time by Judge Buckwell – *"to the limited extent that it is remitted to the Respondent for further consideration of the circumstances of the Appellant in relation to the Legacy Programme…"*

6. Thereafter, a further decision was made to refuse the claimant leave to enter. It is this decision which it at the heart of the current appeal. The claimant once again appealed the Secretary of State's decision to the First-tier Tribunal and this appeal was heard by First-tier Tribunal Judge Hunter on 9 December 2013. Judge Hunter allowed the appeal on Article 8 ECHR grounds in a determination signed on 10 February 2014.

7. The Secretary of State appeals this decision to the Upper Tribunal on the following grounds:

> "(1) The Immigration Judge has allowed the appellant's appeal on Article 8 grounds, based on his private life. It is submitted that the Immigration Judge has failed to give adequate reasons for his findings. It is submitted that the Immigration Judge has failed to give adequate consideration to the Secretary of State's policies in maintaining effective immigration control. The appellant's previous appeal was dismissed in 1998, and the appellant absconded. It is submitted that any private life ties that the appellant has established, have come about in the full knowledge that his immigration status was precarious. Further, any delay in assessing the appellant's further submissions have not resulted in him missing out on a relevant policy. It is submitted, in assessing proportionality, the Immigration Judge has failed to give adequate reasons for finding that the appellant's Article 8 private life ties outweighed the need to maintain effective immigration control. It is submitted that the appellant's private life ties are such that they can be re-established in Ghana where he spent his formative years.
>
> (2) Having made the finding that the appellant does not have family life ties with his family members in the UK, the Immigration Judge finds that the appellant's family members would be affected by his removal such that his removal is rendered disproportionate. It is

submitted that the Immigration Judge has not relied on any evidence indicating that the appellant's parents would have such difficulties visiting him in Ghana, such that his removal is disproportionate. The Immigration Judge refers to difficulties the appellant may encounter in rebuilding his life in Ghana [paragraph 105]. It is submitted, however that the appellant still has ties to Ghana and would be able to overcome any difficulties with the assistance of friends and family.

(3) The Immigration Judge has failed to identify any compelling circumstances in this case. It was made clear in Gulshan [2013] UKUT 00640 (IAC) that the Article 8 assessment shall only be carried out when there are compelling circumstances not recognised by these Rules. In this case the Tribunal did not identify such compelling circumstances and its findings are therefore unsustainable. Gulshan also makes clear that at this stage the appeal should only be allowed where there are exceptional circumstances. Nagre [2013] EWHC 720 Admin endorsed the Secretary of State's guidance on the meaning of exceptional circumstances, namely ones where refusal would lead to an unjustifiably harsh outcome. In this case the Tribunal has not followed this approach and thereby has erred materially in law."

8. Designated First-tier Tribunal Judge Baird granted the Secretary of State permission to appeal by way of a decision dated 27 February 2014. In particular Judge Baird said as follows when doing so:

"3. Judge Hunter noted that the appellant had been in the UK for over 17 years but found that he has not established that he has no ties to Ghana. He found that he has no family life in the UK that would engage Article 8. He found that the appellant does not meet the requirements of paragraph 276ADE of the Immigration Rules and that the private life he has established in the UK was established while he had been here unlawfully. He went on to allow the appeal under Article 8, apparently relying on delay by the respondent in dealing with his case and his relationship with his parents in the UK.

4. All the grounds are arguable."

9. Thus the matter came before me.

10. At the hearing Mr Saunders maintained reliance on the pleaded grounds and further submitted that the First-tier judge had erred by failing to take into account the decade of overstaying by the claimant, from January 1998 onwards, when coming to his conclusions. It was additionally asserted that the First-tier Tribunal had erred by failing to provide any, or any adequate, reasons as to why the approach taken in Gulshan was not adopted.

11. In response Miss Jones reminded the Tribunal that Article 8 considerations were always fact sensitive. She further observed that the First-tier Tribunal had seen a number of witnesses give oral evidence before it and that it had reached conclusions based on the evidence of those witnesses. It was also asserted that (i) such conclusions had been open to the tribunal, (ii) that the tribunal had specifically taken into account the fact that the claimant had overstayed his leave in the United Kingdom (iii) that the tribunal had properly relied on evidence from the claimant's parents to found its conclusion that they could not visit Ghana.

12. As to the failure of the Tribunal to consider whether there were compelling circumstances in accordance with the decision in Gulshan, Miss Jones submitted that such principles were inapplicable to the instant appeal because the claimant had made an application to the Secretary of State, or the Secretary of State had treated an application as having been made, prior to 9 July 2012. As a consequence she submitted that, when looked at as a whole, the

determination contained an adequacy of reasoning sufficient to enable the Secretary of State to understand why the appeal had been allowed.

Error of Law

13. Turning then to consider the Secretary of State's grounds; in reality these stand or fall with my conclusion on the issue of whether the First-tier Tribunal ought to have approached its decision making process in accordance with the principles enunciated in Gulshan.

14. Absent determination of the aforementioned issue, I am otherwise entirely satisfied that the First-tier Tribunal took into account all material matters, did not take into account any irrelevancies and that its determination contains an adequacy of reasoning.

15. On 9 July 2012, HC 194 introduced a significant number of new Immigration Rules ("new Rules") with the intention of bringing the consideration of Article 8 within the Rules so as to ensure a consistent, fair and transparent approach to decision making process in that regard. Amongst the Rules introduced on 9 July 2012 were Appendix FM - relating to family life - and paragraph 276ADE - relating to private life.

16. The effect of the introduction of these Rules has been the subject of much litigation. For the present purposes I need first direct my attention to the decision of the Upper Tribunal in Gulshan [Mr Justice Cranston and Upper Tribunal Judge Taylor], in which the Tribunal considered the application of both Appendix FM and paragraph 276ADE of the Rules. Reading from paragraph (b) of the headnote to Gulshan it is plain that a decision maker should take the following approach to matters involving family and private life considerations:

> *"(b) after applying the requirements of the Rules, only if there may be arguably good grounds for granting leave to remain outside them is it necessary for Article 8 purposes to go on to consider whether there are compelling circumstances not sufficiently recognised under them."*

17. On 2 April 2014 the Court of Appeal handed down its judgment in Edgehill & Bhoyroo v SSHD [2014] EWCA Civ 402 (Laws, Jackson and Black LJJ). In this case the court was faced with appellants who had made applications to the Secretary of State for leave to remain on Article 8 grounds prior to the 9 July 2012. The Secretary of State refused each of the applications, and the First-tier Tribunal dismissed appeals brought against such decisions. Both appellants appealed to the Upper Tribunal and each had there appeal dismissed. In both cases the Upper Tribunal gave weight to the new Rules - paragraph 276ADE in each case - as an expression of the legislature's views as to where the public interest lies. Both appellants appealed to the Court of Appeal, submitting that the Upper Tribunal had erred in treating the new Rules as a relevant matter in the determination of the Article 8 ECHR ground, in circumstances where the applications leading to the decisions under appeal had been made prior to the introduction of these Rules i.e. prior to 9 July 2012.

18. Giving the judgment of the Court, Lord Justice Jackson concluded that the Upper Tribunal's approach had been taken in error. It is prudent to cite the following passages from the Court's judgment:

> 28. Since the Immigration Rules are not formal legislation, either primary or secondary, this affects the approach to construction. In *Mahad v Entry Clearance Officer* [2009] UKSC 16;

[2010] 1 WLR 48 Lord Brown summarised the correct approach to construing the Immigration Rules as follows at paragraph 10:

> "The Rules are not to be construed with all the strictness applicable to the construction of a statute or a statutory instrument but, instead, sensibly according to the natural and ordinary meaning of the words used, recognising that they are statements of the Secretary of State's administrative policy."

