Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: DA/01373/2013

THE IMMIGRATION ACTS

Heard at Birmingham	**Determination Promulgated**
on 6th November 2014	**on 14th November 2014**

Before

UPPER TRIBUNAL JUDGE HANSON

Between

MAXINE SATCHELL
(Anonymity order not made)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellant: Mr A Eaton instructed by Virgo Consultancy Services Ltd.
For the Respondent: Mr Smart – Senior Home Office Presenting Officer

DETERMINATION AND REASONS

1. This is an appeal against a determination of a panel of the First-tier Tribunal, composed of First-tier Tribunal Judge Parkes and Dr T Okitikpi, who in a determination promulgated on 9th July 2014, dismissed the Appellant's appeal against the order for her deportation from the United Kingdom.

2. The deportation order, dated 28 June 2012, was made as a result of the Appellant's conviction on a guilty plea on 24th February 2012 at Birmingham Crown Court and her subsequent sentence to a period of 30 months imprisonment in total for a number of offences by HHJ Webb, who notes in his sentencing remarks that he was dealing with seven offences in total. The first five counts on the indictment involving obtaining and using a false identity document, in particular a passport, which entitled the Appellant to enter the United Kingdom in 1997 and subsequently to obtain a National Insurance number and another passport. Using this false identity the Appellant also registered the births of two of her children as British nationals which she knew to be false, in a false identity, which are stated to be serious offences. The Appellant also used her false identity to obtain from the British taxpayer just under £60,000 in benefits to which she was not entitled over a substantial number of years.

3. The determination is challenged on a number of grounds although Ground two, alleging perversity in a specific finding, was withdrawn by Mr Eaton at the outset of the hearing on the basis it was materially incorrect and drafted on a misunderstanding of the findings of the Panel.

4. Ground 1 asserts the Panel failed to consider the evidence of the likelihood of the Appellants reoffending or evidence of her rehabilitation whist in prison which was combined with a submission the Panel failed to consider the evidence made available to them generally.

5. In relation to this latter assertion I find the same has no arguable merit. At paragraph 10 of the determination the Panel state that the Tribunal papers include the Home Office bundle, the Appellant's bundle, an additional bundle, together with a number of other documents specified in the determination, including the doctor's letter of 20th March 2014, a report from Christine Brown an independent social worker, and others. The Panel also confirm they have considered the papers submitted and the evidence and submissions made at the hearing although they have not summarised the nature of the evidence but refer to them when relevant in their findings.

6. It is accepted there are occasions when some judges of the First-tier Tribunal have made statements they have considered all the available evidence which is not supported when their determinations are read. This is not such an application. It is clear from reading the determination that the Panel not only state they considered the evidence but actually did so, as the nature of the analysis of that evidence and the findings of fact that followed thereafter show that the key relevant issues were clearly identified and adequately considered by the Panel. As the Panel considered the material before them, both oral and documentary, with the required degree of anxious scrutiny the weight they gave to the evidence is a matter for them provided that adequate

reasons for the findings made were given. I find no arguable merit in the assertion the Panel failed to consider the evidence properly or adequately.

7. In relation to the specific issue raised in Ground 1, relating to whether the Panel considered the evidence regarding rehabilitation, and the assessment the Appellant presented a low risk of reoffending found within the OASYS report, this document appears at page 75 of the Appellants additional bundle which is specifically referred to in paragraph 10 of the determination as having been considered by the Panel. Whether the Appellant has made progress with regard to the risk of reoffending is one factor but it is not determinative. This is an appeal against an automatic deportation order in respect of which Parliament has enacted legislation to the effect that the removal of the Appellant from the United Kingdom is conducive to the public good. Indeed the relevant provisions of the UK Borders Act show that in such circumstances the Appellant must be deported. The Appellant opposes this by reference to the exception in the Act based upon Article 8 ECHR family or private life although the Court of Appeal have repeated many times that in an automatic deportation case the weight to be given to the Respondent's position must properly recognise the statutory provisions and the will of Parliament. As of 28 July 2014 the Immigration Act 2014 also brings into force mandatory statutory requirements relating to the weight to be attached to the public interest under Article 8, which may override existing case law, but which are not applicable unless material legal error is found and the decision is to be re-made.

8. Risk of offending relates to the question whether the Appellant poses an ongoing risks to those within the United Kingdom by way of further offending which is only one of the relevant elements to be considered. In Masih (deportation/public interest/basic principles) Pakistan [2012] UKUT 00046(IAC) the Tribunal said that so long as account is taken of the following basic principles, there is at present no need for further citation of authority on the public interest side of the balancing exercise. The following basic principles can be derived from the present case law concerning the issue of the public interest in relation to the deportation of foreign criminals: (i) In a case of automatic deportation, full account must be taken of the strong public interest in removing foreign citizens convicted of serious offences, which lies not only in the prevention of further offences on the part of the individual concerned, but in deterring others from committing them in the first place. (ii) Deportation of foreign criminals expresses society's condemnation of serious criminal activity and promotes public confidence in the treatment of foreign citizens who have committed them. (iii) The starting-point for assessing the facts of the offence of which an individual has been committed, and their effect on others, and on the public as a whole, must be the view taken by the sentencing judge. (iv) The appeal has to be dealt with on the basis of the situation at the date of the hearing. (v) Full account should also be taken of any developments since sentence was

passed, for example the result of any disciplinary adjudications in prison or detention, or any OASys or licence report.

9. In Gurung v SSHD [2012] EWCA Civ 62 the Court of Appeal, when overturning a Presidential Upper Tier panel, said that the absence of a risk of reoffending, though plainly important, is not the "ultimate aim" of the deportation regime. "We are troubled, too, by the proposition in paragraph 40(iii) (cited above) that the nature and seriousness of the offence do not by themselves justify interference with family and private life without prospective regard to the public interest. Although Mr Bourne does not seek to characterise this as an error of law, he is right, in our view, to suggest that it misplaces the emphasis. The Borders Act by s.32 decides that the nature and seriousness of the offence, as measured by the sentence, do by themselves justify deportation unless an exception recognised by the Act itself applies."

10. The offences for which the Appellant was convicted in the United Kingdom, ignoring the earlier sentence of nine years for drug trafficking imposed upon her in Germany, of falsely claiming to be a British national, using a false identity for personal gain including a substantial period of benefit fraud staged over a number of years, means there is a very strong deterrent element in the Appellant's deportation to set an example to those otherwise not entitled to remain in the United Kingdom that such conduct will not be tolerated and will result in serious consequences for offenders. As such no material error is proved.

11. Ground 3 asserts the Panel failed to consider the evidence of the Independent Social Worker, Christine Brown, but such a claim is without arguable merit as a reading of the determination shows. This report was considered but the Panel found it not to be as useful as it might have been. They clearly identify Ms Brown's view in paragraphs 33 to 39. This Ground is, as the first line of paragraph 6 of the Grounds clearly indicates, a challenge to the weight given by the Panel to Christine Brown's report. Although the Grounds also state she is an expert who has provided cogent testimony in cases such as EM and others (returnees) Zimbabwe [2011] UKUT 98 and AM v Secretary of State for the Home Department [2012] EWCA Civ 1634, as if the same should indicate greater weight should have been given to her report, it is also noted by the Upper Tribunal that the Court of Appeal were more critical of Ms Brown in their recent judgement in ZZ(Tanzania) v SSHD [2014] EWCA Civ 1404, at paragraph 30, where Lord Justice Bean in giving the lead judgement stated "For my part I agree with the submission of Ms Catherine Rowlands for the respondent that the report of Ms Brown, in so far as it goes to rehabilitation, is strictly speaking not expert evidence, in the sense of evidence of opinion on issues not within the general knowledge of the UT, but more in the nature of a further character reference."

12. Whether the weight attached to Christine Brown's report is rational and within the range of findings the Panel were entitled to make on that evidence will depend upon whether their findings are adequately reasons – see SS (Sri Lanka) v SSHD [2012] EWCA Civ 155.

13. Ground 4 suggests a finding by the Panel that the Appellant had deliberately become pregnant in order to frustrate attempts to deport her is perverse. It is stated she already has three children in the United Kingdom two of whom live with her, one of which was a British citizen with an acute medical condition. The pregnancy was not considered in the sentencing remarks or the pre-sentence report. Such a finding is said to be speculative and have no basis on the evidence.

14. The Panel do make such a finding and refer to this matter at paragraphs 24 to 26 of the determination. The Panel note that both the Appellant and her partner's evidence is that she maintained her deception with regard to a virtual identity during their relationship until she was arrested on 13th January 2012. The Panel concluded that the timing of the pregnancy was of interest because her last child D was born in September 2012, 41 1/2 weeks after her arrest. The Panel concluded that delivery on this timescale strongly suggested that the Appellant became pregnant between the first and second arrest which was stated to be significant as it suggested, consistent with the Appellant's deception with regards to her identity and benefit entitlement, that was she was seeking to add to her family at a point when she would have been aware that another prison sentence was a possibility, that her British passport was likely to be removed with the consequential loss of status, and all that implied. The Panel specifically find, in paragraph 26, that the pregnancy in 2012 was an effort to increase her family life with a child who would be a British citizen and to increase the obstacles to her being ejected from the United Kingdom in due course. It was also found to be possible that she hoped it would render it more difficult to be sent to prison. Such a finding has not been shown to be irrational or a finding not available to the Panel on evidence they were able to consider. In any event such a finding has not been shown to be material to the decision to dismiss the appeal.

15. Ground 5 asserts the Panel failed to properly consider the evidence regarding the Appellant's daughter's ongoing medical treatment. The specific wording is of interest as it is not asserted that the Panel did not consider the evidence, but rather claims they failed to "properly" consider the evidence. The grounds allege error in the Panel noting two of the Appellant's children suffering medical conditions whereas only her daughter OW is receiving ongoing medical treatment. This child had a congenital heart condition although it is alleged the Panel failed to consider that or that she had also been diagnosed with a rare skin condition known as Kawasaki disease. This assertion is also without arguable merit.

16. At paragraph 30 of the determination the Panel note that two of the Appellant's children have medical conditions. There is specific reference to Kawasaki disease in the evidence provided in paragraph 10 of the determination and this was clearly an issue of which the Panel were fully aware. The Panel note, however, that the Appellant had not enquired whether treatment would be available to meet the medical needs of the children in Jamaica to where the Appellant had travelled with the children in 2009. There was no evidence the children were so seriously ill that they could not travel and the letter dated 20th March 2014 suggests that OW's congenital heart defect is minor and not requiring further medical assessment for a period of 2 1/2 years.

17. It was accepted before the Upper Tribunal that no enquiries have been made regarding the availability of suitable medical treatment in Jamaica. As the Respondents assertion that such treatment is available has not been shown to be false, it has not been shown that Article 3 or 8 are breached on the basis of the medical evidence for any member of this family unit.

18. Ground 6 asserts the Panel reached a perverse conclusion regarding the likely impact upon the Appellant's youngest son M; alleging the Secretary of State's own representative submitted it would be unreasonable for the Appellant to be separated from her son who was at that time not yet two years of age. It is stated the Panel concluded perversely that it would be reasonable for him to be separated from his mother for the purposes of their consideration of paragraph 399 of the Immigration Rules.

19. This ground does not accurately reflect the submission made which was not a submission it will be unreasonable for the Appellant to be separated from her son. This is of course the child born as a result of the pregnancy which led to the adverse finding regarding the Appellant's motives referred to in the ground above. At paragraph 47 of the determination the Panel record that the Presenting Officer was reluctant to suggest that the youngest child could remain in the United Kingdom without the Appellant, and no more. There is no concession by the Presenting Officer that such separation would be unreasonable and even if that was made a submission by an advocate is not binding upon the Panel who are required to evaluate the evidence for themselves.

20. There are four children born to the Appellant the eldest of whom is now an adult. When the Appellant went to Germany, where she was arrested and sentenced for importing drugs, that child was placed in the care of a named individual and thereafter into the care of the social services. This daughter is not part of the Appellant's household and was considered and dealt with in an appropriate manner within the determination. The Appellant's eldest son D is stated to have seen his father deported and to have been separated from

the Appellant during her imprisonment in the United Kingdom after which he lived with the Appellant and her partner EW and one of his daughters from his previous marriage. The Panel in fact noted that of the children of the Appellant and EW only the youngest has lived with the Appellant continuously since birth.

