Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: DA/01165/2013

THE IMMIGRATION ACTS

Heard at Royal Courts of Justice	**Determination Promulgated**
On 21 May 2014	**On 3 July 2014**

Before

UPPER TRIBUNAL JUDGE RINTOUL

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Claimant

and

MR JOSEPH JANBAZIAN ZULU

Claimant

Representation:

For the Claimant: Mr N Bramble, Senior Home Office Presenting Officer
For the Respondent: Miss V Hutton, Counsel, instructed by Cotisens, Solicitors

DETERMINATION AND REASONS

1. The Secretary of State appeals with permission against the determination of the First-tier Tribunal (a panel comprising First-tier Tribunal Judge Mitchell and Sir Jeffrey James KBE, CMG) in which they allowed the appeal of Mr Joseph Janbazian Zulu, a Zambian citizen (to whom I refer as the claimant) against a decision of the Secretary of State made on 22 May

2013 that he is a person to whom Section 32(5) of the UK Borders Act 2007 applies and thus must be deported as a foreign criminal.

2. The First-tier Tribunal also imposed an anonymity order preventing the claimant's name being published or him being otherwise identified. The Secretary of State has not challenged that decision. Nonetheless, I do not consider that such an order can be justified. The claimant's crimes are a matter of public record, and there is no good reason advanced why he should be protected from publicity and the consequences of his wrongdoing. For that reason, having taken into account the views of the parties, I consider that the anonymity order should not continue in respect of this decision. I do, however, maintain the anonymity order in respect of the decision of the First-tier Tribunal.

3. The claimant is a citizen of Zambia born on 7 April 1994 in Kwekwe, Zimbabwe. His mother is Congolese by origin, obtaining Zambian citizenship through her step-father; the claimant's father, to whom his mother was never married, is a German citizen of Lebanese origin. It is not part of the claimant's case that he has acquired German nationality.

4. The claimant has never lived in Zambia although has visited on one occasion en route to the United Kingdom in 2003 to join his mother. Until then he had lived in Zimbabwe where he was educated. He has lived here ever since and was granted indefinite leave to remain on 10 September 2010 as a dependant of his mother. The claimant has two older brothers who also live in the United Kingdom and two younger half-siblings whose father is a Nigerian national to whom his mother is now married.

5. On 13 July 2012 the claimant was convicted of violent disorder and two counts of arson. The offences took place during the 2011 London riots and he was sentenced to two years' imprisonment for violent disorder, 54 months' imprisonment for the first count of arson and 42 months for the second count, the sentences to run concurrently. That is without doubt a significant sentence.

6. The Secretary of State's case is that the claimant is a foreign national who must be deported and, as he has been sentenced to a term of imprisonment in excess of four years, it would only be in exceptional circumstances that the public interest in deportation would be outweighed by other factors and that there were in his case no exceptional circumstances such that deportation should not proceed. She considered that he could keep contact with his siblings by modern forms of communications and visits to him; that he had failed to establish that there is family life between himself and his adult family members. She also considered that he had failed to show that he had never lived in Zambia, finding that he had left at approximately 6 years old; that, as the official language of Zambia is English there would be linguistic barrier to hinder his successful reintegration into Zambian society and whilst that would be challenging, he possesses the necessary language, education and knowledge to make his return successful. She was not satisfied that

there was anything in the claimant's private life which would prevent his deportation to or reintegration into life in Zambia.

7. The claimant's case is that he has never lived in Zambia and thus would not be re-integrating to society there, but going to a country with which he has no connection other than his nationality. He has no friends, relatives or contacts there; he would have no employment, no accommodation and no prospects. It is also his case that he has a close relationship with his siblings, mother and step-father and that he has had to look after the younger children effectively as a parent owing to his mother and step-father's illness and thus his deportation was disproportionate.

8. The First-tier Tribunal heard evidence from the claimant, his mother and step-father all of whom were cross-examined. It was accepted by both parties that the claimant is a Zambian national and that he could not meet the requirements of paragraphs 399 or 399A of the Immigration Rules. The Tribunal found that:-

(i) paragraphs 398 and 399 of the Immigration Rules constitute a complete code [79]; that the claimant has committed extremely serious offences [81] and that the Immigration Rules make it clear that it would only be in exceptional circumstances that the public interest in deportation would be outweighed by other factors [82];

(ii) the claimant's and his witnesses' evidence was credible [68];

(iii) the claimant had been born in Zimbabwe and had lived his whole life there, until he arrived in the United Kingdom in 2003, never having spent a significant time in Zambia [69] and thus, deportation would be sending him to Zambia, not returning him there;

(iv) the claimant has no ties or connections to Zambia; the only relative he has outside the United Kingdom is a grandmother who lives in Zimbabwe; that he would be unfamiliar with the culture and all the social aspects of Zambia, would be unable to speak any language spoken there other than English; that his situation there would exacerbated by the fact that he is of mixed race [74]; that in many countries being of mixed race is a significant disadvantage in acceptance [74] and given his ethnic heritage, it is unlikely the claimant would have the facial characteristics or skin colour of many Zambians [75];

(v) the claimant has a family life in the United Kingdom, the respondent's representative accepting that deporting the claimant would be an interference with that family life [80], and that there was no suggestion that anyone in the claimant's family should follow him to Zambia [83];

(vi) the claimant had expressed remorse for his crimes, has not committed any other crimes, had no previous convictions and they are unaware

of any adjudications whilst in prison [100], that he has disassociated himself from his friends in his neighbourhood, has matured, has insight into his offending and the best evidence before them that the risk of his re-offending was low;

(vii) the claimant may have some difficulty in obtaining employment in Zambia having never lived there and having no social ties and or assistance from relatives [101] and he would not be welcomed by either the authorities or those in the community given his criminal record [102];

(viii) the claimant appears to have played a parental role within his family which is indicative of his character [104], and the situation of him having to play a parental role within the family increases the chances that he would not re-offend in the future as he has substantial support as an integral member of an extended family;

(ix) while the claimant's qualifications and ability to speak English may be of assistance to him in Zambia [108] he would have no contacts or connections with the country; is of mixed race, making it harder to integrate and avoid discrimination; and, he would not be integrating into Zambian society for the first time [109], but entering it for the first time, having spent his formative years in the United Kingdom where he had been educated and spent half his life;

(x) the Secretary of State's decision was incorrectly founded on an assumption that the claimant would have contacts in Zambia as he had lived there in the past albeit when young [107]; that whilst the claimant's crime was not only serious but high profile in that he took part in riots and that there are elements of this case that are unattractive and he had pleaded not guilty to the offences resulting in a trial being arranged; that his family has exaggerated to some extent his role within the family [120]; but, that in all the circumstances the effects of deportation would be unjustifiably harsh [125] and therefore the decision would not be proportionate;

(xi) it was appropriate in the circumstances to put in place an anonymity order.

9. The Secretary of State sought permission to appeal against the decision. Permission was granted by First-tier Tribunal Judge Baird on 25 March 2014

10. The grounds on which the Secretary of State seeks to overturn the First-tier Tribunal's decision are discursive, and are not without factual error. In essence, the Secretary of State's case is that the Tribunal erred in three ways when evaluating whether the public interest in deporting the claimant was outweighed, those errors being that the Tribunal:

(1) made a number of findings of fact which were unsupported by the evidence and had wrongly taken those into account in the claimant's favour;

(2) failed to give proper weight to the public interest in deporting the claimant; and,

(3) failed to identify circumstances particular to the claimant which, over and above the factors identified in the Immigration Rules 399A, were exceptional.

11. I deal with these errors in turn.

Errors of Fact

12. The Secretary of State submits that the Tribunal made errors of fact in reaching findings, in the absence of proper evidence:-

(i) that the claimant would be disadvantaged due to being of mixed race;

(ii) that he would not be welcomed back to Zambia as a deportee but, there being no evidence to substantiate that;

(iii) as to the claimant's actual involvement with his family, there being no evidence as to anyone being unable to cope in his absence, no relationship between the claimant and his family not being beyond normal emotional ties;

(iv) that the claimant would be unable to relocate to Zimbabwe given he had spent the first nine years of his life there, there being no evidence of him residing or illegally there or that he had made enquiries about living there, the conclusion thus being unreasoned;

(v) that the claimant intends to move upon release to a different area, there accordingly being a risk that he may associate with negative peers again increasing his risk to society, there being in addition no evidence his family would be able to exert insufficient influence over him as they had been able to do so before;

(vi) that the claimant's offence did not involve violence which was incorrect.

13. In their determination at paragraph [68] the panel found that the claimant's and his witnesses' evidence was credible. There is no challenge to that in the grounds as pleaded by the Secretary of State, nor is it established that a submission to the contrary was made to the First-tier Tribunal, or that the contrary had been put in cross-examination. It flows from this that the Tribunal were entitled to make findings of fact on the basis of the evidence put forward by the claimant.

14. In his witness statement the claimant said [17] that if deported to Zambia "I would have nowhere to live and would not be able to support myself. I would be homeless and living on the streets. I feel that as a mixed race person, I would be subject to attack and fear for my personal safety."

15. His mother, in her witness statement says:-

> "[26] I do not have any family in Zambia. Joseph does not know anyone in Zambia; he would have nowhere to live and would end up on the streets. He would have difficulty fitting into any local community. He is of mixed race ethnicity. I am Congolese by birth, Zambian by nationality and his father is German. I do not have any home town I belong to in Zambia."

16. The Secretary of State's grounds do not make an effective challenge to that evidence, nor is it shown that this evidence was challenged before the First-tier Tribunal. It is in the circumstances not arguable that there was, as the grounds state "no evidence to substantiate the finding the [claimant] would be disadvantaged"; the material was set out in the witness statements. As Miss Hutton submitted, the evidence in the witness statement was not challenged by the Secretary of State's representative in cross-examination or his oral submissions. Mr Bramble was unable to make any submissions to the contrary.

17. With regard to whether the claimant would be "welcomed" back to Zambia, the use of the word implies a positive act on the part of Zambian society, the authorities or family. In this context it must be borne in mind that there is no challenge to the finding that the claimant had never been there except for a short period en route to the United Kingdom. It was in the circumstances reasonable for the Tribunal to conclude that the claimant would not be "welcomed back" bearing in mind that Zambia is not somewhere he had ever lived. This is not a finding that he would face difficulties from the authorities; it is nothing more than observation that it is unlikely that there would be any positive attitude towards him as he would be entering the country as a convicted criminal and as a person with little or no connection to the country other than nationality.

18. Mr Bramble developed his grounds, submitting that at paragraphs 103, 104 and 120 the Tribunal had in effect contradicted themselves, finding that the claimant's family appeared to have suffered from the consequences of imprisonment of a family member [103] but that this was not a reason for the claimant not to be deported himself; that the claimant had played a parental role within the family [104] which increased the chances that he would not re-offend in future; yet, at paragraph 120 that the family had exaggerated to some extent his role in the family and their reliance upon him.

19. Absent any proper challenge to the assessment of the witnesses' credibility, it is not arguable that the Tribunal reached conclusions at paragraphs 102 to 104 of the determination which were not open to them.

The fact that the witnesses exaggerated is not a sufficient basis to show that the Tribunal's finding that nonetheless there was still a strong family life was perverse or irrational; it was open to the Tribunal, on considering the evidence, that while an attempt had been made to show that family life was stronger than it in fact was, nonetheless, it was still strong, and they gave proper reasons for that finding.

20. The grounds as pleaded by the Secretary of State fail to identify any basis on which the Tribunal erred in accepting the claimant's assurance that he had matured and had insight into his offending and had disassociated himself from the friends. The challenge as expressed in paragraph 6 of the grounds is that there is no evidence he intends to move to a different area on release. That is not so. It is evident from the trial court records that he was living in Wolverhampton at the time of his trial and it is evident from his witness statement, and this was not challenged by the secretary of State before the First-tier Tribunal, that at the time of the offences he was living in London. That was a number of months, nearly a year, earlier. As was noted in the sentencing remarks made by the Judge, the claimant had been in custody for only twelve days prior to the trial. The conclusion that he had moved away from his home area is thus supported by the evidence adduced by the Secretary of State and placed before the First-tier Tribunal.

21. Whilst it is submitted by the Secretary of State that the Tribunal's finding as to the risk of the claimant re-offending is inadequate given that there is no evidence that he has addressed his behaviour and failed to consider the risk of harm, Mr Bramble was unable to direct me to any contrary evidence and it has not been shown on the grounds as pleaded that these conclusions were not open to the Tribunal

22. Mr Bramble accepted that it was not correct, contrary to what is pleaded, that the Tribunal had found that the offences did not involve violence. He also accepted that it had not been part of the Secretary of State's case previously that the claimant could go to live in Zimbabwe. While he was born there, it is not part of the Secretary of State's case that he has Zimbabwean Citizenship; as neither of his parents had that nationality, that is unsurprising. Accordingly, it cannot have been an error for the Tribunal not to consider whether the claimant could relocate there. In any event, it would be somewhat surprising if he were to be admitted to Zimbabwe given he is a convicted criminal and not a national.

23. With regard to the claimant's linguistic ability, it is not disputed that English is the first language of Zambia or that the claimant speaks English. Indeed he has been educated in that medium for most his life. He does, in his witness statement, say that he does not speak the main language in Zambia, Nyanga and again that was not disputed below.

24. There is, at first glance, an inconsistency in the Tribunal's findings [101] that the claimant would have "some difficulty" in obtaining a job, but that is only if that factor is considered in isolation of the other factors, such as

the lack of means, accommodation and support, and it would appear that in the use of the qualification "some" the Tribunal was, perhaps inadvisably, using understatement.

25. Taking these factors together I consider that the Secretary of State has not shown that the Tribunal reached findings of fact which were not open to them and indeed there is no challenge to two important findings of fact – that the claimant despite being a citizen of Zambia had never lived there – or that he has established a family life in the United Kingdom, a point the Secretary of State's representative conceded before the First-tier Tribunal in direct contrast to her case as set out in the refusal letter.

26. For the reasons set out above, the Secretary of State has failed to establish that the Tribunal made any material errors of fact which were taken into account in evaluating whether there were exceptional circumstances.

Failure to attach proper weight to the public interest

27. Mr Bramble submitted that the Tribunal's decision could have been more fully reasoned in light of the decision in **MF (Nigeria) v SSHD [2013] EWCA Civ 1192**. Miss Hutton submitted that in consequence, the Secretary of State's case is in effect a "reasons challenge".

28. It is at this point apposite to consider what was said in **English v Emery Reimbold & Strick Limited [2002] EWCA Civ 3685** at [26]:

> "Where permission is granted to appeal on the grounds that the judgment does not contain adequate reasons the Appellate Court should first review the judgment, in the context of the material evidence and submissions at the trial, in order to determine whether, when all of these are considered, it is apparent why the judge reached the decision that he did. It is satisfied that the reason is apparent that if there is a valid basis for the judgment the appeal would be dismissed."

29. Further, as was stated in **B v SSHD [2006] EWCA Civ 922** per Latham LJ at [17], [18]:

> "It may be that inadequate reasoning can in some circumstances undermine the validity of a decision. Certainly, if no reasons are given there is a well-known basis upon which the Appellate Court can interfere, but where reasons have been given it seems to me that the essential question that the court has to answer is whether the decision is one to which no Tribunal could sensibly have come.
>
> The reasons that a Tribunal give may well provide a good guide as to whether or not this was a decision to which the Tribunal could properly have come and to that extent, inadequate reasons may be a guide but they are

> only a guide to the ultimate question which, in my judgment, is whether or not the decision is one to which the Tribunal was entitled to reach on the evidence which was before it."

30. In their determination, the Tribunal refer extensively to the relevant case law in which the public interest in the deportation of foreign criminals. They also refer to the wider dimension over and above the need to deter. The Tribunal also directed themselves in accordance with **Kabia (MF: Para 298 – Exceptional Circumstances) [2013] UKUT 00569**.

31. In this case, it is evident from their determination that the Tribunal were fully aware of the fact that it was only in exceptional circumstances that this claimant could succeed. They directed themselves properly as to the relevant case law noting [95] that exceptional cases are numerically rare and that "exceptional" refers to circumstances in which deportation would result in unjustifiably harsh consequences to the individual or their families which deportation would not be proportionate, a circumstance that is likely to be the case only very rarely. They concluded that, on the facts of this case, the consequences would be unjustifiably harsh, and thus deportation would be disproportionate.

Failure to identify properly exceptional circumstances.

32. The Secretary of State submits that the "exceptional circumstances" within paragraph 398 of the Immigration Rules, must be circumstances which are over and above those set out in the Rules at paragraph 399 and 399A and that what the Tribunal had identified as exceptional circumstances were simply those which would have availed the claimant had he come within the terms of paragraph 399 or 399A had he received a sentence of less than four years' duration but did not go beyond that; and, thus, the Tribunal had erred not in the adequacy of their reasons but substantively by not directing themselves to the type of circumstances which are capable of outweighing the public interest in deporting a foreign criminal.

33. The exercise to be undertaken by a Tribunal when considering circumstances not provided for by the Immigration Rules requires an assessment of proportionality. In **SS (Nigeria) v SSHD** [2013] EWCA Civ 550 the Court of Appeal underlined an aspect of the weighing exercise that any Tribunal is required to undertake but to which, in the view of the Court of Appeal, inadequate emphasis had hitherto been given. This was in relation to the fact that the presumption in favour of deportation was a presumption embodied in primary legislation and was not therefore a policy formulated by executive decision. For the Court of Appeal this was of real importance and meant that when the public importance was placed in the proportionality scales it carried substantial weight. Laws LJ [28] stated of previous jurisprudence (from this jurisdiction but also from the

Strasbourg Court): "There is no acknowledgement ... that the weight to be attached in an article 8 case to a State's policy of deporting foreign criminals may be greater where the policy is made, not by the executive government, but by the legislature. But this seems to me to be of very great importance". In paragraph 50 he reiterated that: "... it is the importance attached by Parliament itself that matters".

34. From this the Court of Appeal deduced that the width of the margin of appreciation of the SSHD in criminal deportation cases was a wide one. This was because of the quintessentially political and moral nature of the value judgment embodied in the legislation:

> 52. "In my opinion, however, this is a central element in the adjudication of Article 8 cases where it is proposed to deport a foreign criminal pursuant to s.32 of the 2007 Act. The width of the primary legislator's discretionary area of judgment is in general vouchsafed by high authority: *Brown, Lambert, Poplar,Marcic, Lichniak* and *Eastside Cheese,* cited above. But it is lent added force where, as here, the subject-matter of the legislature's policy lies in the field of moral and political judgment, as to which the first and natural arbiter of the extent to which it represents a "pressing social need" is what I have called the elected arm of government: and especially the primary legislature, whose Acts are the primary democratic voice. What, then, should we make of the weight which the democratic voice has accorded to the policy of deporting foreign criminals?
>
> *(2) THE NATURE OF THE POLICY: MORAL AND POLITICAL*
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> 53. The importance of the moral and political character of the policy shows that the two drivers of the decision-maker's margin of discretion - the policy's nature and its source - operate in tandem. An Act of Parliament is anyway to be specially respected; but all the more so when it declares policy of this kind. In this case, the policy is general and overarching. It is circumscribed only by five carefully drawn exceptions, of which the first is violation of a person's Convention/ Refugee Convention rights. (The others concern minors, EU cases, extradition cases and cases involving persons subject to orders under mental health legislation.) Clearly, Parliament in the 2007 Act has attached very great weight to the policy as a well justified imperative for the protection of the public and to reflect the public's proper condemnation of serious wrongdoers. Sedley LJ was with respect right to state that "[in the case of a 'foreign criminal' the Act places in the proportionality scales a markedly greater weight than in other cases.
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> 54. I would draw particular attention to the provision contained in s.33(7): "section 32(4) applies despite the application of Exception 1...", that is to say, a foreign criminal's deportation remains conducive to the public good notwithstanding his successful reliance on Article 8. I said at paragraph 46 that while the authorities demonstrate that there is no rule of exceptionality for Article 8, they also clearly show that the more pressing the public interest in removal or deportation, the stronger must be the claim under Article 8 if it is to prevail. The

> pressing nature of the public interest here is vividly informed by the fact that by Parliament's express declaration the public interest is injured if the criminal's deportation is not effected. Such a result could in my judgment only be justified by a very strong claim indeed. "

35. The court emphasised, in the light of this consideration, that when applying the test of proportionality a principle of "minimal interference" should be adopted. This meant that whilst fundamental rights could never be treated as token or as a ritual nonetheless the discretionary judgment enjoyed by the primary decision-maker, though variable, meant that the court's role was to keep in balance with that of the elected arms of Government.

36. In paragraph 47 the court drew together various jurisprudential threads and stated:

> "47. It is worth drawing these general considerations together.
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> (1) The principle of minimal interference is the essence of proportionality: it ensures that the ECHR right in question is never treated as a token or a ritual, and thus guarantees its force.
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> (2) In a child's case the right in question (child's best interests) is always a consideration of substantial importance.
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> (3) Article 8 contains no rule of 'exceptionality', but the more pressing the public interest in removal or deportation, the stronger must be the claim under Article 8 if it is to prevail.
>
> (4) Upon the question whether the principle of minimal interference is fulfilled the primary decision-maker enjoys a variable margin of discretion, at its broadest where the decision applies general policy created by primary legislation.

37. At paragraph 54 Laws LJ stated this about the strength of the Article 8 evidence needed to counter the policy objection:

> "I would draw particular attention to the provision contained in s.33(7): 'Section 32(4) applies despite the application of Exception 1…', that is to say, a foreign criminal's deportation remains conducive to the public good notwithstanding his successful reliance on Article 8. I said at paragraph 46 that while the authorities demonstrate that there is no rule of exceptionality for Article 8, they also clearly show that the more pressing the public interest in removal or deportation, the stronger must be the claim under Article 8 if it is to prevail. The pressing nature of the public interest here is vividly informed by the fact that by Parliament's express declaration the public interest is injured if the criminal's deportation is not effected. Such a result could in my judgment only be justified by a very strong claim indeed."

38. It is worthwhile reciting the summary of the facts in the case of **SS (Nigeria)** set out by the Court [56] and [57]:

> 56. This Appellant was convicted of serious offences of peddling Class A drugs. He had no vestige of a right to be or remain in the United Kingdom, so that immigration policy as well as his criminality favours his deportation. He worked illegally. The UT found (paragraph 57) that 'has the potential to present a real risk to members of the public and to society in general due to the effect of drugs'.
>
> 57. As for the interest of the Appellant's son (now aged 5), this is not a case where the Appellant's deportation will involve the child's having to move to Nigeria. He will continue to be looked after by his primary carer, his mother, as he was while the Appellant was in prison. The Secretary of State had made enquiries of the child's mother and also Walsall Children's Services. The Appellant appears to have been selling drugs on the streets whilst he had a very young son at home."

39. In **MF (Nigeria)** [2013] EWCA Civ 1192 (decided shortly after **SS (Nigeria)**) the Court of Appeal also addressed the strength of the public interest in deporting foreign criminals. In particular the court focused upon the strength of the "other factors" which would need to exist before a justification for deportation would be set aside. In paragraph 40 of their judgment the Court of Appeal stated:

> "Does it follow that the new rules have effected no change other than to spell out the circumstances in which a foreign criminal's claim that deportation would breach his Article 8 rights will succeed? At this point, it is necessary to focus on the statement that it will only be 'in exceptional circumstances that the public interest in deportation will be outweighed by other factors'. Ms Giovannetti submits that the reference to exceptional circumstances serves the purpose of emphasising that, in the balancing exercise, great weight should be given to the public interest in deporting foreign criminals who do not satisfy paras 398 and 399 or 399A. It is only exceptionally that such foreign criminals will succeed in showing that their rights under Article 8(1) trump the public interest in their deportation."

