**Upper Tribunal**
**(Immigration and Asylum Chamber)** Appeal Number: DA/00844/2013

**THE IMMIGRATION ACTS**

| **Heard at Field House** | **Determination Promulgated** |
|---|---|
| **On 24 February 2014** | **On 13 March 2014** |
| **Prepared 25 February 2014** | |

**Before**

**UPPER TRIBUNAL JUDGE MCGEACHY**

**Between**

**JAI KUMAR SUNWAR**

Appellant

**and**

**THE SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Respondent

**Representation:**

For the Appellant: Mr C Howells, of Counsel instructed by Messrs N.C. Brothers & Co Solicitors
For the Respondent: Mr S Walker, Senior Home Office Presenting Officer

**DETERMINATION AND REASONS**

1. The appellant appealed against a decision of the Secretary of State made on 16 April 2013 to deport him under Section 32(5) of the UK Borders Act 2007. His appeal before the First-tier Tribunal was allowed but on appeal I found that there was a

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material error of law in the determination of the First-tier Tribunal and set that determination aside. My decision was as follows:-

"1. The Secretary of State appeals, with permission, against a decision of the First-tier Tribunal (Judge of the First-tier Tribunal Ian Scott and Mr B D Yeats (Non-Legal Member)) who in a determination promulgated on 25 November 2013 allowed the appellant's appeal against a decision of the Secretary of State to make a deportation order against him.

2. Although this is the appeal of the Secretary of State I will for ease of reference refer to her as the respondent as she was the respondent in the First-tier. Similarly I will refer to Mr Jai Kumar Sunwar as the appellant as he was the appellant before the First-tier Tribunal.

3. The appellant is a citizen of Nepal born on 17 April 1987. His father entered Britain in May 2006. In August the appellant was granted entry clearance as dependent and, on arrival in Britain in December 2006, was granted indefinite leave to remain.

4. On 7 August 2012 he was convicted at Canterbury Crown Court for possession of heroin with intent to supply and was sentenced to twenty months' imprisonment. On 3 September 2012 he was notified of his liability to automatic deportation, the deportation order being made against him on 16 April 2013 under Section 32(5) of the UK Borders Act 2007.

5. The Tribunal heard evidence from the appellant and his father and having briefly stated in paragraph 21 that it was accepted that the appellant could not meet the terms of the Immigration Rules, considered the appellant's claim that his rights under Article 8 of the ECHR would be infringed by his removal solely in terms of the Convention. Having noted the terms of the determination **Ghising (family life – adults – Gurkha policy) [2012] UKUT 00160 (IAC)** and the judgment in the Court of Appeal in **Gurung & Others [2013] EWCA Civ 8** the Tribunal set out the structured approach to the issue of an appellant's Article 8 rights as set out in the judgment of the House of Lords in **Razgar [2004] UKHL 27**.

6. The Tribunal noted the public interest in the deportation of criminals before setting out the various issues raised in the decision of the European Court of Human Rights in **Maslov [2008] ECHR 546**.

7. In paragraphs 33 onwards they set out their reasons for finding that the removal of the appellant would be disproportionate. They stated that it was relevant that the appellant had been sentenced as a low-level street dealer and that the offence had been committed against the background of the appellant's own heroin addiction. They stated that they accepted that the appellant was no longer addicted to heroin. They note that the appellant had been in Britain for nearly seven years and then somewhat surprisingly referred to an Upper Tribunal determination in **Dewan**, number DA/00039/2013, which was heard in August 2013. I note that there was nothing to indicate that the barrister who represented the appellant was entitled to ask them to take that determination into account – the requirements of the Practice Directions regarding the submission of

unreported determinations were not complied with. I note from the copy of that determination on the file that it is, in fact, merely a decision in an error of law hearing where the decision of the First-tier Tribunal was set aside and the appeal remitted to the First-tier for a hearing de novo. The ratio of the decision however appeared to be that there was a "historic injustice" argument relevant in the appeal. It appears the Tribunal decided that they would take this into consideration and in their conclusions in paragraphs 36 through 39 of the determination they stated:-

