IAC-FH-NL-V1

Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: DA/02226/2013

THE IMMIGRATION ACTS

Heard at Field House	**Determination Promulgated**
On 15 October 2014	**On 7 November 2014**

Before

UPPER TRIBUNAL JUDGE MCGEACHY

Between

R E K A

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Ms H Gore, of Counsel instructed by Messrs R Spio & Co
For the Respondent: Mr S Walker, Senior Home Office Presenting Officer

DETERMINATION AND REASONS

1. The appellant, a citizen of Ghana born on 14 May 1982 appealed against a decision of the Secretary of State to make a deportation order against him following his conviction on 5 October 2012 for inflicting grievous bodily harm and assault. His appeal had been allowed in the First-tier Tribunal in a determination promulgated on 24 March 2014 but after a hearing on 15 July 2014 I set aside that decision and directed that the appeal proceed to a hearing afresh.

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2. My decision set out the appellant's immigration history in paragraph 3, details of the appellant's conviction in the following paragraph and in paragraph 5 I refer to the appellant's relationship with Ms S. I also noted the findings of fact made by the Tribunal below and in paragraphs 27 onwards gave my reasons for setting aside the decision.

3. My decision was as follows:-

> "1. The Secretary of State appeals, with permission, against a decision of the First-tier Tribunal (Judge of the First-tier Tribunal Morris and Mrs S Hewitt JP lay member) who in a determination promulgated on 24 March 2014 allowed the appeal of R E K A against a decision of the Secretary of State to make a deportation order against him on 2 September 2013 under the provisions of Section 32(5) of the UK Borders Act 2005.
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> 2. Although in the appeal before me the Secretary of State is the appellant I will for ease of reference refer to her as the respondent as she was the respondent in the First-tier Tribunal. Similarly I will refer to R E K A as the appellant as he was the appellant in the First-tier Tribunal.
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> 3. The appellant is a citizen of Ghana, born on 14 May 1982 who entered Britain on 12 November 1998 with entry clearance for settlement as the dependant of his mother. In 2000 he returned to Ghana. He came back to Britain in November 2001 before returning to Ghana the following month and then coming back to Britain on 21 November 2003. Although on return he was initially only given six months' leave to enter he was granted indefinite leave to remain on 16 January 2004.
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> 4. On 4 September 2012 he was convicted at Croydon Crown Court of inflicting grievous bodily harm and assault by beating. On 5 October 2012 he was sentenced to 27 months' imprisonment on the first count and two months' imprisonment, to run concurrently, on the second count. On 2 November 2012 he was served with notice of liability to automatic deportation and on 2 September 2013 the deportation order against him was signed.
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> 5. Since 2007 the appellant has been and continues to be in a relationship with Ms S. Ms S has a daughter, J S O ("J") who was born on 19 January 2006. Although Mrs S was born in Jamaica she and J are both British citizens.
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> 6. In the determination the Tribunal set out in paragraphs 6 onwards the relevant legal framework starting with Rules 398, 399 and 399A. They then set out the terms of Sections 32 and 33 of the 2007 Act and Section 55 of the Borders, Citizenship, and Immigration Act 2009.
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> 7. They noted the terms of the respondent's reasons letter dated 2 September 2013 giving the reasons why the respondent had decided to deport the appellant. They then noted that the appellant had been convicted of a serious offence, noting that the appellant's repeatedly punched the victim, a neighbour with whom he was in dispute and then

two days later attacked him in the street punching and kicking him so that the victim suffered some conjunctival haemorrhaging which required extensive surgery.

8. They referred to the fact that the appellant had been assessed and made subject to the minimum level of Multiagency Public Protection Arrangements ("MAPPA level 1") noting that this was a system designed for the protection of the public. They noted the respondent stated that the appellant had been assessed as a person who had to be monitored under risk management strategies and that this was an indication that he was viewed as a risk to the public.

9. In paragraphs 18 onwards of the determination the Tribunal set out their findings of fact. They concluded that the appellant could not benefit from the provisions of paragraph 399(a)(ii) and (b) of the Rules as J could remain in Britain with Ms S and therefore there was another family member who would be able to care for her in Britain if the appellant were returned to Ghana. They noted it was accepted that Ms S and the appellant were in a genuine and subsisting relationship but because the appellant had not lived in Britain continuously for at least fifteen years immediately preceding the date of decision he could not benefit from the provisions of paragraph 399(b)(i). Having noted that the appellant could not benefit from the provisions of paragraph 399A they concluded that the appellant could not benefit from the terms of the Immigration Rules.

