**Upper Tribunal**
**(Immigration and Asylum Chamber)** Appeal Number: DA/00465/2012

**THE IMMIGRATION ACTS**

| **Heard at Field House** | **Determination Promulgated** |
|---|---|
| **On 4 June 2014** | **On 18 July 2014** |

**Before**

**UPPER TRIBUNAL JUDGE KOPIECZEK**

**Between**

**SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Appellant

**and**

**LC**
**(ANONYMITY ORDER MADE)**

Respondent

**Representation:**

For the Appellant: Ms A. Everett, Home Office Presenting Officer
For the Respondent: Mr B. Quee, Solicitor

**DETERMINATION AND REASONS**

*Introduction*

1. The appellant in these proceedings is the Secretary of State. However, for convenience I refer to the parties as they were before the First-tier Tribunal.

2. The appellant is a citizen of Angola, born on 8 December 1957. He arrived in the UK in 1992 and was granted indefinite leave to remain on 23 February 2003.

3. On 21 February 2011 the appellant was convicted of an offence of possession with intent to supply cannabis. On that date he was sentenced for that offence and for driving whilst disqualified and driving with no insurance. He received a sentence of 28 months imprisonment, with a further 8 months imprisonment for failing to comply with the requirements of a suspended sentence order, making a total sentence of three years imprisonment. A decision was made on 6 July 2012 to make a deportation order pursuant to the automatic deportation provisions of the UK Borders Act 2007.

4. The appellant's appeal against that decision was allowed by a panel of the First-tier Tribunal comprising First-tier Tribunal Judge Herlihy and Mrs A.F. Cross De Chavannes, after a hearing on 29 January 2014. The Panel dismissed the appeal with reference to the immigration rules and on asylum and humanitarian protection grounds, but allowed it under Article 8 of the ECHR.

*Submissions*

5. Ms Everett relied on the grounds of appeal to the Upper Tribunal. She referred to the First-tier Tribunal's determination and submitted that the appellant's oral evidence was not found credible in terms of the asylum aspect of the claim. There were inconsistencies in his account which were not considered in terms of the Article 8 assessment. Although a pre-sentence report should have been before the Tribunal, there is reference at [41] to the probation officer's views.

6. It was submitted that the determination does not give adequate reasons for concluding that the appellant has no ties to Angola, given that he left at the age of 36. In addition, there was not much evidence adduced in relation to his social ties in the UK.

7. Mr Quee relied on the skeleton argument and various authorities. It was submitted that the risk to the public had been considered by the Panel.

8. There was an assessment of risk, and there was no evidence to the contrary. The Tribunal was entitled to form the view that it did as to risk. There were various documents in relation to the progress the appellant had made, and in relation to negative drug tests.

9. Even if the new rules do apply, it was submitted that there was no error of law in the decision.

*My assessment*

10. The immigration decision by the Secretary of State to make a deportation order is dated 6 July 2012. The provisions of the

immigration rules under paragraphs 398-399A came into force on 9 July 2012. At first glance therefore, those provisions do not apply to this appeal in the light of what was said in MF (Article 8 – new rules) Nigeria [2012] UKUT 00393(IAC) on retrospectivity in relation to those rules, a matter on which the Court of Appeal (MF EWCA Civ 1192) did not express any disagreement.

11. However, in a supplementary decision with reasons, undated but with a fax date of 11 January 2013, consideration is given to those 'new' deportation paragraphs of the immigration rules. It was not argued before the First-tier Tribunal, and was not raised as an issue before me on behalf of the appellant, that the First-tier Tribunal was wrong to decide the appeal with reference to those immigration rules. The matter only arose at the hearing before me because I raised it with the parties.

12. In any event, section 85(1) of the Nationality, Immigration and Asylum Act 2002 ("the 2002 Act") provides, in summary, that an appeal against a decision shall be treated as including an appeal against any decision in respect of which the appellant has a right of appeal. Thus, the supplementary decision was part of the appeal that was before the First-tier Tribunal.

13. In order to put my reasons into context, it is necessary to set out a little more of the background to the appeal, and some of the findings of the First-tier Tribunal.

14. The offences which prompted the deportation decision are set out in [3] above. The First-tier Tribunal recorded at [41] that the appellant was convicted of possession of cannabis with intent to supply in 2008 which resulted in the suspended sentence order in 2009. He had a month left of this order when he committed the index offences. There was reference to a conviction for 'fraud' in 1995 and a caution for possession of cannabis in 1997.

15. The Panel made reference to the appellant having a son with whom he has indirect contact via correspondence once a month, at Christmas and on birthdays, confirmed by a court order on 29 November 2013. Other than seeing his son at court in 2013, he had not seen him since he was detained following his arrest in 2011. The Panel concluded that the same contact that the appellant presently enjoys with his son could be maintained from Angola.

16. It was concluded that the appellant is in a genuine and subsisting relationship with his partner, J, albeit that they do not currently live together because of the appellant's bail conditions. J takes care of her nephew, R, who the Panel believed was a British citizen.

