Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: DA/01376/2013

THE IMMIGRATION ACTS

Heard at Manchester
On 7th February, 2014

Determination Promulgated
On 28th February 2014

Before

Upper Tribunal Judge Chalkley

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

JAMES FELIPE CHRISTIANSEN

Respondent

Representation:

For the Respondent: Mr G Harrison, Home Office Presenting Officer
For the Respondent: Mr McIndoe, Solicitor, Latitude Law Limited

DETERMINATION AND REASONS

1. The appellant is the Secretary of State for the Home Department to whom I shall refer in this determination as the "claimant".

2. The respondent is a citizen of the United States of America, who was born on 10th November, 1978.

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Immigration History

3. The respondent was born in Nicaragua and adopted by Mr and Mrs Christiansen. On 5th March, 1980, Mr and Mrs Christiansen took the respondent to the United States of America, where he was naturalised and became a United States citizen in the state of Wisconsin. His adoptive parents then divorced and his mother was granted custody of the respondent. The respondent's mother then decided to return to the United Kingdom, bringing the respondent with her and the respondent's United States passport stamped with indefinite leave to enter the United Kingdom on 3rd November, 1983, when he entered.

4. The respondent has remained in the United Kingdom ever since.

5. On 13th April, 2011, the respondent was committed for trial to Caernarfon Crown Court for the supply of a controlled drug Class A heroin and for possessing with intent to supply a controlled drug, Class B cannabis resin. On 15th April, 2011, he was convicted on one count of offering to supply a Class B controlled drug, namely cannabis, two counts of possession with intent to supply a controlled drug, Class B cannabis, and two counts of possessing a Class C controlled drug with intent to supply.

6. On 11th October, 2011, the respondent was convicted at Mold Crown Court of possession with intent to supply a controlled drug Class A, namely heroin. On 12th October, 2011, the respondent was sentenced at Mold Crown Court for the convictions on 15th April and 11th October, 2011, and was sentenced to a total of four years' imprisonment.

7. On 4th April, 2012, the respondent was notified of his liability to automatic deportation. A deportation order was made on 20th June, 2013 which was subsequently served with a letter giving reasons for deportation dated 24th June, 2013.

8. The respondent appealed and his appeal was heard by a panel of the First-tier Tribunal (First-tier Tribunal Judge De Haney sitting with Dr de Barros) who, in a determination promulgated on 7th November, 2013 allowed the respondent's appeal.

9. The respondent challenged the appeal and leave was granted on the basis that it was arguable that the panel erred in failing to have adequate consideration to the risk of re-offending, the need for deterrence and the public interest. In granting permission, First-tier Tribunal Judge Astle said that all grounds may be argued.

10. The first challenge suggested that the panel allowed the appeal on asylum grounds, but there was no asylum aspect of the respondent's claim. Mr Harrison agreed with me and it is perfectly clear from the determination that the respondent had a deportation appeal on the basis of his Article 8 human rights claim and, where the panel referred at the end of the determination to "the asylum appeal is allowed", that was clearly a typing error. He accepted that the Tribunal did not refer to *asylum* anywhere in the body of the determination and all the determination was concerned solely with the respondent's Article 8 rights and his deportation appeal.

11. It was then suggested that the Tribunal's findings were flawed and should be set aside. Mr Harrison agreed that the typing error at the end of the determination did not justify my setting aside the panel's findings.

12. The grounds went on to suggest that the panel erred by finding that the respondent had no ties in the United States and point out that the respondent's father lives in the United States. Mr

Harrison suggested that it was really a question of degree. He accepted that the respondent had not seen his father for some fifteen years and that there was no evidence that the respondent had any friends or other relatives in the United States or that he had ever been educated there.

13. Mr Harrison told me he did not rely on the second challenge. I asked Mr Harrison whether the third challenge was not in fact a simple disagreement with the judge's decision. He told me that he had nothing further that he felt he could usefully add.

14. Having carefully read the determination and the papers in this appeal before the hearing of the appeal I advised Mr McIndoe that I did not need to hear from him.

15. I am satisfied, having carefully read the determination in the light of the Secretary of State for the Home Department's grounds of appeal, that the First-tier Tribunal **did not make any error on a point of law**.