21. In paragraph 43 of the determination the Panel make the following statement:

> 43. The issue for us, whether the best interests of the children outweigh the public interest in deportation, raise different issues for each of the children. It also has to be remembered that if the Appellant is deported the family will have to make a decision about what they do about where to live and how to organise themselves. These are decisions that all families make and it is not the first time that they would have had to address these issues arising out of the removal of the Appellant from the family.

22. The Panel thereafter note that the eldest son D was born in the United Kingdom but is a Jamaican national who is approaching a natural break in his education. He has never lived in the United Kingdom lawfully but is here as a result of his mother's deception. Whilst accepting that education and healthcare available in Jamaica would not be to the same standard as that in the United Kingdom the Panel find that the evidence shows that it is adequate. The Panel accordingly find that it would be reasonable to expect D to travel to the country of his nationality with his mother if she were to be deported. This has not been shown to be an irrational conclusion on the basis of the available evidence which did not include sufficient evidence of an adverse impact on any children of their or their mother's removal. Accordingly there is insufficient evidence to indicate material error in their findings on this point.

23. Of the three children the Appellant has given birth to during the course of her partnership with EW, the Panel accept she has family life with those children. The situation of the children M and OW is assessed at paragraphs 33 to 43 of the determination. It was found they are entitled to dual nationality and could live in Jamaica although if it was decided they should remain in the United Kingdom EW could look after them as he had in the past. This has not been shown to be an unreasonable or irrational finding based upon the evidence available to the Panel.

24. In relation to the youngest child, M, the Panel note the child was approaching two years of age and was at an age where the appellant is not required, in a physical sense, to look after him. The child is a British national entitled to British citizenship as a result of the fact his father EW is a British national. The Panel find that if the Appellant was deported the child could remain in the UK where there are people, including EW, who could undertake his care.

25. The Panel note in assessing the best interests of the children that the family may be required to make a choice although they have been faced with similar difficulties and decisions in the past and made arrangements that suited them.

26. The Panel in paragraph 50 refer to the fact the Appellant's case is covered by paragraphs 398 (b) and 399 of the Immigration Rules and find that on the evidence it is reasonable to expect the Appellant's oldest son to live in Jamaica or that EW could be regarded as a family member able to care for him. The Panel also note that whilst the Appellant has family life with others in the United Kingdom no insurmountable obstacles, as this term is legally understood, had been shown to prevent that continuing abroad.

27. In paragraph 52 the Panel summarised their conclusions as follows:

> 52. Obviously it is not a question of punishing the children, it is not therefore that their mother has acted in such a dishonest, persistent, and calculating manner and it is not a question of rewarding the Appellant for having children who are settled in the UK. However, given the extent and duration of the Appellant's actions and her convictions we are satisfied that the public interest in her deportation is not outweighed by the children's best interests. In other words the deportation of the appellant is a proportionate step. How the family chose to arrange their life is a matter for them, we do not pretend that the decisions or the consequences will be easy but they are a proportionate result of the situation the Appellant has created.

28. As stated above, an important element in this appeal to the Upper Tribunal is whether the Panel gave adequate reasons for their findings. Having considered the available material, having read the determination as a whole, and having considered submissions made, I find that the Panel did give adequate reasons for their findings and accordingly that the weight they gave to the evidence was a matter for them.

29. In relation to the youngest child, the only one of the children who is a British national, the question the Panel had to answer was "would the child have to leave the United Kingdom in the event of the deportation of the mother and perhaps, if so, was that outcome disproportionate when weighed in the scales against the seriousness of the mother's offending and the public interest in deportation?" It was not their task to make further enquiries into the welfare of the child either outside the United Kingdom or indeed the standard of care he would enjoy within the United Kingdom. The Panel answered this question and I find they made no legal error material to the decision to dismiss the appeal which shall therefore stand.

Decision

30. **There is no material error of law in the First-tier Tribunal Judge's decision. The determination shall stand.**

Anonymity.

31. The First-tier Tribunal made a limited order pursuant to rule 45(4)(i) of the Asylum and Immigration Tribunal (Procedure) Rules 2005 in relation to he identity of EW and the Appellant's children. I continue that order pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008) in similar terms.

Signed…….
Upper Tribunal Judge Hanson

Dated the 7th November 2014