> '36. We take these factors into account in this case, giving due weight to the relevant legitimate aim of preventing disorder or crime on the one hand and the 'historic injustice' on the other, without which the appellant might be a British citizen by now, his father having been discharged from the Army in 1991, and thus be immune from deportation.
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> 37. In regard to the remaining **Maslov** criteria, we note that the appellant's offence occurred comparatively recently, but we take into account, for what it is worth, the fact that his conduct since then has been good.
>
> 38. We find that the appellant has strong social, cultural and family ties with the United Kingdom, having lived here for nearly seven years since the age of 19 with close family members. By contrast, he no longer has any real connection with Nepal. He has no home and no family there and has not lived in that country since 2006. Indeed, since coming to the United Kingdom he has only been back on one occasion for a holiday.
>
> 39. Balancing all of these factors, we have come to the view that the public interest in deportation in this case is outweighed by the various countervailing factors, in particular the appellant's length of residence with his family in this country taken together with the 'historic injustice'. Accordingly, we find that the appellant's deportation would involve a disproportionate interference with his Article 8 rights and those of his immediate family'.

8. They therefore allowed the appeal. The Secretary of State appealed, arguing that the Tribunal had misdirected themselves in law in that they had not taken into account the clear guidance in the judgment in **MF (Nigeria) [2008] EWCA Civ 1192** and not accepted that it was only in exceptional circumstances that a deportation case should succeed under Article 8. The grounds referred further to the judgment of the Court of Appeal in **Gurung [2012] EWCA Civ 62** which had referred to the appellant in that case as being a "physically fit and intellectually sound young man who had lived in Nepal in the past" and decided that deportation was a proportionate response to his crime. It was pointed out that the judgment in **Gurung** emphasised the weight to be placed on the decision of the Secretary of State to invoke the provisions of Section 32 of the Borders Act 2007. It was claimed that the Tribunal had not adequately balanced the public interest in the deportation of a convicted criminal against the appellant's ties in the United Kingdom.

9. Mr Bramble relied on those grounds of appeal. While he accepted that the hearing of the appeal had taken place before the judgment in **MF (Nigeria) [2013] EWCA Civ 1192** had been issued on 8 October 2013 he stated that the determination had not been promulgated until after the judgment in **MF (Nigeria)** had been issued and therefore that the Tribunal should have taken that into account. He emphasised that the judgment in **MF** set out the necessity of there being compelling and exceptional factors before an appellant could succeed in arguing that his rights under Article 8 would be infringed by the decision. He stated that the Tribunal had not identified such factors. He referred to the fact that the appellant's crime was committed when he was an adult – this was not an appellant who had come to Britain as a child. He stated that the appellant's circumstances were similar to that of the appellant in **Gurung** in that he was physically fit and intellectually sound and there was nothing to indicate that he required the support of his father or indeed that his father required his support. The Tribunal had referred to "historic injustice" done to Gurkhas but there was nothing to indicate that that was relevant to the appellant's case. He stated there was nothing to indicate that the Tribunal had considered the public interest in the deportation of a man who had committed a serious crime.

10. In reply Ms Stickler referred to her skeleton argument in which she had set out the factors which the Tribunal had taken into account in paragraph 25 of the determination. They included the fact that the appellant had always lived with his family in their family home, that he was not living an independent life, had a close relationship with his family, and his extended family also lived in the UK. They had found that the appellant's father could not be expected to return to Nepal in the light of his grant of indefinite leave to remain and the presence of his wife and two daughters here. They had also taken into account that the appellant was no longer addicted to heroin and was at a low risk of re-offending and that his conduct since the offence had been good. Together with these factors they had taken into account the fact that the appellant had been resident in Britain since December 2006 and the "historic injustice" suffered by him and his family. They had concluded the appellant had no real connection with Nepal.

11. She emphasised that the Tribunal had referred to the importance of taking into account the public interest and indeed the deterrent effect of deportation but had reached a conclusion, which was open to them, that the removal of this appellant would be disproportionate. She argued that the judgment of the Court of Appeal had not altered the fundamental balancing exercise in dealing with the issue of deportation – it was the ratio of the judgment in **MF (Nigeria)** that the approach to the issue of the Article 8 rights of an appellant under the new Rules as opposed to under the Convention was really a question merely of form rather than substance. The Tribunal had considered a number of relevant factors and reached a conclusion which was open to them.

12. By citing the judgment of the Court of Appeal in **Gurung** they had clearly taken into account the public interest in the deportation of a criminal but she emphasised that the facts in the crime committed by the appellant in **Gurung** were of a completely different order from those of this appellant – the appellant in Gurung had been sentenced for manslaughter and violent disorder.

13. She argued that it was not the case that the seriousness of the appellant's crime could only lead to one conclusion. Nor indeed was it the case that the Tribunal had not been fully aware of the necessity of weighing up the public interest of deporting an offender – they had fully engaged with the issue of the public interest. In the skeleton argument she emphasised that the new Rules "did not herald a restoration of the exceptionality test and should be interpreted consistently with Strasbourg jurisprudence".

14. She asked me therefore to find that the Tribunal had reached a conclusion which was fully open to them on the evidence before them and therefore to dismiss the Secretary of State's appeal.

**Discussion**

15. I consider that there are material errors of law in the determination of the Tribunal. While I accept that the judgment in **MF (Nigeria)** had not been issued at the date of hearing the reality is that it was issued seventeen days before the determination was signed and, in any event, **MF (Nigeria)**, while dealing with the issue of the assessment of the Article 8 rights of an appellant under the Rules, reflects a line of judgments, the most important of which is **SS (Nigeria) [2013] EWCA Civ 50** which emphasise the importance of the public interest in deporting criminals and the necessity of there being very important factors indeed to overturn the presumption in favour of deportation set out in the 2007 Act. The Tribunal, although they referred to the public interest in the deportation of convicted criminals, simply did not show any factors which would mean that the deportation of the appellant would be disproportionate.

16. The Tribunal appear to consider that the "historic wrong" done to Gurkhas was somehow a determinative factor to be taken into account in this case and in so doing they were clearly wrong to place weight on an error of law decision which was not reported. The relevant reported case is that of Ghising and others (Ghurkhas/BOCs: historic wrong; weight) [2013] UKUT 567(IAC) the head note of which reads as follows:

> '(1) In finding that the weight to be accorded to the historic wrong in Ghurkha ex-servicemen cases was not to be regarded as less than that to be accorded the historic wrong suffered by British Overseas citizens, the Court of Appeal in Gurung and others [2013] EWCA Civ 8 did not hold that, in either Gurkha or BOC cases, the effect of the historic wrong is to reverse or otherwise alter the burden of proof that applies in Article 8 proportionality assessments.
>
> (2) When an Appellant has shown that there is family/private life and the decision made by the Respondent amounts to an interference with it, the burden lies with the Respondent to show that a decision to remove is proportionate (although Appellants will, in practice, bear the responsibility of adducing evidence that lies within their remit and about which the Respondent may be unaware).

(3) What concerned the Court in Gurung and others was not the burden of proof but, rather, the issue of weight in a proportionality assessment. The Court held that, as in the case of BOCs, the historic wrong suffered by Gurkha ex-servicemen should be given substantial weight.

(4) Accordingly, where it is found that Article 8 is engaged and, but for the historic wrong, the Appellant would have been settled in the UK long ago, this will ordinarily determine the outcome of the Article 8 proportionality assessment in an Appellant's favour, where the matters relied on by the Secretary of State/ entry clearance officer consist solely of the public interest in maintaining a firm immigration policy.

(5) It can therefore be seen that Appellants in Gurkha (and BOC) cases will not necessarily succeed, even though (i) their family life engages Article 8(1); and (ii) the evidence shows they would have come to the United Kingdom with their father, but for the injustice that prevented the latter from settling here earlier. If the Respondent can point to matters over and above the public interest in maintaining a firm immigration policy, which argue in favour of removal or the refusal of leave to enter, these matters must be given appropriate weight in the balance in the Respondent's favour. Thus, a bad immigration history and/or criminal behaviour may still be sufficient to outweigh the powerful factors bearing on the Appellant's side of the balance'.

17. As is clear from that decision the "historic wrong" related to the fact that Gurkha soldiers who had retired were not given a right of residence here in line with those of other Commonwealth citizens who had served in the British army. The "wrong" was righted by the grant of residence to such soldiers. Because of that the appellant's father was able to come here and settle and to bring the appellant with him. It was not somehow a licence for the appellant to come here and commit crimes or evade the consequences for committing crimes here.

18. Moreover, the Tribunal appeared to consider that the appellant should benefit from the criteria set out in the European Court of Human Rights judgment in **Maslov**. The reality, however, in this case is that the appellant, who had lived in Britain for a comparatively short time had, unlike the claimant in **Maslov,** not been brought up here – he had arrived here at the age of 19 and the crimes which he committed were committed when he was aged 24.