10. In paragraph 21 of the determination they referred to the decision of the Upper Tribunal in **Farquharson [2013] UKUT 00146 (IAC)** which they stated listed the factors which needed to be considered by the decision maker and on appeal by a judge before a proper exercise of discretion under Article 8 could be made.

11. The Tribunal then set out the various factors which they considered relevant including the age and length of the appellant's residence in Britain, his connections with this country and his personal history including character, conduct and employment record. They considered that he had had a record of steady employment in Britain and that there was no evidence that he had ever been a burden on the state or that he did not take his duties to support his family seriously.

12. They noted the seriousness of the appellant's crime but also stated that the trial judge had specifically mentioned that the appellant was a young man of previous good character. No recommendation for his deportation had been made and he had been given credit for his late change of plea to guilty on the day of trial. They stated that the appellant had shown considerable remorse since he had committed the offence and had written to the victim and the victim's family. They accepted the depth of his remorse. They noticed that he had been assessed as a minimum MAPPA level.

13. They went on to say that it was clear from the sentencing remarks that the offences for which the appellant was found guilty had arisen out of an ongoing neighbour dispute and that that had not been challenged by the respondent.

14. They noted the close relationship between the appellant, Ms S and J and that the appellant had provided a stable home for J. Moreover, he has close relationships with his mother and sisters here.

15. Having stated that there were clear compassionate circumstances in the case and noted various representations which had been made the Tribunal went on to set out the structured approach given by Lord Bingham of Cornhill in **Razgar [2004] EWCA Civ 368** and referred to the judgment of Hale LJ in **ZH (Tanzania) [2011] UKSC 4**.

16. The Tribunal noted the judgment of Lord Hope in **DS (Afghanistan) [2011] EWCA Civ 305** that even if it was in the child's best interests to remain in Britain that was not the end of an assessment and would not necessarily prevail over other factors including the maintenance of proper immigration control.

17. They concluded that the appellant was in effect J 's stepfather and that the family had a strong relationship and went on to conclude that the removal of the appellant would not be proportionate taking into account the fact that the appellant had not had a previous criminal record, his crime related to a very particular set of circumstances, the appellant had previously been of good character, he was making plans to avoid further confrontation and all his family were either working, studying or both.

18. They considered that the respondent had not taken into account the protected rights of Ms S let alone those of J and therefore concluded that notwithstanding the appellant's offences it was not necessary or proportionate for him to return to Ghana.

19. The Secretary of State appealed. The very lengthy grounds of appeal referred to the judgment of the Court of Appeal in **MF (Nigeria) v SSHD [2013] EWCA Civ 1192**. They referred to the fact that the Court of Appeal had stated that the new Rules were a "complete code" and that having found that the appellant could not meet the terms of paragraphs 399, and 399(a) and (b) of the Rules the Tribunal then found that the appellant's circumstances were exceptional and compassionate so as to make his deportation disproportionate. They stated that the Tribunal had not shown that there was something over and above the provisions set out in paragraph 399(a) or paragraph 399(b) to succeed under exceptional circumstances. They referred to the judgment in **A D Lee [2011] EWCA Civ 348** where it had clearly been thought that it was still appropriate to deport a foreign criminal where that would mean that a family was broken up.

20. The grounds referred to the judgment in **SS (Nigeria) [2013] EWCA Civ 550** which emphasised the weight to be placed on the deporting of foreign criminals.

21. It was also stated that the Tribunal had failed to give adequate reasons for their finding that the appellant had few ties in Ghana. There was nothing to indicate that he could not readapt to life there. It was stated that the reasoning of the Tribunal was inadequate and they had

failed to give a proper assessment to take into account the consideration of society's revulsion against serious crime and the deterrence of other foreign criminals. In this regard they referred to the judgment in **AM [2012] EWCA Civ 1634**.

22. Permission to appeal was granted, the Judge of the First-tier Tribunal stating that it was arguable that the panel did not have regard to the wider public interest in the deportation of foreign criminals and the principle of deterrence and that therefore had not taken into account material factors when reaching their conclusions.

23. At the hearing of the appeal before me Ms Ong relied on the grounds of appeal stating that the Tribunal fundamentally erred by not having regard to the wider public interest and the deterrent effect of the deportation of those who committed serious crime. She referred to the judgment in **AM** and stated that there was no indication that the Tribunal had had regard to the public interest in this case and that therefore their proportionality exercise was in error.