29. Aided by this guidance, I now return to the central issue in the two current appeals. Mr Bourne submits that applications made under article 8 before 9th July 2012 did not fall under any of the Immigration Rules, either old or new. The decision maker simply had to apply article 8, taking into account the wealth of guidance provided by Strasbourg and the domestic courts.

30. The next stage in Mr Bourne's argument is that appellate tribunals make article 8 decisions by reference to the current state of affairs, not by reference to the state of affairs when the Secretary of State reached her decision. In both of the present cases the current state of affairs included new rule 276ADE, providing a requirement for 20 years' continuous residence.

31. I admire the dexterity of this argument. Nevertheless it produces the bizarre result that the new rules impact upon applications made before 9th July 2012, even though the transitional provisions expressly state that they do not do so.

32. The Immigration Rules need to be understood not only by specialist immigration counsel, but also by ordinary people who read the rules and try to abide by them. I do not think that Mr Bourne's interpretation of the transitional provisions accords with the interpretation which any ordinary reader would place upon them. To adopt the language of Lord Brown in *Mahad*, "the natural and ordinary meaning of the words, recognising that they are statements of the Secretary of State's administrative policy," is that the Secretary of State will not place reliance on the new rules when dealing with applications made before 9th July 2012.

33. Accordingly, my answer to the question posed in this part of the judgment is no

19. For the sake of completion, I also set out the relevant transitional provisions to HC 194. which include the following:

> "... If an application for entry clearance, leave to remain or indefinite leave to remain has been made before 9 July 2012 and the application has not been decided, it will be decided in accordance with the Rules in force on 8 July 2012."

20. The first point of dispute between the parties is whether the claimant made a relevant application prior to 9 July 2012.

21. In Edgehill the Secretary of State submitted [24] that neither appellant had made an application prior to the 9 July 2012 because 'application' must mean an 'application under Immigration Rules'. Neither appellant had made such an application, but rather had applied for leave to remain outside of the Rules on Article 8 ECHR grounds. The Court regarded this submission as one of *"some subtlety"* [25] and rejected it, although when doing so did not provide any guidance as to what should be considered to be a relevant application for the purposes of the conclusion found in paragraph 32 of its decision.

22. I ask myself what, if any, applications did the claimant make prior to the 9 July 2012. It is not in dispute that he made an application for asylum in 1996, but this has no nexus to the decision under appeal so cannot be relevant for the purposes of my considerations. The claimant does not purport to make an application to the Case Resolution Directorate in his letter of 21 April 2008, but rather an enquiry is made as to whether he *"satisfies the terms of the legacy"*. The same can be said of the terms of the letters of 18 June 2008, 22 October 2008, 18 February 2009 and 21 April 2010. The letters from the claimant's solicitors of the 7 September 2010, 8 November 2010, 7 December 2010, 11 May 2011 and 23 August 2011 request a decision on the claimant's case, observing when doing so that a request had been made for consideration of the claimant's *"position whether he satisfied under the terms of the legacy."* In the letter of the 5 December 2011 the claimant's solicitors assert, *inter alia*, that the claimant's case *"clearly falls within the parameters of the legacy program"* and that there has been a failure to provide adequate reasons for the continuing refusal of the Secretary of State to grant the claimant leave. The letter of 21 May 2012 is in similar terms.

23. The response of the Secretary of State of 20 June 2012 is of some importance in that it asserts on its first page that:

> "Mr Laryea has no outstanding applications or further representations"

24. Thereafter it provides notification to the claimant that if he:

> "[h]as further representations to make he is able to make an appointment to submit these. From 14 October 2009 all further submissions must be made in person, by appointment...
>
> As it stands, Mr Laryea has no basis of stay in the UK and should make arrangements to leave the country as soon as possible. If Mr Laryea fails to leave the UK voluntarily, he will render himself liable to enforcement action. If enforcement action is taken against Mr Laryea, he will be prohibited from returning to the UK for five years."