19. The appellant does have family here but he is an adult and there is nothing to indicate that he could not live in Nepal, he is a physically fit and intellectually sound young man. I find that the Tribunal have not identified any factors which when weighed against the public interest in the deportation of foreign criminals would indicate that the deportation of this appellant would be disproportionate.

20. I therefore find that there are material errors of law in the determination of the First-tier Tribunal and I set aside their decision.

21. The appeal must now proceed to a hearing afresh on all issues when the relevant exercise as set out in the judgment of the Court of Appeal in **MF (Nigeria)** can be carried out."

2. The appeal therefore came back to me for a hearing afresh. Mr Walker and Mr Howells agreed that there was no requirement to hear further evidence as the findings of fact the First-tier Tribunal set out in paragraphs 7 to 13 of the determination were accepted. In those paragraphs the First-tier Tribunal stated:-

"**EVIDENCE**

*Appellant*

7. In his oral evidence, the appellant adopted his witness statement dated 6th September 2013. In summary, he was born in Brunei while his father was serving there as a Gurkha soldier in the British Army. He also lived in Hong Kong with his parents before he and his mother returned to Nepal. His mother died in 2000. In May 2006 his father was granted indefinite leave to remain in the United Kingdom and in December of that year the appellant came here as his dependant. Initially, he lived with an uncle and aunt until his father and stepmother arrived in 2007 when went to live with them, which he has done ever since. In 2008 they were joined by the appellant's two younger sisters. The appellant has never lived a separate life. He has a very close relationship with his father, stepmother and sisters and has always been a very important part of the family.

8. In relation to the offence for which he was sentenced to 20 months' imprisonment the appellant explained that he was at that time a heroin addict. He did not sell drugs on a commercial basis. The drugs which were found in his possession were for use in company with a friend. He only sold drugs to his friends in order to feed his habit, as he had been sacked from his job as a consequence of his addiction. He regrets the day when he started to take drugs.

9. The appellant said that he has lived in the United Kingdom lawfully for the last seven years and has an established private and family life here. This is where his home is and where his parents, siblings, extended family members, friends and colleagues all are. He has always lived with his family, in Nepal and the United Kingdom. He has nothing and no-one to return to in Nepal. He has no home and no family there. Since arriving in the United Kingdom at the end of 2006, he has only been to Nepal once, in 2009, for a four-week holiday.

10. While in prison, the appellant undertook and successfully completed several courses which helped him to give up drugs and taught him various skills. All of these courses had a positive impact on him and he wishes to continue to live his life in a positive way with his family. He has learned from his mistakes and his family will continue to support him.

11. The appellant's statement also refers to the "historic injustice" in the treatment of former Gurkha soldiers. Had it not been for that, he and his father would have settled in the United Kingdom earlier, when the appellant was younger, and he

would have had a full education in the United Kingdom with improved employment opportunities and better integration.

*Appellant's Father*

12. The appellant's father, Mr Lal Bahadur Sunwar, gave evidence and adopted his witness statement dated 6th September 2013. He confirmed that the appellant is his son and said that he agreed with and adopted the appellant's statement. He confirmed that the appellant was born in Brunei while Mr Sunwar was serving there in the British Army. The appellant and his mother then went to Hong Kong with Mr Sunwar. They remained there until 1988 when they returned to Nepal. After retiring from the army in 1991, Mr Sunwar also returned to Nepal and lived there with his family for a few months before moving back to Brunei to work with the Gurkha Reserve Unit. Some years later, the appellant's mother was diagnosed with breast cancer. As her condition deteriorated, she was unable to look after the appellant and he had to live in a hostel. After his mother died in August 2000, the appellant went to Brunei to be with his father. In 2006 he was granted indefinite leave to remain in the United Kingdom as a dependant and went to live there, being joined by his father and stepmother shortly afterwards.

13. Mr Sunwar said that the appellant is his eldest child, and only son, and has always been close to him. They grew even closer to each other after the death of the appellant's mother. They are a very close-knit family. The appellant has never lived a separate life. He has always been an important and integral part of the family unit. The appellant is also very close to his sisters, who are both younger than him."

