Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: DA/01901/2013

THE IMMIGRATION ACTS

Heard at Field House	**Determination Promulgated**
On 3rd June 2014	**On 12th June 2014**

Before

UPPER TRIBUNAL JUDGE REEDS

Between

ARTON HALILI

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr Alexander, Counsel instructed on behalf of BG Lawyers LLP
For the Respondent: Mr T Melvin, Senior Presenting Officer

DETERMINATION AND REASONS

1. The Appellant is a national of Kosovo born on 3rd December 1982. This is an appeal against a determination of the panel of a First-tier Tribunal composed of First-tier Tribunal Judge Braybrook and Mr J H Eames (hereinafter referred to as "the panel") who in a determination promulgated on 6th March 2014 dismissed the Appellant's appeal against the decision of the Respondent that Section 32(5) of the UK Borders Act 2007 applied to the Appellant.

The background to the appeal:

2. The background factors can be summarised as follows. The Appellant arrived in the United Kingdom in 1998 along with his parents and siblings. His father claimed asylum with the Appellant as a dependant. This was refused but ELR was granted to the family unit until the year 2000 and indefinite leave to remain was subsequently granted on 17th June 2005.

3. On 4th November 2005, the Appellant applied for a travel document to Kosovo to attend the funeral of his grandparent.

4. On 19th April 2012 the Appellant was convicted at Isleworth Crown Court of one offence of possession of a firearm with intent contrary to Section 16 of the Firearms Act 1968 having entered a guilty plea to that offence. On 17th July 2012 he was sentenced at Isleworth Crown Court by Her Honour Molyneux to a sentence of two years' imprisonment. The judge's sentencing remarks were set out in the Respondent's bundle and recited at paragraph [3] of the panel's determination. The judge stated:-

> "You have pleaded guilty to carrying an imitation firearm with the intention of causing a person to believe that violence would be used. On 1st February this year you went to an address in Southall. There was an argument. You took out an imitation firearm, an imitation gun, which looked to those people as if it was a real gun and you threatened them: 'come any closer and I will shoot.' You have pleaded guilty on a basis of plea and you have accepted that you wanted them to believe that violence would be used. There was a fight, which followed; in the course of that fight you yourself received injury. In passing sentence upon you the court takes account of and gives you credit for the following matters. In the first place and perhaps, of the greatest importance, you are a young man 29 years of age and you are previously of good character. This is the first time you have been convicted of a criminal offence. Not only is it the first time you have been convicted of a criminal offence, but I have read letters from people who know you well and who speak very highly of you. I know that you have suffered difficulties in your own life and this offence is very much out of character for you. You were doing your best to earn a living and to lead a good and useful life as part of the community. Secondly you receive a discount from the sentence because you have pleaded guilty to the offence. Today was to have been the day of your trial; however you receive a greater discount than you would ordinarily be the case, having entered a plea today, on the basis that it is only very recently that the status of this firearm was confirmed by expert evidence. It is also right to say that you have pleaded guilty even though you know of the great difficulties which the crown have experienced in getting their witnesses to court and you know that they may well not have been prepared to go ahead and give evidence. You have expressed remorse for what you have done. The offence to which you have pleaded guilty is so serious that only a custodial sentence is appropriate. I have reviewed the authorities of cases of this kind and you have heard me discussing those authorities with your Counsel. Of course, each case has to be decided on its own facts. There is what is known as a guideline case, which is called **R v Avis**, which requires courts to ask and answer the following four questions. Firstly, what type of firearm are we talking about? In your case it is an imitation firearm, albeit it looked like a gun to people who saw it. What use did you make of it? Well, you took it with you to that address in case there was going to be an argument.

That, as your Counsel said, was the wrong choice for you to have made. You did use the firearm to threaten, albeit, you used it to stop what you thought was going to be an attack upon you. There is an extent to which, therefore you used it defensively rather than aggressively and, of course as I have already said you are a man of previously good character. I have taken all those matters into account and your sentence will be one of two years in custody.."

5. The Appellant was duly informed of his liability for automatic deportation and was served with a liability to automatic deportation questionnaire which was returned on 15th November 2012 stating that he had a fear of return to Kosovo. The Appellant was therefore interviewed for an asylum claim on 15th May 2012, however, the Appellant informed the Immigration Officer that he did not wish to claim asylum.