25. It was this decision that was the subject of the Judicial Review application lodged on 19 September 2012.

26. The next correspondence from the claimant's representatives is dated 9 July 2012 – the same date as the introduction of HC 194 into the Immigration Rules - and is headed *"Representations for Leave to Remain in the UK pursuant to Article 8 of the ECHR based on the terms of the legacy"*. On the first page of the letter, under the heading *"Immigration History"*, details of the claimant's asylum application and subsequent refusal are provided. It is then said:

> "Our client did not attempt to lodge an application without merit at the Home Office thereafter."

27. No further details of any claimed past applications are subsequently referred to. Thereafter, under the heading *"Current Application"*, a request is made for the claimant to be granted leave to remain in the United Kingdom. The detailed submissions that follow include those found under the heading *"Article 8 ties in the UK"*.

28. On 19 July 2012 the Secretary of State wrote indicating, *inter alia*, that her records identified that the claimant had no outstanding applications with the UK Border Agency.

29. The grounds pleaded in support of the application for Judicial Review asserted, *inter alia*, that *"[t]he Claimant's legacy case was considered without any complete reference to his personal*

circumstances [26] – *In particular, the Claimant has never had a decision and a right of appeal to the Tribunal on his human rights claims, especially Article 8 of ECHR."* [27]. The grounds do not seek to identify when, or in what form, a human rights claim is said to have been made to the Secretary of State by the claimant.

30. This application for Judicial Review was the subject of a compromise agreement in the following terms:

> "UPON THE DEFENDANT having invited the claimant to make any further submissions and provide any further evidence that he may wish to have considered by the Defendant, within 28 days of the date of signing this order; and
>
> UPON THE DEFENDANT having agreed to consider any such further submissions or evidence within three months of the date of sealing of this order and, if the submissions are rejected, to issue the claimant with a notice of immigration decision thereby giving him an in country right of appeal ...."

31. It is the claimant's case that the correspondence he had with the Secretary of State prior to the 9 July 2012 should be treated as an application or, alternatively, that the Secretary of State treated it as such, and, consequently, following the rationale of the Court of Appeal's decision in Edgehill, neither the Secretary of State nor the First-tier Tribunal were entitled to place reliance on the new Rules when giving consideration to his case, including his case in relation to Article 8 ECHR. Accordingly, it is said, any failure of the First-tier Tribunal to adopt the approach set out in Gulshan cannot amount to an error of law capable of affecting the outcome of the appeal.

32. The Secretary of State's asserts the diametric opposite i.e. that the correspondence between the claimant and Secretary of State prior to the 9 July 2012 did not constitute an application and neither did she treat it as such. It is said, therefore, that both she, and the First-tier Tribunal, were bound to have reference to the new Rules when determining the claimant's case and, thus, apply the approach identified in Gulshan: it erred in not doing so.

33. I accept the Secretary of State's submissions in this regard. Although not determinative of the matter at issue, it is nevertheless pertinent to observe that at no point in time prior to 9 July 2012 was a formal application made by the claimant to the Secretary of State in a form specified by the Immigration Rules. Neither did any of the correspondence prior to 9 July 2012 - at least any that I have been drawn to - raise specific reliance by the claimant on Article 8 of the Human Rights Convention. The Secretary of State has been clear throughout that she did not treat the Claimant's correspondence as an application; this is self-evident from the terms of the letter of the 20 June and is also made clear in the letter of the 19 July 2012.

34. In my conclusion, engaging in correspondence with the Secretary of State on the issue of whether the claimant falls within the parameters of the legacy programme does not constitute an application of the type anticipated by the Court of Appeal in paragraph 32 of its decision in Edgehill.

35. The legacy programme was instigated by the government in July 2006 to deal with unresolved cases where, primarily, an unsuccessful asylum applicant had neither been removed nor granted leave to remain. It was not for a person to apply to be considered under the programme, although of course many persons did seek to persuade the Secretary of State that their cases ought to be so considered.

36. The programme did not purport to create any new substantive rights - Geraldo [2013] EWHC 2763 [40] and the mere fact that an individual was being considered under the legacy programme did not entail an immigration decision having to be made by the Secretary of State once a consideration had been undertaken - Baser v Secretary of State for the Home Department [2012] EWHC 3620 (Admin) [15].