24. In reply Ms Spio-Aidou argued the Tribunal had properly considered the Rules and made clear and unequivocal findings of fact regarding the appellant's credibility and his strong family life with Ms Scarlet and J. She referred to the length of time the appellant had lived in Britain, his work record and his relationships not only with his immediate family but also with his mother and sisters. She emphasised that the judge had referred to the appellant as being of previously good character.

25. She went on to refer to the particular circumstances of the dispute between the appellant and his neighbour and then said that in any event the appellant had taken courses in anger management and conflict resolution whilst in prison. She stated that his stepdaughter could not leave Britain and that the appellant's partner and daughter were both British. She referred to the provisions of Section 55.

26. She argued that the Tribunal had made a properly balanced consideration of all relevant factors and that they were entirely entitled to reach the conclusions which they had. The conclusion which they reached was indeed the only conclusion that they could reach given the circumstances. They had properly considered relevant case law and she asked me to find that there was no material error of law in the determination. They were entirely entitled to use their discretion to reach the conclusion which they had.

Discussion

27. In many ways this is a thorough and balanced determination and indeed the various findings of fact which the Tribunal made regarding the appellant's relationships, his work record and the fact that he had committed no other offences were conclusions which were open to them.

28. However there is, I consider a disjunction between the First-tier Tribunal's consideration of the facts in this case under the Rules and the way in which they then went on to consider the position of the

appellant applying the structured approach set out in **Razgar**. The judgment of **MF Nigeria** makes it clear that the Rules should be regarded as a complete code and that should the terms of the Rules not be met it is only in exceptional circumstances that an appellant's appeal should be allowed. It is not the case that a Tribunal, having found that an appellant could not meet the requirements of the Rules should then go on to conduct a separate exercise in which proportionality is considered. The consideration of the appellant's rights under Article 8 as incorporated in the Rules reflects the test of whether or not the deportation of an appellant would be disproportionate and concludes that it would be only be disproportionate in exceptional circumstances.

29. In effect the Rules reflect the increasing awareness of the public interest in the deportation of foreign criminals as indicated in the judgments in **SS Nigeria**, **DS India** and **A D Lee** – the latter two judgments making it clear that even where an appellant has a child that is not a determinative factor.

30. In this case the appellant committed a very serious crime with serious consequences for the victim. The Tribunal, who do not appear to have considered the terms of the pre-sentence report, should have placed particular weight on the public revulsion at such a crime. I consider that it is not clear that they did so and moreover they did not point to any exceptional factors in this case which would mean that the deportation of the appellant would be disproportionate.

31. They placed weight on the appellant's relationship with J whom they stated was the appellant's stepdaughter. Of course the reality is that she is not. There is nothing to indicate that although, clearly, the removal of the appellant would be likely to be distressing for J, she could not be properly looked after by Ms S if the appellant were deported.

32. Moreover the Tribunal did not appear to find that the appellant had any ties with Ghana despite the fact that he had spent effectively the period between 2000 and 2003 there.

33. In all I consider that the fact that the Tribunal did not consider the issue of the deportation of the appellant within the structured approach set out in **MF Nigeria** is a material error and that was compounded by the fact that they did not place appropriate weight on the fact that the deportation of an appellant who commits a serious crime is in the public interest.

34. For these reasons I set aside the determination of the Tribunal and I direct that the appeal proceed to hearing afresh." _

4. At the hearing of the appeal before me Ms Gore first argued that my decision did not apply to the appellant as it referred to someone name "R E K A". She therefore argued that the appeal was still at the error of law stage. I pointed out to her that, in fact, the First-tier Tribunal had made an

anonymity order in this case and that therefore my decision was headed with the appellant's initials rather than his full name.

5. Ms Gore then went on to state that I should set aside my own decision setting aside the Tribunal arguing that the grounds of appeal before me had not properly challenged the detail of the findings of the Tribunal and that in setting aside the decision I had taken account of issues which were not raised in the grounds of appeal. She also made an alternative argument which was that Judge Brunnen, in granting permission to appeal, had himself gone outside the issues raised in the grounds of appeal and that when he had stated that "much of the grounds amounts to disagreement with the panel's conclusion in an attempt to re-argue the appeal" he had in fact found that the Tribunal had not made any arguable error of law and that therefore he had been wrong to go on to state it was arguable that the panel did not have regard to the wider public interest in the deportation of foreign criminals.

6. I consider that there is no merit in either of those arguments as the grounds of appeal, which were wide-ranging with regard to their challenge to the facts, did focus on the issue of proportionality and the appropriate application of paragraphs 398 and 399 of the Rules. In any event I pointed out to Ms Gore that should she wish to challenge my decision to set aside the determination then that was a matter which should be challenged in an application to the Court of Appeal rather than before me at this full, adjourned hearing.

7. Ms Gore then stated that paragraph 28 of my decision was in conflict with what I wrote in paragraph 34. I stated that I did not agree with that assertion and that I had made it clear that the appeal should proceed to a hearing afresh.

8. Ms Gore stated that she did not wish to call the appellant who in fact, at that stage of the proceedings, had not attended, and that she wished only to make submissions.

9. She argued that despite the fact that I had said that the appeal should proceed to a hearing afresh I should be bound by the findings of fact of the First-tier Tribunal and then went on to argue that under the terms of paragraph 398C of the Rules I should find that the appeal should have been allowed. She accepted that the terms of paragraph 399(a) and (b) did not apply but stated that the provisions of paragraph 398(c) being aligned to Article 8 jurisprudence meant that all factors should be taken into consideration. She referred to paragraphs 44 and 45 of the judgement of the Court of Appeal in MF (Nigeria) [2913] EWCA Civ 1192 and went on to refer to the Tribunal's findings of fact asserting that they had found that the appellant had close relationships here, particularly with his partner and her daughter. She stated that although the appellant and his partner were not married the Tribunal had been correct to refer to his partner's daughter as the appellant's stepdaughter. She referred to the

behaviour of the appellant's neighbour, whom he had attacked, in the run-up to the attacks. She stated that the fire brigade, the police and the local council had been aware of the ways in which the appellant's neighbour had made the lives of the appellant and his partner difficult and that the neighbour had been abusive towards the appellant's partner and on one occasion had punched the appellant causing his nose to be broken.

10. While she stated that it was accepted that the appellant's crime was serious she emphasised that the appellant had never been in trouble before, he had had indefinite leave to remain and he had been attempting to relocate his family away from the neighbour at the time of the attack. Since the attack the appellant's partner has been re-housed.

11. She emphasised that the judge, when sentencing the appellant, had stated that he was of previous good conduct and that taking all these facts together I should conclude that there were exceptional factors in this case and that the deportation of the appellant would be disproportionate.

12. In reply Mr Walker referred to the terms of the pre-sentence report and to the fact that the appellant had received lengthy custodial sentences. It was wrong, he argued for Ms Gore to make light of the appellant's offences. He stated that the Tribunal had not given proper weight to the public interest in the removal of those who commit serious criminal offences and urged me to do so and to dismiss the appeal.

13. In reply Ms Gore emphasised that she did not wish to make light of the appellant's offence but stated that the factors relating to the appellant's circumstances fully outweighed the public interest in his deportation. Again she emphasised the appellant's remorse stating that the Tribunal had clearly taken that into account. She emphasised that the appellant had not offended before the index offences and that since release he has not offended. While she accepted the provocation was not a defence which could be taken into account in the criminal court she stated that it was appropriate that it should be taken into account by me. She referred to the public interest in the appellant's partner's child having a male role figure. Again she emphasised there were exceptional factors in this case.

Discussion

14. I was surprised that Ms Gore decided not to call the appellant, his partner or other members of his family to give evidence before me. The reality is that in my decision I set aside the determination of the First-tier Tribunal and directed that the appeal proceed to a hearing afresh.

15. Nevertheless I have considered the statements from the appellant, his sisters and his mother and his partner. I accept that there is clear evidence that the appellant and Ms S have lived together for many years and there is no evidence that the appellant committed any offences before the index offences nor indeed has he committed any offences after leaving

prison. I accept that he plays a paternal role for his partner's daughter. I also accept that the appellant has been in work here although it appears that some of his work may have been on a temporary basis – I refer to the letter of 30 July 2012 from Croydon Benefits Department to Ms S. It is also relevant that the appellant entered Britain at the age of 16 in 1998. At the age of 18 he returned to Ghana and effectively came back in November 2003 at the age of 21. In the first 21 years of his life he therefore spent eighteen years in Ghana and spent three years there as an adult. He is now aged 32.

16. The Offender Management Information Report summarises the risks which the appellant posed to others stating that "risk is towards those whom Mr A feels have aggrieved him in some way. The risks are physical harm or injuries". The banding risks of re-convictions showed that as being low.

17. The OASys Assessment gives graphic details of the appellant's offence and noted that the appellant had stated that he regretted his actions. The report goes on to state at paragraph 2.14:-

> "This is Mr A's first conviction and he has demonstrated remorse for his actions. However, the events demonstrates anger and resulting violence resulting in significant harm to Mr B. Mr A also minimises his responsibility for the assault, stating he had not realised he could cause this harm and stating that due to his fear and anger at the time, Mr B's actions left him no option but to retaliate with violence."

18. I note that the OASys Report records the appellant stating that he had failed to obtain any GCSEs "due to being sent to Africa by his parents for four years". I also note that under the initial sentence plan of the OASys Assessment it states that the appellant is capable of changing and reducing offending and that he is motivated to address offending but that a factor that might inhibit change was if he became angry in the belief that he or his partner had been treated unfairly or verbally or physically abused.

19. Turning to the pre-sentence report on which Mr Walker relied I note the details of the attack but as it also sets out the appellant's comments on the attack I consider it appropriate to set it out in full. It states that:-

> "In relation to the 28th November Mr A claimed some responsibility for the offence. He explained that he was alone on his way home having returned from spending the night with friends. He was making his way to the shop to purchase cigarettes and had not initially seen the victim, Mr B. He claims that he had his hoodie on his head and felt a blow to the back of his head causing him to fall to the ground. He then saw someone run to a car which he believed to be Mr B. He continued on his way and saw Mr B further along the road. He admitted assaulting Mr B stating that he acted in self defence after receiving a cut to his nose which was bleeding, which could have been his eye.

When questioned about the excessive force used he admitted to have over reacted by 'failing to stop at the first kick', but said he was 'angry' and was 'not thinking at the time'. He stated that he believed that the victim had a sharp object, 'a knife', as he received a cut to his nose and his clothing had ripped marked in them. When asked about the stamping on Mr B's head on more than one occasion and the repeated kicks to his head and body, and his intentions, he replied that he had seen the CCTV footage and was unable to explain this, as it was out of character for him to behave in such an aggressive manner. After the assault he confirmed that he left the scene and called his partner. When asked about her arrival and her informing the paramedics that 'she had come to finish him off', he denied that she had said this.

As a result of the assaults the hospital report state that Mr B suffered a number of injuries namely blood clots around his brain (subconjunctival haemorrhage) causing paralysis and numbness down one side of his body, swelling and superficial bruises over the head, face and right hand, tenderness over the paraspinal muscles of the neck. A report from E R, a Registered Intermediary concludes that Mr B shows 'significant cognitive dysfunction', by being unable to 'follow and process complex language' and 'time'.

Although Mr A accepts in part for the commission of these offences he has also minimised his involvement stating that it was him who was attempting to calm and resolve matters. He attempts to justify his actions by stating that his reasoning behind this was due to him being angry and not thinking. He did inform me that he regretted his actions and was apologetic particularly after being faced with it via the CCTV footage. He said that he has tried to stay out of trouble, does not hang around with gangs and felt genuinely 'touched' by his actions. Mr A also said that he felt evil, did not expect this to happen and wished he could apologise to his victim and his family for his actions. He described himself as feeling lost and having suffered nightmares from his actions and the resulting effects as he did not mean for this to happen....

Despite this being Mr A's first conviction and him having demonstrated remorse his actions demonstrate extreme anger and violence resulting in considerable harm to the victim he has also attempted to justify and minimise his behaviour, blaming the victim for his apparent anti-social behaviour. It is my assessment that this offence was committed due to increasing animosity against the victim, Mr B. Mr A's violent behaviour was aggressive in nature with the intent to cause harm. Despite him reporting that he acted in self defence does not account for the excessive force used and what could be described as a savage attack. The CCTV observation by PC S states that 'the victim had no time to defend himself'. I would also assess that the trigger and motivation for this offence was anger by Mr A believing that he had been assaulted by Mr B and the need for him to express his anger and possible frustration."

