



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

Appeal Number: DA/00308/2014

THE IMMIGRATION ACTS

**Heard at Field House
On 4 November 2014**

**Decision Promulgated
On 18 December 2014**

Before

UPPER TRIBUNAL JUDGE JORDAN

Between

Acheampong

Appellant

and

The Secretary Of State For The Home Department

Respondent

Representation:

For the Appellant: In person

For the Respondent: Mrs S. Petterson, Home Office Presenting Officer

REASONS FOR FINDING AN ERROR OF LAW

1. The appellant is a citizen of Ghana who was born on 3 October 1985. He appeals against the determination of First-tier Tribunal Judge Hemingway and Mr G.H. Getlevog promulgated on 4 June 2014 dismissing his appeal against the decision made by the respondent on 11 February 2014 to make a deportation order against him. The appellant did not attend the hearing. It is noteworthy that in paragraph 14 of its determination, the panel stated that, had there been a good

reason for the appellant's non-attendance, the panel would not have proceeded in the absence of the appellant.

2. Although the appellant is a national of Ghana, he has a right to reside in Italy where he lived for some years with his family. His mother is an Italian national. The appellant came to the United Kingdom in July 2007, aged 21. He was granted a residence card as confirmation of a right of residence as a family member of his EEA national mother. Subsequently, he was granted a permanent right of residence on 22 May 2013.
3. On 16 May 2013, just six days before the grant of a permanent right of residence, the appellant was convicted on two counts of possessing Class A controlled drugs, namely cocaine and heroin, with intent to supply and possession of cannabis for which he was sentenced on 6 June 2013 at Snaresbrook Crown Court to a total of 18 months imprisonment.
4. Following the respondent's decision, the appellant appealed to the Tribunal and a notice of hearing was sent out to him at an address at 19 Brisdale Court. In fact, he lives at 9 Brisdale Court and an envelope sent out on 4 June 2014 to 19 Brisdale Court was returned to the Tribunal marked with an indication that the appellant did not live there. It is clear from the recital of the facts provided by Designated Judge Appleyard in granting permission that there has been an error in serving the appellant. This would normally entitle him to have the determination set aside without more. However, where there is not even an arguable case that this would result in a different outcome, it is open to the Tribunal to refuse to set aside the determination as to do so would serve no purpose.
5. This approach, however, should be used sparingly given the Draconian effect of a decision with a very significant impact upon the appellant who has not had an opportunity to argue his case before the Tribunal. Although the offences were serious ones, they were committed at a time when the appellant was of no fixed abode. Subsequent reports suggest that the risk of reconviction is low and that he has been assessed as posing a low risk of harm to members of the public. He told me that he is now living with his mother and his domestic circumstances have significantly changed. In these circumstances there are issues which require a full examination which can only be achieved by re-making the decision.
6. There has been a procedural irregularity amounting to an error on a point of law. I set aside the panel's determination. I direct the appeal is to be re-determined by the First-tier Tribunal in accordance with paragraph 7.2(a) the Practice Statement of the Senior President dated 25 September 2012.

ANDREW JORDAN
JUDGE OF THE UPPER TRIBUNAL
13 November 2014