37. In all the circumstances of this case I do not accept that the claimant made an application prior to the 9 July 2012 of a type that precluded the Secretary of State from undertaking a consideration under, and placing reliance upon, the new Rules when making her decision of 24 October 2013. It cannot be the case therefore that the First-tier Tribunal were excluded from placing reliance on the new Rules in its consideration of the claimant's Article 8 ground and, thus, it follows that it ought to have adopted the approach identified in Gulshan when doing so.

38. Whilst the First-tier Tribunal correctly observed, in paragraph 104 of its determination, that Appendix FM and Paragraph 276ADE of the new Rules represent the Secretary of State's view as to where the public interest lies, and it thereafter attached considerable weight to those views in its consideration of the Article 8 ground, it does cite, direct itself in accordance with, or apply the approach identified in Gulshan. Such a failure amounts to an error of law capable of affecting the outcome of the appeal.

39. Even if I am wrong in my conclusion that the First-tier Tribunal erred in failing to adopt the correct approach to its considerations I, nevertheless, find its determination vitiated by its failure to provide an adequacy of reasons, sufficient to enable the Secretary of State to understand why it found the circumstances of the claimant's case to be compelling.

40. For all these reasons I find that the determination of the First-tier Tribunal contains an error of law capable of affecting the outcome of the appeal and I set it aside.

Re-making of decision

41. The only ground now pursued by the claimant is that his removal in consequence of the immigration decision will lead to a breach of his article 8 ECHR rights. The claimant's refugee claim was abandoned before the First-tier Tribunal, and it is not asserted he meets the requirements of the Immigration Rules, or that the Secretary of State's decision was made otherwise in accordance with the law – although in any event these latter two grounds are not available for the claimant to deploy in this appeal, as a consequence of the application of section 89 of the Nationality, Immigration and Asylum Act 2002.

42. The Directions that were sent to the parties on 4 March 2014 included the following:

> "[2] The parties shall prepare for the forthcoming hearing on the basis that, if the Upper Tribunal decides to set aside the determination of the First-tier Tribunal, any further evidence, including supplementary oral evidence, that the Upper Tribunal may need to consider if it decides to re-make the decision, can be so considered at that hearing"

43. The parties were also reminded that if they sought to rely on additional evidence before the Upper Tribunal an application would be required pursuant rule 15(2A) of the Tribunal Procedure (Upper Tribunal) Rules 2008.

44. No such application has been made by either party and no additional evidence has been provided to the tribunal. As such I re-make the decision on the available evidence before me,

much of which is summarised in paragraphs 7 to 29 and 40 to 64 of the First-tier Tribunal's determination; all of which I have taken into account. The First-tier Tribunal has already given consideration to that evidence and its findings of primary fact have not been the subject of successful challenge by either party. I adopt those findings when giving consideration to the claimant's Article 8 claim.

45. The First-tier Tribunal concluded that the claimant does not share a family life with anyone in the United Kingdom [101]. This case, therefore, is one purely revolving around the claimant's private life, albeit that private life has at its centre the claimant's relationship with his immediate family members.

46. It is unchallenged that Article 8(1) of the Human Rights Convention is engaged and, therefore, that the real issue before me is one of proportionality; the legitimate aim being pursued by the Secretary of State being that of the maintenance of immigration control.

47. Whilst the claimant arrived in the United Kingdom as long ago as 1996, he failed in his attempt to obtain refugee status here in early 1998. His attempt to reinvigorate his Refugee Convention claim was abandoned by Ms Jones before the First-tier Tribunal [86], and I say nothing more about it here.