16. At paragraph 4 of the determination the Tribunal set out the requirements of Section 32(v) of the UK Borders Act 2007 and at paragraph 5, it set out the terms of Article 8. The panel reminded itself of the words of Lord Bingham at paragraph 17 of R *(Razgar) v Secretary of State for the Home Department* [2004] 2 AC 368 and noted that it was agreed between the parties that the issue for the Tribunal was the question of proportionality. The panel then properly considered paragraph 339A of Statement of Changes in Immigration Rules, HC 395, as amended ("the Immigration Rules"). It noted that the claimant accepted that the respondent spent over twenty years in the United States, but claimed that the respondent did have ties to America. The Tribunal reviewed all the evidence, including documentary evidence submitted, and noted submissions made to it. It found the evidence of the respondent and his mother both,

> "credible and convincing."

The Tribunal noted statements from the respondent's father and Ms Toole and from the respondent's uncle. In relation to the respondent's convictions they said, at paragraph 31:-

> "The fact remains however that the respondent has been found guilty of a most serious offence. That is an offence which the respondent quite rightly regards as abhorrent to the public as well as putting the public at risk. Further the feature which the sentencing judge took into account was that this happened whilst the respondent was on bail. We have therefore taken full account of the crimes which the respondent has committed and the intention of the respondent both to protect the public and to send out a clear message to anyone contemplating criminality as a foreign national that they will be deported."

17. The Tribunal noted that the respondent had lived in the United Kingdom for some 29 years and that he had last visited his father when he was between 10 and 12 years of age. He apparently keeps in touch with his father, but has not seen him for some fifteen years. I believe that on the evidence before them they were entitled to conclude that the respondent had no social or cultural ties with the United States. They noted at paragraph 36:-

> "In regarding 'family ties' we think that the respondent intended something more than an Article 8 reference to family life. Had they intended family life we believe that they would have stated so in the Rules. Therefore the fact that the [respondent] has a father in the United States does not necessarily mean that there needs to be family life with that father in the United States. We note however that the [respondent] has not seen his father for some fifteen years and when he did last see him that was in the United States but was in St Lucia. This may not be important in establishing whether or not he had family ties but it reemphasises our decision that he has no social or cultural ties in America, given that even when he last saw his father that was not in America."

18. That may not have been the most elegant way of expressing the Tribunal's view. The Tribunal considered carefully the respondent's position with regard to social, cultural or family ties with the United States and whilst it may be noted that the respondent's father lived in the United States it also noted that they were not particularly close and had not seen each other in some fifteen years. The respondent himself had been in the United Kingdom since the age of 5 and had never returned to the United States. He had effectively severed all connection with the United States save for the fact that his father lived there. The respondent and his father are not close and have clearly not been close for many years. The respondent was brought up by his mother, latterly in the United Kingdom and I believe that the Tribunal were entitled to find as they did. The Tribunal went to add:-

> *"*We note that whilst initially the [respondent's] father came over to see him in the United Kingdom this seems to have ceased when the [respondent] in effect became an adult. They now appear to have contact on a Christmas, birthday cards and odd telephone conversations basis.*"*

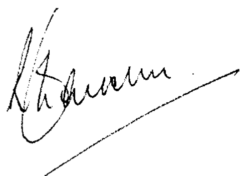
19. The Tribunal noted that the respondent had provided evidence of cultural and social ties to the United Kingdom and they did not believe that the respondent's building skills and knowledge would necessarily easily transfer to the United States. I assume that this is because building regulation control, building materials, and building design and construction is not necessarily the same in America as it is in the United Kingdom.

20. At paragraph 40 of the determination, the Tribunal referred to *Ogundimu (Article 8 – new Rules) Nigeria* [2013] UKUT 60 and concluded that the respondent did not have family ties in the United States.

21. Under the heading at the end of the determination "Decision" reference is made to "the asylum appeal is allowed" but as Mr Harrison pointed out, it is clear from the body of the determination that the Tribunal were dealing with the respondent's deportation appeal and Article 8 human rights and this reference is clearly taken in error.

23. I do not believe there is any merit in the third challenge which suggests that the panel failed to give adequate consideration to the respondent's criminality, risk of offending, and public interest in deportation. The panel demonstrated that they have considered the judge's sentencing remarks and they did note the very serious nature of the offences. However, they were faced with a respondent who has spent his entire adult life in the United Kingdom.

24. I have concluded that the Tribunal did not err in its decision, which I uphold. The respondent's appeal is allowed.



Upper Tribunal Judge Chalkley