Upper Tribunal
(Immigration and Asylum Chamber) Appeal Numbers: DA/02034/2013

THE IMMIGRATION ACTS

Heard at Birmingham	**Determination Promulgated**
On 20 June 2014	**On 23 June 2014**

Before

UPPER TRIBUNAL JUDGE PITT

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

MEDY HAKIZIMANA

Respondents

Representation:

For the Appellant: Mr Smart, Senior Home Office Presenting Officer
For the Respondents: Ms White, instructed by J M Wilson

DETERMINATION AND REASONS

The Appeal

1. This is an appeal by the Secretary of State against a determination promulgated on 31 January 2014 of First-tier Tribunal Judge Pirotta and Mr Sandall which allowed the respondent's appeal against deportation.

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2. For the purposes of this determination, I refer to Mr Hakizimana as the appellant and to the Secretary of State as the respondent, reflecting their positions as they were before the First-tier Tribunal.

3. The appellant is a citizen of Burundi and was born on 14 January 1992.

4. The background to this matter is that the appellant came to the UK at the age of 11. Whilst a minor he committed a number of offences which are set out at [13] and [14] of the determination. The last conviction was in 2008 for robbery and possession of a weapon for which he received a sentence of 1 year and 10 months in youth detention.

5. The respondent made a decision to make a deportation order on 13 September 2013 against the appellant. The deportation order was made under section 3 (5)(a) of the Immigration Act 1971 as the respondent deemed deportation conducive to the public good. In the reasons letter, reference was made to the provisions of paragraph 398(c) of the Immigration Rules which states:

> "The deportation of the person from the UK is conducive to the public good because, in the view of the Secretary of State, their offending has caused serious harm or they are a persistant offender who shows a particular disregard for the law"

6. As I understood it, the respondent raised four grounds of challenge against the decision of the First-tier Tribunal. They can be summarised as follows:

    a. incorrect weight in the appellant's favour concerning the delay in issuing the deportation decision

    b. insufficient attention to the deterrent and expression of public revulsion elements of the public interest

    c. the British nationality of the appellant's partner and child did not preclude their accompanying him to Burundi

    d. the principles of SS (Nigeria) v SSHD [2013] EWCA Civ 550 and Masih (deportation – public interest – basic principles) Pakistan [2012] UKUT 46 (IAC) had not been properly applied

7. I will start with the last ground first. As indicated above, the respondent did not make an automatic deportation order against the appellant. She could not do so as he was only 16 years old at the time of his last offence. Where that was so, I did not find that the panel could be said to have erred in failing to apply SS (Nigeria), as case relating to the increased public interest in automatic deportation cases.

8. The panel indicated at [5] that it directed itself to Masih and did so again at [30] when reaching their conclusion. The respondent faced a difficult task in showing that they panel did not have that case properly in mind when making its decision, therefore.

9. It did not appear to me that the respondent had shown that the First-tier Tribunal could be said to have failed to apply the material factors from Masih in substance. It followed head note (c) of Masih by referring to the offences that had been committed and the remarks of the sentencing judge at [13], [14] and [16]. There was further reference to the remarks of the sentencing judge at [26] and [27]. The panel cannot be said to have failed to take into account these material aspects of the case.

10. They dealt with the evidence as of the date of the hearing; see head note (d) of Masih.

11. The First-tier Tribunal was entitled to give "full account to any developments since sentence was passed", here weighing in favour of the appellant as in the 6 years since his last offence he had a clean record and nothing adverse had occurred; see [26] and [27 of the determination]; see head note (e) of Masih.

12. Following head note (g), his offences were committed as a juvenile so "serious reasons" were required to justify expulsion. Although not specifically addressed by the First-tier Tribunal it is difficult to see how the appellant's offence of robbery and possession of a weapon for which he received a sentence of 1 year and 10 months in youth detention was a "very serious violent" offence which could justify expulsion .

13. Ground 2 was, in part, addressed before me with reliance on paragraphs (a) and (b) of the head note of Masih so it is convenient to deal with it here. The public interest in deportation is not merely about preventing someone from reoffending as deportation also acts as a deterrent and allows for the proper expression of public revulsion at criminal offending. As above, the panel cannot be said to have failed to have had the provisions of Masih in mind when reaching its decision. It properly weighed the offence as serious [27]. Where those matters are so, and given the view of the panel on the weight to be placed on developments since the decision, a position open to them on the evidence, and the appellant's age at the time of the offences, it did not appear to me that any failure to specifically refer further to the factors of deterrence and the expression of public revulsion could be material.

14. As regards the first ground, it was not my view that the panel at [25] stated in sufficiently clear terms that they considered the weight accruing to the public interest decreased because of the amount of time taken by the respondent to issue the deportation decision in 2013 where the last convictions was in 2008. Rather, the point they appear to be making is that the delay allowed the appellant to show that he was reformed as in the 6 years between the last offence and the deportation decision he had a clean record and established a settled family life. Mr Smart conceded that this was a minor aspect of the respondent's grounds that only had weight when considered cumulatively with the other grounds. As above and below, I did not find the other grounds had merit.

15. The remaining ground can be dealt with relatively briefly. The appellant's wife and, more importantly, his child are British nationals. The panel was entitled to find that the child (and therefore his mother) could not be expected to accompany the appellant to Burundi; C-34/09 Ruiz Zambrano and C-256/11 Murat Dereci applied.

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Decision

16. The decision of the First-tier Tribunal does not disclose an error on a point of law and shall stand.

Signed: Date: 21 June 2014
Upper Tribunal Judge Pitt