48. The claimant has remained in the United Kingdom unlawfully since the dismissal of his refugee claim, during which time he has built up his private life in full knowledge that he was not entitled to be here. The adverse impact of this unlawful stay on my considerations is ameliorated to a large extent in relation to the period from April 2008 onwards, during which time the Secretary of State largely failed to engage with the claimant regarding whether his case was going to be considered under the legacy programme. This is also the period in which the claimant rediscovered his family in the United Kingdom [107]. Whilst I attach little weight to the precariousness of the claimant's immigration status in the post April 2008 period, because of the delays of the Secretary of State in engaging with his legacy enquiries, it nevertheless remains a fact that even during this period there could be no legitimate expectation on behalf of the claimant that he would eventually be entitled to remain.

49. Turning to the private life ties the claimant has with his family members in the United Kingdom. The claimant's father and mother live apart in the United Kingdom and are aged 70 and 64 respectively. The First-tier Tribunal found that both would have difficulty in travelling to visit the claimant in Ghana [108]. The claimant's mother has diabetes, high blood pressure and breast cancer. The claimant makes regular visits to see his parents, provides them with some assistance [99] and provides his mother in particular with *"important emotional support"* [108]. Despite this, neither of the claimant's parents are dependent him, but support themselves and also receive support from other family members [99]. It has not been found that the claimant's parents will suffer any particular detriment should the claimant return to live in Ghana. It is, however, accepted that it would be difficult for them to visit him there [108].

50. The claimant currently lives with his brother (Isaac), Isaac's wife and his two children (aged 12 and 8 years) and he done so since 2012. He provides assistance to Isaac's children. He is also close to his sister, Angela, and her children (aged 17, 14, 6 and 3 years), whom he provides emotional support to and has looked after in the past [100]. However, both Isaac's and Angela's family can manage their daily affairs without the claimant, and neither is he dependent on them [101].

51. It is plain that it is in the best interests of the claimant's sibling's children to remain in the United Kingdom and that is exactly what they would do if the claimant were to be returned to Ghana. The First-tier Tribunal did not find, and there is no persuasive evidence before me, that either the children, or the claimant's siblings, would suffer any long term emotional or physical difficulties if the claimant were to be removed. Each of the children would, of course, remain in their own family unit in the United Kingdom; no doubt receiving the necessary comfort and support from their parents whilst they come to terms with the upset of their uncle no longer being in their lives.

52. The claimant does not have any close relatives in Ghana to whom he could turn to for support upon return, nor does he have a property there. It would in these circumstances be "difficult for him to build a new life in Ghana" [105]. Nevertheless, he has lived there for 26 years of his life, although not for the past 17 years. He previously lived alone there, and was also in employment prior to coming to the United Kingdom. He is a fit and healthy person. In all the circumstances I do not accept that he would return to a life of homelessness and destitution in Ghana as claimed. There is no satisfactory reason given as to why he could not find employment, or undertake some economic activity in Ghana sufficient at least to meet his basic needs. In any event, there is no evidence before me that his United Kingdom based family would not be willing and able to continue to assist him financially upon his return, even if only in the short term whilst he re-establishes himself, much as they state they have been doing in the United Kingdom.

53. Outside of his family connections, the claimant has other friends in the United Kingdom and has close ties to the church, where he undertakes voluntary charitable work. This is plainly of benefit not only to the individuals he assists but also to society as a whole. I have taken these matters fully into account when coming to my conclusions.

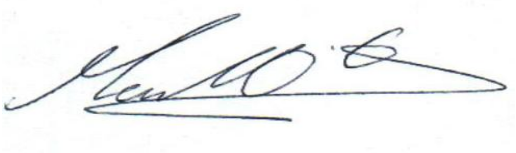
54. Having considered all of the evidence before me, and adopted the First-tier Tribunal's findings of primary fact, I can detect no compelling circumstances not sufficiently recognised under the Rules so as to lead me to conclude that the claimant's removal would not be proportionate to the legitimate aim pursued.

Decision

The determination of the First-tier Tribunal contains an error of law capable of affecting the outcome of the appeal and it is accordingly set aside.

Upon remaking the decision I dismiss Mr Laryea's appeal on all grounds.

Signed:



Upper Tribunal Judge O'Connor
Date: 22 April 2014