6. On 22nd August 2013, a deportation order was made against him.

7. The basis of the appeal against the deportation order is that, the Appellant claims that the deportation will breach his right to family life in the United Kingdom relying upon his relationship with his family members and a partner, a British citizen.

The findings of the panel:

8. Having considered the evidence and in particular the oral evidence of the Appellant, his partner Miss Zavareh and the evidence of his cousin's wife Mishel Hathiram, the panel set out their findings at paragraphs [8-21] of the determination.

9. The findings of the panel can be summarised as follows:-

(1) It was conceded that the Appellant is subject to automatic deportation and that paragraph 398(b) applied to the Appellant and that his deportation was conducive to the public good. The panel considered paragraphs 399 and 399A of the Rules which were said not to apply to the Appellant [9].

(2) In respect of the nature and seriousness of the offence, the panel took into account the mitigating factors in the sentencing remarks, observing that this was a first offence, the guilty plea and the remorse shown. However they noted that the offence was not an action taken on the spur of the moment but the result of the Appellant obtaining and travelling in a premeditated way to a meeting in Southall with an imitation weapon. They also noted that despite the mitigation, the offence was serious enough to necessitate a two year sentence although Counsel had submitted that the maximum sentence for the index offence was ten years and thus the panel accepted that in this context the sentence was at the lower end of the scale.

(3) They considered the likelihood of the Appellant re-offending at [11] taking into account the OAYSys Report at [4] and at [12]. He was assessed as a low risk of offending but a medium risk of harm to the public and the panel found that the assessment continued at the same level in the most recent report from the probation officer (which was dated 17th February 2014). The panel also took

into account at [12] that the motive for his crime recorded in the OASys was that he went to confront people supplying him with cannabis in Southall but there was no reference to his use of cannabis in the most recent and final report from his probation officer. The panel had regard at [12] that during his period on licence he had been fully compliant with reporting instructions, and had engaged well to address his offending behaviour. There had been no breach of any licence conditions. However in respect of risk of re-offending, at [16] they concluded on the evidence that there was some risk of re-offending based on the OASys Report at [4], [11] and [12]. They took into account at [13] that the documents provided demonstrated that the Appellant's drug taking had been a significant factor in his life and had led to the index offence but there had been no reference at all to this in his witness statement or his oral evidence as to his present situation in this respect nor had he taken any courses relating to drug taking whilst in custody. At [14] the panel considered the circumstances of the Appellant, that he had lived with his parents and whilst they were at court they did not give evidence but had supported him at trial but there was nothing to show that they had any real knowledge of the Appellant's day-to-day lifestyle or influence on him and the panel at [16] whilst accepting that he had support from family members that there was little evidence as to the extent they would be able to assist if the pressures which had prompted his current offence resurfaced or if he was tempted to renew links with his social circle. Based on those matters, the panel found that there was some risk of re-offending [at 16].

(4) The panel took into his relationship with his immediate family noting that there was no specific evidence from any family member except Miss Hathiram (his cousin's wife). The panel found on the evidence that whilst they accepted there were emotional bonds, they were adult relationships and there was no element of particular dependency.

(5) At [18] the panel took into account the relationship with Miss Zavareh. They observed there had been no reference to the relationship in the Appellant's response to the Respondent in September 2012 and no mention of the relationship in the Grounds of Appeal. They found that the relationship developed only after he had been released from prison in 2013 and the duration of the relationship had been almost a year. They did not live together nor had they ever cohabited she now living in Cambridge at her parents' home and thus they did not meet as frequently but meet once per week. The panel found that whilst it was a genuine relationship it was of limited duration and there were difficulties such as the need to find employment and housing in the same area. They took into account that the relationship began at a time when they were both well aware of his precarious immigration status (on the basis that he was facing deportation) but did not consider that they could give the relationship any significant weight in the balancing exercise.

(6) At [19] the panel reached a conclusion on the evidence before them that whilst he had been in the United Kingdom since 1998, there was little to indicate that he was economically or socially integrated and took into account the evidence

before them concerning the employment that he had had in the United Kingdom.

(7) They took into account the length of residence in the United Kingdom since 1998 and that he had remained in the UK lawfully.

(8) They took into account his ties in the country of destination namely Kosovo and found that whilst he had had some education in the UK having left Kosovo at age 15 the bulk of his education would have taken place there. His immediate family including his parents and brothers and sisters are in the UK but found that he had maternal grandparents and a paternal uncle in Kosovo. That uncle had three children including a 20 year old son with whom the Appellant spoke on the telephone. The evidence indicated there was regular contact between his family and family members who remained in Kosovo and both his father and mother had returned; his mother regularly to see her parents and his brother had been to Kosovo but was married to an Albanian so therefore went to Albania. The Appellant himself had stayed with maternal grandparents when he had returned in 2005 and he had returned five months later and stayed a week seeing a school friend. Miss Hathiram said her husband (the Appellant's cousin) went back to Kosovo about twice a year to see his family and for holidays. Thus the panel found there was considerable evidence of continued contact with and visits by his family and family members to Kosovo thus he would be able to maintain regular contact.

(9) The panel found that he would be able to re-integrate socially, economically and linguistically in Kosovo and whilst they did not underestimate the upheaval for the Appellant in such a removal, he was fit and overall of an age when he could re-adapt to life in Kosovo.

(10) Having considered all the factors and taken into account the "considerable weight to be given to the public interest in deportation appeals" they did not find that there were any compelling reasons identified to outweigh the public interest in deportation.

10. Thus the panel reached the conclusion that the Appellant's removal would not be in breach of Article 8.

11. The Appellant sought permission to appeal that decision and permission was granted by the First-tier Tribunal (Judge Cheales) on 3rd April 2014. The reasons for that decision are as follows:-

> "In his grounds for onward appeal, the Appellant asserts that the judge's conclusion in relation to the Appellant's risk of re-offending is irrational, had made erroneous findings on whether he is socially and economically integrated. He failed to consider Article 8 in the light of the guidance in **Beoku-Betts [2008] EWCA 1900** and to take into account the findings in **MM [2013] EWCA 1900**.

> It is arguable that the Tribunal's findings that there is little to indicate that the Appellant is economically and socially integrated into the UK do not take into account the judge's sentencing remarks, the Appellant's relationship with a British national and the evidence of his employment. All grounds are arguable."

The appeal before the Upper Tribunal:

12. Thus the appeal came before the Upper Tribunal. Mr Alexander appeared on behalf of the Appellant, who did not appear at the court below and Mr Melvin, Senior Presenting Officer on behalf of the Secretary of State. Mr Alexander relied upon the four Grounds of Appeal that had been advanced on behalf of the Appellant. In relation to Ground 1, he submitted that the finding at [16] that there was some risk of re-offending and thus was a factor in favour of deportation was an irrational conclusion to have reached on the evidence. He submitted that it was unclear why there would be some risk of re-offending but that the evidence of the probation officer which was a positive report in a letter dated 17th February 2014 referred to the risk of re-offending as low and the risk to members of the public as medium. The probation officer made it clear that the Appellant was motivated to address his offending behaviour. He was no longer under licence it had expired and that was relevant to the risk of re-offending thus it was submitted that the judge failed to properly take into account the evidence, the conclusion was irrational and he had not given the evidence the weight that it should have.

13. In respect of Ground 2 at paragraph [19] the judge concluded that the Appellant had been in the UK since 1998, but there was little to indicate that he was "socially or economically integrated." That was a finding that was not justified on the evidence and in this respect the panel failed to take into account the remarks of the sentencing judge, failed to take into account the relationship with Miss Zavareh, a British national which was evidence of social integration and the evidence of Miss Hathiram about his ability to work and employment. In the grounds it is further submitted that the judge failed to make findings about that evidence of employment. It is further submitted that the Appellant gave his evidence in English. Thus it was submitted that the panel had erred in concluding that he had failed to demonstrate integration and that had had negative impact on the Appellant's case.

14. In respect of Ground 3, Mr Alexander submitted that the panel failed to apply the ratio in the decision of **Beoku-Betts** (as cited) and had failed to take into account the Article 8 rights of other family members including his partner, father, mother, brothers, sister and Miss Hathiram. It was submitted that the argument was based primarily on the close nature of the relationships within the family unit and thus it was incumbent on the panel to deal with this as an issue.

15. As to Ground 4 the panel did not take into account the argument following the judgment of Mr Justice Blake in **MM and Others** that the Respondent had to show "compelling justification for requiring a British citizen to leave the UK in order to continue his relationship with a non-British national." It was argued that the Respondent had failed to show to such a compelling justification notwithstanding the criminal offence he had committed.

16. Mr Melvin on behalf of the Secretary of State had provided a Rule 24 response. He relied upon the contents of that document. In addition, he submitted that there was no material error of law disclosed in the decision of the panel. He submitted the starting point was that it had been accepted that the Immigration Rules could not be met and therefore as the panel stated, "very compelling reasons will be required to outweigh the public interest in deportation" see [21]. He submitted the panel had considered correctly the decision in **MF (Nigeria) [2013] EWCA Civ 1192** and properly considered the relevant factors to the appeal. As to Ground 1, the panel correctly considered the risk of re-offending taking into account the OASys Report of January 2013 assessing his risk of reconviction as low but risk of serious harm to the public as medium. The report noted that the offence was "fairly specific" and related to problems with those supplying the Appellant with drugs" and considered at [7] the report dated 17th February 2014. Thus it was open to the panel to find on the evidence before them that there was some risk of re-offending as there was little straightforward evidence that the family would be able to assist if renewed links with the previous social circle. Thus it was submitted the findings made by the panel were based on the evidence presented both oral and documentary and the fact that there was nothing in the evidence that the Appellant's drug habits had dissipated and that he had not attended any courses, that on the evidence provided it was open to the panel to find that there was some risk of re-offending and that no error of law was disclosed in relation to that issue.

17. As to Ground 2, the panel considered the employment history of the Appellant at [19] and reached the conclusion, which was open to them that although being in the UK since 1998 there was little evidence to indicate that he was economically and socially integrated. This was a finding open to the panel to make based on the lack of evidence of work qualifications or employment in the fourteen years reaching majority. The panel also had regard to the sentencing remarks when considering integration at [3].

18. As to Ground 3, it was submitted that the grounds were simply a disagreement with the findings made by the judge concerning the evidence relating to the family members. The judge found that the parents, who did not give evidence had nothing to show that they had any real knowledge of the Appellant's lifestyle or influence on him and that there was no dependency [17]. As to the relationship with his partner that was dealt with at [18] and noting that the relationship only began on the Appellant's release from prison in 2013, that they had never co-habited and the panel referred to the time that the relationship began and the precariousness of the relationship as it began at a time when the Appellant was subject to deportation proceedings. In those circumstances, the decision of **Kabia** applied and that it could not be said that there were circumstances in which deportation would result in "unjustifiably harsh consequences for the individual or the family such that a deportation would not be appropriate." The panel by way of contrast considered the ties in Kosovo at [20] finding that he had social and linguistic and family ties to Kosovo. As to Ground 4, it was submitted that as the panel found that little weight could be placed on the relationship between the Appellant and his partner, it was not

open to the Appellant to argue that the decision of **MN** had any bearing on the appeal which was not a deportation appeal.

19. By way of reply Mr Alexander submitted that the panel did not take into account all the relevant factors and the issue of re-offending was required to be addressed. The public interest should be looked at in a positive way and that in respect of the relationship between the Appellant and his partner insufficient weight had been attached to the relationship when making the overall findings. Thus he invited the court to find that there were errors of law in the panel's determination and that it should be set aside.

20. At the conclusion of the hearing I reserved my determination.

Conclusions:

21. I have given careful consideration to the grounds advanced on behalf of the Appellant but have done so in the light of the evidence and the determination of the First-tier Tribunal panel. It is plain from the determination that this was a case in which it was conceded by Counsel that the Appellant could not meet paragraphs 399 and 399A and thus the focus was on the concluding sentence of paragraph 398:

> "The Secretary of State in assessing that claim will consider whether paragraph 399 or 399A applies and, if it does not, it will only be in exceptional circumstances that the public interest in deportation will be outweighed by other factors."

22. As the panel referred later to at [21] **MF (Nigeria) [2013] EWCA Civ 1192**, those circumstances have to be (with emphasis added):

> "... sufficiently compelling (and therefore exceptional) to outweigh the public interest in deportation ..."