3. Mr Howells stated that he wished to renew his application to rely on the decision of Upper Tribunal Judge Grubb and Deputy Upper Tribunal Judge Davidge in **<u>Dewan</u>** Appeal No. DA/00039/2013 in which that Tribunal had considered the fact that Dewan was the son of a Gurkha and stated that the "historic wrong" in relation to Gurkhas was a fact which should be taken into account when the deportation of the child of a Gurkha was considered on the basis that had there not been the historic wrong and the potential deportee's father had been able to settle in Britain when he had originally wished to do so, the appellant in that case would have been able to settle in Britain earlier and become more integrated into British society and therefore the offence might not have taken place.

4. The fact that a panel in the Upper Tribunal has reached conclusions on an argument put before them which was the same as an argument put before me does not mean that I should be bound by the conclusion in their determination, particularly when it is only a conclusion reached in a decision to remit rather than in a determination and is in any event not reported. However, Mr Howells emphasised that had the appellant's father come to Britain in 1991 – it was his evidence that that is what he wished to do, by the date of the conviction the appellant would have been a British citizen and therefore not subject to deportation.

5. He then turned to the determination of the Tribunal in **<u>Ghising and Others</u> (Gurkhas/BOCs: historic wrong; weight) [2013] UKUT 00567 (IAC)**. It was the

determination of the appeal in **Ghising [2012] UKUT 00160 (IAC)** once that determination had been set aside by the Court of Appeal insofar as it related to the question of the proportionality under Article 8(2). Paragraph (4) of the head note in the determination (which I set out in full in paragraph 16 of my decision to set aside above) reads:

> "(4) Accordingly, where it is found that Article 8 is engaged and, but for the historic wrong, the Appellant would have been settled in the UK long ago, this will ordinarily determine the outcome of the Article 8 proportionality assessment in an Appellant's favour, where the matters relied on by the Secretary of State/entry clearance officer consists solely of the public interest in maintaining a firm immigration policy."

6. Mr Howells was also, of course, aware of the fifth paragraph of the head note which reads:-

> "5. It can therefore be seen that Appellants in Gurkha and BOC cases will not necessarily succeed, even though (i) their family life engages Article 8(1); and (ii) the evidence shows they would have come to the United Kingdom with their father, but for the injustice that prevented the latter from settling here earlier. If the Respondent can point to matters over and above the public interest in maintaining a firm immigration policy, which argue in favour of removal or the refusal of leave to enter, these matters must be given appropriate weight in the balance in the Respondent's favour. Thus, a bad immigration history and/or criminal behaviour may still be sufficient to outweigh the powerful factors bearing on the Appellant's side of the balance."

7. Mr Howells went on to state that, of course, in a case such as this there is a public interest in the deportation of a convicted criminal. He referred however to the various criteria set out in the judgment of the European Court of Human Rights in **Maslov** emphasising that the appellant had come to Britain at a relatively young age and was "only" 24/25 when he committed the offence. He stated that there was nothing left for the appellant in Nepal as all his family including his siblings were in Britain and referred to the judgment of the Court of Appeal in **MF (Nigeria) [2013] EWCA Civ 1192** and to paragraphs 42, 43 and 45 of that judgment which deal with the test of exceptionality. He argued that the criteria set out in the judgment of **Maslov** could outweigh the public interest in deportation and that in assessing the balancing exercise I should take into account the historic wrong done to Gurkhas as well as the length of time the appellant had been here and the fact that he had nothing to return to in his own country. He argued that the appellant's own particular circumstances outweighed the public interest in his deportation.

8. In reply Mr Walker referred to the chronology in the appellant's bundle with particular regard to the time which he had spent in Brunei when his father was working there. He emphasised that the appellant had started taking drugs while still living with his parents and said that it could not be argued that his parents were not aware of what he was doing, indeed they had agreed that he should go to rehab in Nepal in 2009.

9. He argued therefore that the fact that the appellant had started taking drugs shortly after he arrived, had gone on to lose his job and had been arrested for a serious drug offence showed that it would not be disproportionate for him to be removed to Nepal.

10. He emphasised that the appellant was not a child: he had committed the crimes as an adult and I should place weight on the seriousness of the crimes committed and conclude that the deportation of the appellant was not disproportionate.