40. In paragraph 42 the Court stated that in cases of criminal deportation: "...the scales are heavily weighted in favour of deportation and something very compelling (which will be exceptional) is required to outweigh the public interest in removal". In paragraph 43 the Court stated that the general rule was that in the case of foreign prisoners to whom paragraphs 399 and 399A did not apply "very compelling reasons" would be required to outweigh the public interest in deportation

41. In the circumstances, the Tribunal did not err by referring to **Razgar** [112]. It is evident from the discussion above that if a Tribunal has to consider whether there are exceptional circumstances, there is of necessity still to be a balancing exercise albeit one in which the scales in favour of deportation start heavily weighted in the Secretary of State's favour all the more so where, as here, a significant sentence in excess of four years has been passed. It is not properly arguable that the Tribunal did not take that into account, given that they directed themselves properly as to the relevant case law.

42. It is evident reading the determination as a whole that there is no one factor which kept the balance in the claimant's favour and it is worth noting that the Secretary of State herself said in the refusal letter that the claimant's return was likely to be challenging (page 6), an assessment was also predicated on the assumption that the claimant had spent several years in Zambia, had contacts to turn to there, and had established no family life here. The Secretary of State did not, however, challenge the evidence that the claimant had never lived in Zambia, and conceded before the First-tier Tribunal that he had established a family life here, contrary to her case as set out in the refusal letter.

43. It was the claimant's evidence and that of his mother as set out in their witness statements and which was not challenged below that he would have no job, no accommodation, and no money on deportation to Zambia. It is not properly established that the Secretary of State submitted below that he could rely on funds submitted by relatives nor is there evidence supporting such a submission. More importantly, it is not established that the claimant's evidence on this was challenged before the First-tier Tribunal.

44. It is evident that the Tribunal found that the circumstances were sufficient on the unusual facts of this case to make the Claimant's deportation disproportionate. It cannot properly be argued that they gave insufficient consideration to the weight to be attached to deportation, referring as they do to the relevant case law which establishes the deterrent effect as well as the effect of preventing those affected from offending again after release and it is evident [121] that they were aware and took into account the views of Parliament.

45. In evaluating this situation the Tribunal were entitled to consider the decision in **Maslov**, indeed this was a matter conceded by Counsel for the Secretary of State in **MF (Nigeria)**. Further, they identified factors which, when taken cumulatively, they considered meant that the consequences of deportation to a country where he has never lived and with which he has the most tenuous of connections, would be unjustifiably harsh, a conclusion open to them, the claimant's serious criminality and the public interest in removing him notwithstanding.

Conclusion

46. Returning to the decisions in **English v Emery Reinbold** and **B v SSHD**, and to the passages cited above, it is, on the face of the determination why the First-tier Tribunal reached the conclusion that they did. Further, it was one which, on the material before them, they were entitled to reach.

47. For these reasons, the Secretary of State has not shown that the determination of the First-tier Tribunal involved the making of an error of law, and, while it may not have been a decision to which the Upper Tribunal might have come, it must therefore be upheld.

48. That said, I am not satisfied that it is in the public interest that an anonymity order remain in favour of the claimant. It is only in exceptional circumstances that the strong public interest in public justice can be outweighed, and in this case, they are not insofar as the claimant's identity is concerned. That said, the determination of the First-tier Tribunal contains material which must remain confidential given its nature and the risks to others. I therefore maintain the anonymity order in respect of that determination.

SUMMARY OF CONCLUSIONS

1 The decision of the First-tier Tribunal did not involve the making of an error of law and I uphold it.
2 The anonymity order put in place by the First-tier Tribunal remains so far as it relates to their determination, but does not apply to this determination.

Signed Date: 1 July 2014

Upper Tribunal Judge Rintoul