23. In **R (Nagre) v SSHD [2013] EWHC 720 (Admin)** Sales J considered the meaning of "exceptional circumstances" and concluded that in order for the discretion to be exercised outside the Rules, there needed to be particular features of the case of a compelling nature demonstrating that removal would be unjustifiably harsh. In **MF (Nigeria)** the Court of Appeal endorsed this approach whilst stressing that this did not mean that a test of exceptionality was being applied, but rather, that in cases falling outside the Rules, the scales are weighed very heavily in favour of deportation and something very compelling is required to outweigh the public interest in removal.

24. There is no dispute that the panel did not apply the correct law and I have considered the grounds advanced on behalf of the Appellant in that legal context.

25. I have set out earlier in the determination the findings of fact made by the panel. I have therefore considered the grounds. Dealing with Ground 1, it is asserted that the findings made by the panel in relation to risk of re-offending are irrational. Mr Alexander has referred to the evidence before the panel including that of the

probation officer which assessed him as posing a "low" risk of re-offending and that he had been fully compliant with reporting instructions and engaged well to address his behaviour and thus the conclusion at [16] that there was some risk of re-offending was an irrational conclusion.

26. I am satisfied that the finding of the panel, that there was some risk of re-offending, was not irrational but was one that was justified from the evidence before them. Nor can it be said that the conduct of the Appellant since his conviction had not been taken into account in reaching the assessment or that it had not been taken into consideration in the proportionality balance. The panel were entitled to have regard to the evidence as a whole and at [4] made reference to the OASys Report from January 2013 which assessed the Appellant's risk of re-conviction as low but went on state that as to the risk of serious harm to the public, this was assessed at a medium level. The report noted that those who would be at risk would be "public by whom Mr Halili might feel threatened In his account the circumstances in which this offence was committed were fairly specific and related to problems with those who had been supplying him with cannabis. The nature of the risk is threat of violence or assault. In Mr Halili's account the risk will be if he is using cannabis and so coming into contact with dealers who are operating outside the law and may threaten or put him under pressure. The risk is not deemed imminent due to Mr Halili currently being detained in custody." At [11] the panel considered the likelihood of the Appellant re-offending and again took into account the OASYs Report précised at [4] and also took into account the most recent report, which has been identified as 17th February 2014, that the assessment made that the risk of re-offending was low but there was a medium risk of harm to the public if such offending took place was medium, had remained the same.

27. Contrary to the grounds, the panel plainly had regard and expressly took into account his progress and conduct since his conviction at [12] where the panel noted that there had been no further offending and no breach of his licence conditions and the positive elements set out in the letter.

> It was open to the panel to take into account the circumstances of the offence when reaching a conclusion as to the risk of re-offending. As identified in the OASys Report to which they properly had regard, the offence was fairly specific and related to problems with those supplying the Appellant with drugs. In this context at [16] the panel concluded that on the evidence before them, there was "some risk of re-offending" and this was based on their findings at [12], [13], [14] and [15]. The panel took into account that as the circumstances of the offence related to problems of drugs, the Appellant had not been able to benefit from any courses to lessen any risk in that respect [13] and it was open to the panel to find on the evidence before them that the Appellant's drug taking must have been a significant factor in his life and had led to the index factor but that there was no reference at all in his witness statement or oral evidence as to his present situation in this respect (see [13]). There was no evidence from his partner on this point (at [13]) and in relation to his parents, the panel observed [14] there was nothing to show they had any real knowledge of the Appellant's day-to-day lifestyle or any influence on him. Thus it was open to the panel at

> [16] to conclude from the evidence before them that whilst the Appellant did have such support from family members there was "little straightforward evidence as to the extent they would be able to assist if the pressures which had prompted his current offence resurfaced or if he was tempted to renew links with his social circle." In those circumstances it could not be properly said that the panel had reached an irrational finding on the risk of re-offending. It was open to the panel to find on that evidence that there was some risk of re-offending and indeed that was the conclusion of the probation officer.

It is further submitted that there will always be a risk of re-offending due to the presence of some criminality and it is not simply enough for a judge to state that there is a risk of re-offending which points in favour of deportation. I have considered that submission but find that it fails to take into account properly the issue of the public interest. The justification for deportation is not only by reason of the Appellant's conduct and in the light of the risk of re-offending but as said in **AM v SSHD [2012] EWCA Civ 1634** at paragraph 24:

> "Deportation in pursuit of the legitimate aim of preventing crime and disorder is not, therefore, to be seen as one dimensional in its effect. It has the effect not only of removing the risk of re-offending by the deportee himself, but also of deterring other foreign nationals in a similar position. Furthermore, deportation of foreign criminals preserves public confidence in a system of control whose loss would itself tend towards crime and disorder."

28. The importance of those considerations was emphasised also in **JO (Uganda) v SSHD [2010] EWCA Civ 10** and the same approach was taken by the Upper Tribunal in the decision of **Masih (Deportation – Public Interest – Basic Principles) (Pakistan) [2012] UKUT 46 (IAC)** in which guidance summarised in the head note at

    (1) In the 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.

    (2) 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.

    That was an exercise carried out by the panel when considering the issue of risk of re-offending and they plainly had regard to the circumstances of the offence at [10]. There is no error disclosed by Ground 1.

29. Turning to Ground 2, it criticises the panel's findings at [19] that the Appellant had been in the UK since 1998 but that there was little to indicate that he was "economically or socially integrated," and failing to take into account the sentencing remarks, the relationship with Ms Zavareh and the evidence of Mishel Hathiram. Having considered the submissions set out and recited earlier in the determination, I am satisfied that this was a finding that was open to the panel to make. Contrary to

the grounds, the panel plainly had regard to the sentencing judge's remarks not only did they set them out with some particularity at [3] but expressly took them into account at [10]. It is not clear from the sentencing remarks (where the judge stated "you were doing your best to earn a living and to live a good and useful life as part of the community") as to the evidence in support of that factual statement; whether it was contained in the pre-sentence report (which is not before the First-tier Tribunal panel or this Tribunal) or from mitigation. However what is plain is that the panel nonetheless took that into account. The panel also had regard to the relationship with his partner and findings were made therein at [18] this being a relatively recent relationship, of limited duration and one in which they had never co-habited. The panel also considered the employment history of the Appellant at [19]. Whilst the grounds submit that the evidence of Miss Hathiram about his past and present employment had not been taken into account and no findings were made, that is not the position on a careful consideration of paragraph [19]. The panel found that in his questionnaire to the Respondent the Appellant stated that he had worked since he was 20-21 in a car wash. The Respondent had stated there was no evidence of this. In his witness statement the Appellant asserted he worked as a wood floorer with a company but that this was casual work and that this was "recent employment and I have not been with them very long." His partner in the witness statement referred to skilled work but gave no indication as to what it might be and the evidence of Miss Hathiram was expressly considered at [19]. She confirmed she was the director of Star Construction and had written a letter dated 11th March 2013 offering the Appellant three months work. Her oral evidence was set out at [19] suggesting that he was a "particularly skilled wood worker." However the panel found that there was no documentary evidence to support such employment and whilst they accepted that he may have been helping out Miss Hathiram in some capacity on building site, there was no indication that he had any particular qualification or experience in such work that would ensure he would be able to obtain regular work. Thus it was open to the panel to find, having taken into account all that evidence that based on the lack of evidence of work or employment in the fourteen year period since he had reached his majority, and on his own evidence before the panel at best it consisted of some casual work as an offer of three months' work by his cousin's wife. This could not be seen as evidence of steady employment in the United Kingdom throughout his period of residence or showing the payment of tax or national insurance and thus it was open to the panel to find in those terms that he was not economically integrated by reason of his work history. Whilst there was little to indicate "social integration," that is different from saying that there was "no social integration" and it is plain from the determination that they did have regard, notwithstanding that finding to his relationship with Miss Zavareh at [18] and his relationship with his immediate family at [17].

30. In my judgment the findings at [19] need to be seen in the context of the evidence as a whole and could not be properly characterised as irrational but a finding properly open to the panel to make.

31. Dealing with Ground 3, it is asserted that the panel failed to apply the ratio in **Beoku-Betts** and failed to take into account the Article 8 rights of other family

members. It is submitted in the grounds that this argument was based on the "close nature of the relationship with the family unit." This ground has no merit. The panel gave express consideration to the issues of family life in the context of the family members and their relationship to the Appellant. In respect of his parents, the panel found at [14] that whilst the Appellant lived with his parents, they were in court but did not give any evidence to the panel. They found that there was nothing to show that "they had any real knowledge of the Appellant's day-to-day lifestyle or any influence on him." At [17] they took into account his relationship with his immediate family in the UK but found that there was no specific evidence of any family member (none of them had given evidence before the panel as to the nature, depth and strength of family life) except for Miss Hathiram (who was the Appellant's cousin's wife). Consequently whilst they accepted that on the sparse evidence they had there would be "emotional bonds," but took into account that these were adult relationships but on the evidence before them there was no element of particular dependency. Thus it was plain that they did take into account the family relationships with others and it was open to them to reach that conclusion at [17].

32. The panel also considered his relationship with Miss Zavareh at [18] as noted by the panel there had been no reference to the relationship in his response to the Respondent in September 2012 and no mention of the relationship in his Grounds of Appeal. It was plain that they had known each other as friends and helped each other through respective break-ups however both parties had accepted their relationship had only developed after he was released from prison in 2013 and the relationship was of a limited duration. The parties did not live together and the panel found that they had never co-habited. Whilst they accepted it was a genuine relationship, they found it to be of limited duration and one that had begun against the background of his precarious immigration status in the context of their relationship having begun at a time when both were aware that he was subject to deportation proceedings. Having considered the relationship and the evidence as a whole, it was open to the panel to find that on the particular facts, they could not give the relationship any significant weight. It was open to the panel to reach those findings and no error of law has been disclosed in that respect.

33. As to Ground 4 it is submitted that the panel failed to deal with the argument that the Respondent had to show compelling justification for requiring a British citizen to leave the UK in order to continue a relationship with a non-British national (applying the decision of Blake J in **MM and Others**). The decision in **MM** was not a deportation appeal and the correct law identified by the panel was that set out in **MF (Nigeria)** that where the Appellant could not succeed substantively under paragraph 399 or 399A then the focus was on the concluding sentence of paragraph 398:

> "The Secretary of State in assessing that claim will consider whether paragraph 339 or 339A applies and, if it does not, it will only be in exceptional circumstances that the public interest in deportation will be outweighed by other factors."

34. As made clear in **MF (Nigeria)** (as cited) those circumstances have to be "sufficiently compelling" (and therefore exceptional) to outweigh the public interest in

deportation however whilst the new Rules speak of "exceptional circumstances" it has been made clear by the Court of Appeal in **MF (Nigeria)** exceptionality is a likely characteristic of a claim that properly succeeds rather than a legal test to be met. In this context, "exceptional" means circumstances in which deportation would result in unjustifiably harsh consequences for the individual or the family such that deportation would not be proportionate (see **Kabia [MF: Paragraph 398- "Exceptional Circumstances"] [2013] UKUT 569**). The decision of **SS Nigeria** at paragraphs 46 and 55 which has to be read in light of what has been said in **MF (Nigeria)**

> "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 Claimant at Article 8 if it is to prevail. The pressing nature of the public interest here is vividly informed by the fact that Parliament's expressed declaration of 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."

In those circumstances, it is plain that the decision of the Respondent and the law applied by the panel did consider whether there were compelling circumstances but on the particular facts of this case, after carefully weighing all the factors at [21] reached the overall conclusion that notwithstanding the positive aspects of his case, and taking into account the seriousness of the offences, the Appellant's length of stay in the UK, his ties to the UK and those in Kosovo, that deportation was proportionate and was justified.

35. Consequently it was open to the panel that it had not been established on the particular facts that it would result in unjustifiably harsh consequences for the Appellant or his family that deportation was not proportionate. The panel accepted that there may be some resultant hardship but it was not established that they were sufficient to justify the appeal being allowed. The decision reached by the panel and the findings made cannot be properly characterised as irrational or perverse and they reached conclusions that were adequately reasoned and open to them on the evidence that was before them. The Upper Tribunal can only interfere with a decision of the First-tier Tribunal if an error of law is established. As noted in the decision of of **MA (Somalia) [2010] UKSC 49** at paragraph 45 Sir John Dyson stated:-

> "The court should not be astute to characterise as an error of law what, in truth, is no more than a disagreement with the AIT's assessment of the facts. Moreover, where a relevant point is not expressly mentioned by the Tribunal, the court would be slow to infer that it had not been taken into account."

36. The grounds therefore do not demonstrate any error of law in the determination of the panel.

Decision

The decision of the First-tier Tribunal panel did not involve the making of an error of law. Their decision is upheld.

Signed Date

Upper Tribunal Judge Reeds