11. In reply Mr Howells referred to the fact that the appellant had two younger sisters here.

**Discussion**

12. Mr Howells referred to the judgment of the Court of Appeal in **MF (Nigeria)** and in particular to paragraphs 42, 43 and 45 of that judgment. I note that in paragraph 42 it is stated:-

> "42. ... In approaching the question of whether removal is a proportionate interference with an individual's Article 8 rights, the scales are heavily weighed in favour of deportation and something very compelling (which will be 'exceptional') is required to outweigh the public interest in removal. In our view, it is no coincidence that the phrase 'exceptional circumstances' is used in the new rules in the context of weighing competing factors for and against deportation of foreign criminals.
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> 43. The word 'exceptional' is often used to denote a departure from a general rule. The general rule in the present context of that, in the case of a foreign prisoner to whom paras 399 and 399A do not apply, very compelling reasons will be required to outweigh the public interest in deportation. These compelling reasons are the 'exceptional circumstances'.
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> 44. We would, therefore, hold that the new rules are a complete code and that the exceptional circumstances to be considered in the balancing exercise involve the application of a proportionality test as required by the Strasbourg jurisprudence. We accordingly respectfully do not agree with the UT that the decision-maker is not 'mandated or directed' to take all the relevant Article 8 criteria into account.
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> 45. Even if were wrong about that, it would be necessary to apply a proportionality test outside he new rules as was done by the UT. Either way the result should be the same. In these circumstances, it is a sterile question whether this is required by the new rules or is a requirement of the general law. What matters is that it is required to be carried out if paras 399 or 399A do not apply."

13. It is accepted that paragraphs 399 and 399A do not apply in this case.

14. It is therefore incumbent upon me to consider the relevant factors in assessing the proportionality of the deportation of the appellant.

15. He is subject to automatic deportation following his having been convicted of the serious crime of possession of heroin with intent to supply and having received a sentence of twenty months' imprisonment.

16. The appellant committed that crime at the age of 24 – he was not a child. At that time he had only been in Britain for a comparatively short time in that he had entered Britain in December 2006 at the age of 19. It appears that the crime was committed because he had become addicted to drugs and indeed his parents were so concerned about this they considered that it was appropriate that he should be sent to Nepal for rehabilitation – his addiction had meant that he had been unable to keep employment here. I accept that the appellant's parents and younger sisters are in Britain and there is nothing to believe that they are anything other than a close family although, of course, I am aware that the appellant was taking drugs at a time when he was living at home – his parents were unable to stop him doing so.

17. It does not appear from the evidence that the appellant has built up any significant private life here. He has not completed any studies and before his conviction had stopped working.

18. I accept that the appellant no longer has a home in Nepal but there is nothing to indicate that as a healthy young man he would not be able to find work there even taking into account the fact that his immediate family all live in this country. I note that he did go to Nepal on holiday in 2009.

19. I am aware that the appellant undertook various courses in prison which related to drug awareness and there does not appear to be any evidence that at the present time he is still on drugs. I have, of course, taken into account the findings of fact of the First-tier Tribunal which are set out above.

20. Mr Howells urged me to take into account the "historic injustice" which meant that Gurkha soldiers were not entitled to settle here and points to the assertion by the appellant's father that he would have settled here on retirement in 1991 and therefore the appellant would have been brought up in this country. However, as Mr Walker pointed out the appellant was born in Brunei and then lived with his father in Hong Kong before returning to Nepal in 1991. In 2001 he moved to Brunei to live with his father and it was there that he completed his O levels. He did not return to Nepal until 2004 coming to Britain in 2006. It therefore appears that the appellant spent some of his most formative adolescent years in Brunei where his father was working.

21. The "historic injustice" done to Gurkhas was corrected when those such as the appellant's father who had retired from the Gurkhas were able to settle here and to bring their families. The fact that the appellant entered Britain in 2006 was, I consider the remedying of that wrong. The remedy was to ensure that the appellant could come to Britain to live with his parents despite the fact that he was over the age of 18. It was not a remedy to allow him to come to Britain and break the law here. In finding an error of law in this case I referred to the head note in the decision in **Ghising** in the Upper Tribunal. That makes it clear that where Article 8 is engaged

and apart from the historic wrong the appellant would have been settled in Britain long ago that would ordinarily determine the outcome of the Article 8 proportionality assessment, but that criminal behaviour may still be sufficient to outweigh the powerful factors bearing on the appellant's side of the balance. In this case there is such criminal behaviour. I consider that even placing weight on the "historic wrong" the public interest in the deportation of this appellant who has dealt in drugs outweigh the factors in his favour and therefore the deportation of this appellant would not be disproportionate.

22. I therefore, having set aside the determination of the First-tier Tribunal dismiss this appeal on both immigration and human rights grounds.

Signed                                        Date

Upper Tribunal Judge McGeachy