



IAC-FH-CK-V1

**Upper Tribunal
(Immigration and Asylum Chamber)**

Appeal Numbers: DA/02307/2013
DA/02308/2013

THE IMMIGRATION ACTS

**Heard at Field House
On 29 October 2014**

**Decision & Reasons Promulgated
On 28 November 2014**

Before

**THE HONOURABLE MR JUSTICE DAVIS
UPPER TRIBUNAL JUDGE ESHUN**

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

**MS SIMONIE CASANDRA MURRAY
MISS DAVIA DAWKINS
(ANONYMITY DIRECTION NOT MADE)**

Respondents

Representation:

For the Appellant: Mrs R Head

For the Respondents: Mr I Richards

DECISION ON ERROR OF LAW

1. This is an appeal against a finding of the First-tier Tribunal determination promulgated on 28 May 2014. In the proceedings before the First-tier Tribunal there were two appellants, Ms Simonie Murray and one of her daughters, Miss Davia Dawkins.

2. Ms Simonie Murray has a chequered immigration history. The deportation that was ordered in her case by the Secretary of State for the Home Department followed an appearance by Ms Murray AT the Crown Court sitting at Woolwich in May of 2012. She was then convicted of eleven counts of making false representations and declarations to obtain various benefits and also using a false passport. She was sentenced to nineteen months' imprisonment. That was not the first time she had been convicted of such offences. There had been a similar conviction in 2010. The first appellant therefore fell to be dealt with as a foreign criminal under the UK Borders Act 2007 and the respondent duly made a deportation order against her.
3. In relation to the second appellant, her daughter, the deportation in her case followed simply upon her mother's deportation order.
4. The First-tier Tribunal in considering the case made detailed findings of fact in relation to the relationship between the first appellant and the second appellant and more particularly between the first appellant and children who were not the subject of any deportation order and who were British citizens, one born in June of 2010, the other born in January of 2014.
5. The Secretary of State appealed against the determination of the First-tier Tribunal on the basis that the findings made disclosed errors in law. It was argued that there had been material misdirections by the First-tier Tribunal in reaching the conclusions they did.
6. We conclude that in terms of the factual findings that were made by the First-tier Tribunal they do not disclose any material misdirection in law. However, the core submission of the Secretary of State is that at no point in its determination did the First-tier Tribunal properly balance the public interest in the deportation of the first respondent against the circumstances of the respondent be they exceptional or otherwise. The decision as set out at paragraph 42 was that both appeals were allowed on human rights grounds by reference to Article 8.
7. The criminal history of the first respondent was set out but the only indication that any greater consideration than the mere recitation of the history was being considered by the First-tier Tribunal appears in paragraph 40:

"The appellant never had immigration status in the United Kingdom after her visit visa expired but she continued to live in the United Kingdom. She used two other women's identities, used a false passport in her attempt to return to Jamaica for a visit and committed benefits fraud for which she was firstly given a suspended custodial sentence of six months and then given nineteen months' custody. We do not for a moment condone her criminal behaviour. Our

decision would most certainly have been different had it not been for the three children involved in this appeal.”

8. The concluding sentence of that paragraph is as follows: “We are satisfied that the circumstances of this case are sufficiently compelling and therefore exceptional to outweigh the public interest in deportation.”
9. In our view the determination failed to grapple with the very significant public interest in deporting the respondent, whose immigration and criminal history was so significant. In that regard the First-tier Tribunal fell into material error and their determination cannot stand. We therefore quash the determination.
10. We have sought to enquire whether we could redetermine the case today given that the findings of fact would remain the same and the balancing act would be a matter of assessment on the basis of the facts as found and applying the law as we know it to be.
11. Counsel who appears today for Ms Murray considers that she is not in a position to make relevant submissions today. The case therefore would have to either be adjourned to another hearing at this Tribunal or remitted to the First-tier Tribunal. In our judgment the most sensible course is to remit it to the First-tier Tribunal for a redetermination of that balancing exercise by and before a different panel or judge than that responsible for the promulgation in May of this year.

Signed

Date: **27 November 2014**

Mr Justice Davis

Approval for Promulgation

Name of Upper Tribunal Judge issuing approval:	Mr Justice Davis
Appellants' Names:	Ms Simonie Casandra Murray Miss Davia Dawkins
Case Numbers:	DA/02307/2013 DA/02308/2013

Oral decision (please indicate)

I approve the attached Decision and Reasons for promulgation

Name: William Davis

Date: 30 October 2014

Amendments that require further action by Promulgation section:

Change of address:

Rep:

Appellant:

Other Information: