



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

Appeal Number: DA/00046/2014

THE IMMIGRATION ACTS

**Heard at Field House
On 26 September 2014**

**Determination
Promulgated
On 23 October 2014**

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Before

UPPER TRIBUNAL JUDGE PERKINS

Between

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

NYARADZO MASENDEKE

Respondent

Representation:

For the Appellant: Mr I Jarvis, Home Office Presenting Officer

For the Respondent: Mr Adebisi Adewole, Samuel & Co Solicitors

DETERMINATION AND REASONS

1. The First-tier Tribunal said that it found this appeal more difficult than most. I understand that. It illustrates to me just how difficult decisions on deportation appeals can be if the decision-maker, as decision-makers are required to do, stops and considers the effect of deportation not only on the human rights of the people being deported (who are usually entirely the authors of their own plight) but on those close to them whose rights have to be promoted and protected.
2. The respondent to this appeal is a citizen of Zimbabwe. Her behaviour towards the United Kingdom has been disgraceful. She came to the United Kingdom as a visitor and overstayed. During the time that she overstayed she decided that she wanted to improve her education and she obtained qualifications enabling her to work as a mental health nurse. In some ways that is commendable. What is not in the least bit commendable is that she lied and cheated in order to obtain those


qualifications. She lied and cheated her way onto a course and lied and cheated her way into a bursary to pay for that course and aggravated her lying and cheating by using a false passport or a false endorsement on a passport to give a wrong impression about her status in the United Kingdom. These offences were eventually detected and came before the Crown Court. The respondent was sentenced to sixteen months' imprisonment, the sentencing judge noticing that however bad the offences were, and he clearly disapproved of them considerably, the respondent had at least had the moral courage to face up to her responsibilities at the first opportunity and she got the discount appropriate for that expression of remorse.

3. Clearly it is in the public interest to remove the respondent because that is what Parliament says and that is why the deportation order was made. The difficulty is that the respondent has a partner. He is a man who has been with her for some five years, who has given evidence on her behalf before two quite different Tribunals and who has made a very favourable impression on each occasion. He wants to have children with her but has decided not to take such a serious step when her immigration status is uncertain. The First-tier Tribunal regarded this as an indication of their responsibility as a couple rather than an indication of a lack of commitment.
4. If the respondent is removed to Zimbabwe that relationship will end or at least any hopes of establishing a nuclear family will end. This is because the respondent's partner is a soldier in the British Army. He chose to serve in the army and has made it his career. He cannot be expected to settle in Zimbabwe. He would be most unwelcome there because of his military service.
5. The Tribunal set out to balance the public interest in removing a person who has committed the criminal offences committed by this respondent against the consequent disruption to rights of those most affected by her removal and particularly the rights of her partner. The Tribunal was clearly impressed by the fact that her partner is a serving soldier and has done three tours of duty in places of danger, including in Afghanistan. The Tribunal did not explain precisely why this was important but it is clear to me from reading the determination that the Tribunal saw a certain tension between permitting a man to serve in the British Army and put his life at risk but not permitting him to develop his personal life with the woman of his choice. It seemed a rather harsh thing to do to him.
6. It is also important to remember that serious as these offences are they were committed rather more than ten years ago.
7. The Tribunal directed itself correctly that the public interest was in the removal of the respondent, that there had to be very compelling reasons in human rights terms to allow the appeal and decided hesitantly that allowing the appeal was the right thing to do in this case. Quite clearly it had in mind the effect of removal on the life partner.
8. I think it is worth saying, although it will be obvious to anyone with any understanding of the procedures involved here, that this is not a decision

that every Tribunal would have made on these facts. That is not the point. I have to decide if it was a permissible one or if it was the result either of a misdirection of law or of the perverse application of permissible findings of facts to correct directions. I cannot find anything wrong in law. The grounds make the point that deporting foreign criminals is a pressing point of concern but it is impossible to say that the Tribunal did not know that this was the law. It is quite clear from the way it directed itself that it appreciated fully that point.

9. I think that properly understood this is an example of the Tribunal making a decision that the Secretary of State does not like and not an example of the Tribunal making a decision that is unlawful and certainly not for any of the reasons identified in the grounds before me.
10. It follows therefore that I dismiss the Secretary of State's appeal.
11. The respondent to this appeal needs to understand that the Tribunal in the First-tier found this decision difficult and borderline and if she is so foolish as to behave in a wrong way again the chances of finding anyone else offering such understanding to her or those affected by her removal are exceedingly slim but I cannot say that this decision is wrong in law and therefore I uphold it and dismiss the Secretary of State's appeal.

Signed
Jonathan Perkins
Judge of the Upper Tribunal



Dated 21 October 2014