Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: DA/00094/2014

THE IMMIGRATION ACTS

Heard at Field House	**Decision and Reasons**
On 24 October 2014	**Promulgated**
	On 30 October 2014

Before

UPPER TRIBUNAL JUDGE PERKINS

Between

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

ABDILLAHI MOHAMOUD DOUALE

Respondent

Representation:
For the Appellant: Ms J Isherwood, Senior Home Office Presenting Officer
For the Respondent: In person

DECISION AND REASONS

1. This is an appeal by the Secretary of State against the decision of the First-tier Tribunal allowing the appeal of the respondent, hereinafter the claimant, against the decision of the Secretary of State on 22 November 2013 to make the claimant the subject of a deportation order because she consider his deportation to be in the public good.
2. The decision is supported by a letter of the same date which explains in more care the Secretary of State's reasons and paragraph 33 of that letter is particularly illuminating. The Secretary of State says:

> "The Immigration Rules state that, where a person's deportation is conducive to the public good because they are a persistent offender who, in the view of the Secretary of State, shows a particular disregard for the law, in assessing a claim that deportation would be contrary to article 8, the Secretary of State will consider whether paragraph 399 or 399A applies."

3. It is regrettable that the notice and refusal letter do not each put the reasons for deportation absolutely wholly beyond argument but I am satisfied from the above paragraph that the Secretary of State has decided that the claimant should be deported because he is a persistent offender and not simply because of one previous conviction many years ago.

4. It is quite obvious why the First-tier Tribunal allowed the appeal. They found it grossly disproportionate to deport the claimant given that he has been in the United Kingdom for more than twenty years and although was in very serious trouble when he was sentenced to imprisonment for six years in 1996 his record since is very much less shameful. He has been in further trouble but, as a broad summary, he has been in trouble in a way that is consistent with his being a drug user who is addressing his addiction and is trying to live industriously. The evidence is open to that interpretation.

5. The First-tier Tribunal has clearly erred in two respects although they are really related. The First-tier Tribunal has not engaged properly with the Immigration Rules which are a necessary starting point.

6. The first ground complains that the Tribunal allowed the appeal with reference to paragraph 276ADE of HC 395. It clearly did because it says in paragraph 38 that the claimant has "an unanswerable claim" under paragraph 276ADE. That is just wrong. He has no claim at all under paragraph 276ADE because paragraph 276ADE does not apply in cases of deportation. Ms Isherwood particularly draws attention to paragraph S-LTR.1.3. which makes it plain that a person's presence in the United Kingdom is not conducive to the public good if he has been sentenced to more than four years' imprisonment and therefore he is not suitable for leave to remain and therefore 276ADE is not a consideration. Put simply Ms Isherwood is right and the First-tier Tribunal was wrong.

7. The second ground is more subtle but I am satisfied that it is made out. Given the way the Secretary of State has made the decision it is possible that the appeal should be allowed under paragraph 399A and HC 395. This is not a case where the claimant is relying on children in the United Kingdom but he has accrued twenty years' residence. If as may be that he has no ties to the country to which he would be returned but the First-tier Tribunal has not made any clear reasoned findings about whether he has ties to that country or indeed which country is to be considered. This is important. It is necessary if a decision is to be made on the basis that there are no ties that the reasons for it are clear and the Tribunal shows it appreciates the legal tests set out in case law. This has not been done.

8. It is also possible that the appeal should have been allowed because of exceptional circumstances and I fully understand that the long period of

delay between the six year sentence and now is something that has to be considered. The Tribunal did not come out in terms and say that these were exceptional circumstances. Neither is it plain from reading the determination that the Tribunal found that there were any exceptional circumstances, merely that it thought that was sufficient reason to allow the appeal and unless there were exceptional circumstances within the meaning of the law, it was not.

9. It follows therefore that I am driven to say that the First-tier Tribunal has not done its job properly on this occasion and the decision cannot stand. The claimant is entitled to a proper hearing before the First-tier Tribunal and that includes a properly reasoned decision. It follows therefore that I send the case back to the First-tier Tribunal.

10. I am very aware that the claimant has a sense of grievance about various aspects of his treatment by the Secretary of State. They may or may not have merit but they are not what this appeal hearing is about. He understood that when he was addressing me. He was at all times helpful and respectful. I acknowledge his other concerns to explain that I was uninterested in what he had to say but his was not relevant to the decision I had to make.

11. My decision is that the First-tier Tribunal erred in law. I set aside its decision and I direct the case be heard again in the First-tier.

Signed
Jonathan Perkins
Judge of the Upper Tribunal Dated 29 October 2014