17. It was concluded that there was nothing compelling in the circumstances of the appellant's relationship with J that outweighed the public interest in his removal.

18. However, it was also found that the appellant had lost all ties to Angola and is unlikely to have any family or friends there, or contacts who could meaningfully provide him with any support.

19. So far as the Secretary of State's grounds of appeal are concerned, I do not consider that there is any error of law in the First-tier Tribunal's assessment of the risk of the appellant reoffending. No pre-sentence report was put before the First-tier Tribunal by the respondent, but there was evidence as to the risk of reoffending as set out a [41] of the determination. That was indirect evidence from a probation officer as set out in the Safeguarding Assessment report of Ruby Adams dated 3 September 2012, the probation officer having told her that the appellant posed a low risk of harm to the public, known adults and children.

20. More to the point perhaps, in relation to the risk of reoffending, notwithstanding the appellant's convictions the First-tier Tribunal took into account that he had undertaken courses and that he had not reoffended since completion of his custodial sentence. Whilst a different Panel might have come to a different view on the risk of reoffending, I am satisfied that the conclusion of this Panel in relation to the risk of reoffending was one that was open to it.

21. The grounds suggest that the First-tier Tribunal was not entitled on the facts to find that the appellant had been in the UK since 1992. However, that was a finding that was made in the context of evidence that was before it as to the appellant's marriage, his son, (who admittedly was not born until 2001), and his relationship with his partner. More importantly, it is apparent from the Secretary of State's decision and letter that the appellant claimed asylum in 1992. His length of residence is also evident from the determination of Special Adjudicator Beg who dealt with his original asylum appeal in 1997.

22. In terms of whether the First-tier Tribunal took into account the public interest in deterrence, as raised at [5] of the grounds, again I am not satisfied that there is any error in the Tribunal's decision in that respect. It is apparent from [61], [63] and [68] that this was an issue that was specifically addressed with reference to relevant authority.

23. It is also contended by the Secretary of State that the Panel did not give appropriate consideration to an assessment of whether there are "compelling reasons" that outweigh the public interest in deportation where a person is not able to meet the requirements of the deportation rules.

24. The First-tier Tribunal set out in detail the authorities on this issue, having found that the appellant was not able to bring himself within paragraph 399 of the immigration rules. It found at [64] that there was nothing "compelling" in the circumstances surrounding the appellant's

relationship with his partner "to outweigh the public interest in his removal".

25. However, the Tribunal went on at [69] to repeat that the appellant is said to represent a low risk of harm, referring to courses he has undertaken to address his drug habit, and found that the evidence established that he was free of drugs, and that he had not committed further offences since his release. It went on to state that:

> "We find that at 56 the Appellant is likely to struggle on his return to Angola where he has no family support to rely upon. The Appellant has now lived in the United Kingdom for over 20 years and we find that given his low risk of harm, substantial period of residence in the United Kingdom during which period he legitimately developed his private life and the lack of ties to his home country that the decision appealed against would cause the United Kingdom to be in breach of the law or its obligations under the ECHR or the Immigration Rules as it is a disproportionate interference with his rights to a private life."

26. Although the Panel did not in that paragraph explain that these were its reasons for concluding that the appellant's deportation would have "unjustifiably harsh consequences" (see Kabia (MF: para 398 - "exceptional circumstances") 2013 UKUT 00569 (IAC) at [17]) or that therein lay "compelling reasons" as per MF in the Court of Appeal, I am satisfied that this is to what those findings were directed.

27. Ms Everett specifically stated that she did not contend that the Panel's reasoning in this respect was perverse, only that the reasons were inadequate.

28. It seems to me however, that the Panel having addressed its mind to the relevant legal principles, was entitled on its finding of the facts to conclude that the appellant's deportation would have "unjustifiably harsh consequences". It considered the appellant's age, the length of time that he had been in the UK and the fact that on return to Angola he would have no family or other support to rely on. It also took into account what was said to be a low risk of reoffending. Those were matters that were legitimately within the Panel's province to make findings upon and from which to conclude that his deportation would amount to a breach of his Article 8 rights. Whilst again, it may be that another Panel might well have come to a different view, and that this Panel's decision may be considered to have been a rather generous one, the Secretary of State's disagreement with that assessment does not translate into a conclusion that the First-tier Tribunal erred in law on that issue.

29. Accordingly, I am not satisfied that there is any error of law in the decision of the First-tier Tribunal in any of the respects contended for.

*Decision*

30. The decision of the First-tier Tribunal did not involve the making of an error on a point of law. The decision to allow the appeal therefore stands.

Anonymity

Given that these proceedings involve children, I make an order pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008. Consequently, this determination identifies the appellant's child and other children, and the adults associated with them, including the appellant, by initials only in order to preserve the anonymity of those children.

Upper Tribunal Judge Kopieczek

16/07/14