20. The OASys Report also refers to the appellant being sent to Africa by his parents for four years and that he returned between the ages of 21-22. At page E29 of the bundle is the appellant's list of his employers and the work which he had undertaken. When he returned to Britain he obtained

employment with Sainsbury's and that he had later enrolled and attended Vauxhall College undertaking a computer science maintenance course. The appellant had told the Probation Officer that he had always worked and had a variety of employment working as an assistant manager at Sports Direct where he had been employed for four years, for Cancer Research as a street fundraiser, for Morrison's for two and a half years and Telemarketing. He had also been employed by both Parcel Force at nights and part-time at Allders but was no longer working at Allders as that company had closed down and at the time of the report that Parcel Force was his main and only employment. The OASys Report refers to the appellant coming to Britain at the age of 13. That however appears to be incorrect. It appeared also that the appellant had said that the police had attended his home because of a domestic violence incident on one occasion.

21. The judge's sentencing remarks by His Honour Judge Waller refer to the first incident where the appellant had punched Mr B in front of his two children. They then discuss the second incident and the results of that on Mr B but state that the appellant had been of previous good character. Judge Waller and sentencing him to 30 months' imprisonment reduced on count 1 to 27 months' imprisonment for the serious offence and two months' imprisonment for the less serious offence, being a total of 27 months' imprisonment.

22. This is an automatic deportation under the provisions of Section 32(5) of the UK Borders Act 2007. It is clear from the judgment of the Court of Appeal in **MF (Nigeria) v SSHD [2013] EWCA Civ 1192** that the provisions of the Rules are a "complete code" but effectively the exceptionality provisions of Rule 398 are akin to those which would make a decision to remove disproportionate under Article 8 of the ECHR. Paragraphs 398 and 399 read as follows:-

> "398. Where a person claims that their deportation would be contrary to the UK's obligations under Article 8 of the Human Rights Convention, and
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> (a) the deportation of the person from the UK is conducive to the public good because they have been convicted of an offence for which they have been sentenced to a period of imprisonment of at least 4 years;
>
> (b the deportation of the person from the UK is conducive to the public good because they have been convicted of an offence for which they have been sentenced to a period of imprisonment of less than 4 years but at least 12 months; or
>
> (c) . . .
>
> 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.

399. This paragraph applies where paragraph 398 (b) or (c) applies if –

(a) the person has lived continuously in the UK for at least 20 years immediately preceding the date of the immigration decision (discounting any period of imprisonment) and he has no ties (including social, cultural or family) with the country to which he would have to go if required to leave the UK; or

(b) the person is aged under 25 years, he has spent at least half of his life living continuously in the UK immediately preceding the date of the immigration decision (discounting any period of imprisonment) and he has no ties (including social, cultural or family) with the country to which he would have to go if required to leave the UK."

24. I note the terms of the judgment of Rix LJ in **DS (India) [2009] EWCA Civ 554** where he stated:-

> "In my judgment, when consideration is given to the manifold nature of that public interest (see **N (Kenya)**) at paragraph 87, **E-O (Turkey) [2008] EWCA Civ 671** at paragraph 19 and **OH (Serbia) [2008] EWCA Civ 694** at paragraph 15, it cannot be said the IAT erred in this respect. The public interest in deportation for those who commit serious crimes goes well beyond depriving the offender in question from the chance to re-offend in this country: it extends to deterring and preventing serious crime generally and to upholding public abhorrence of such offending."

25. I do not consider that the factors which I have set out above relating to the appellant's relationship here, his work record and the fact that he has lived in Britain for some years outweigh the public interest in the deportation of a man who has committed a serious violent crime. I do not consider that there are any exceptional factors in this case that would mean that the general rule that those who commit serious crimes should be deported. There are many positive features about this appellant not least the fact that the two crimes against Mr B appear to be isolated crimes and I accept that there was a certain amount of aggravating behaviour by Mr B but I do not consider that these factors make this an exceptional case within the terms of the Rule or that it would mean that the removal of the appellant would be disproportionate. I would add that given that the appellant has lived in Ghana until the age of 16 and that he lived there for either three or four years as an adult I do not consider that he would have no ties with that country or would not be able reintegrate into that society.

26. In reaching that conclusion I have taken into account the fact that I accept that the appellant has a relationship here with Ms S and indeed with her daughter and indeed that the removal of the appellant will no doubt affect J but the reality is that she had to live without him for some time while the appellant was in prison. Indeed as Sedley LJ stated in **AD Lee** the result of criminality can be the break-up of a family.

27. I therefore, having set aside the decision of the First-tier Judge re-make the decision in this case and dismiss this deportation appeal there and make a life there.

Signed Date

Upper Tribunal Judge McGeachy **6 November 2014**