Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: DA/02568/2013

THE IMMIGRATION ACTS

Heard at Field House	**Determination promulgated**
on 20 May 2014	**On 23 May 2014**
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Before

UPPER TRIBUNAL JUDGE MACLEMAN

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

C V T

Respondent

For the Appellant: Mr S Whitwell, Senior Home Office Presenting Officer
For the Respondent: Mr A Jafar, Counsel (instructed directly)

An anonymity order remains in force

DETERMINATION AND REASONS

1. This determination refers to parties as they were in the First-tier Tribunal.

2. The SSHD appeals against a determination by a panel of the First-tier Tribunal comprising Judge Ievins and Mrs S Hewitt JP, promulgated on 27 March 2014, allowing the appellant's appeal against deportation to Vietnam.

3. The lengthy immigration, criminal and procedural history is summarised in the respondent's notice of decision dated 6 and served on 11 December 2013. The live issue remaining was whether Article 8 of the ECHR and in particular the best interests of the appellant's children constituted exceptional circumstances outweighing the public interest in deportation. The respondent found that they did not. The panel concluded that they did.

4. The SSHD's grounds of appeal to the Upper Tribunal are all directed at failure to give reasons, or adequate reasons, for the panel's findings on material matters.

5. Mr Whitwell submitted that looking at the findings in the determination, together with preserved findings from the determination of the panel which heard an earlier appeal on 19 January 2011, this was accepted to be a close family, and the result of deportation would be to leave the 4 children in a single parent unit, but no exceptional circumstances appeared (¶1 of the grounds). Some contact could be maintained, and the consequences of separation could be mitigated (¶2). Deportation does break up families. The panel erred in its treatment of the public interest. The panel thought there was little risk of re-offending, but did not consider whether the appellant had addressed his problems with alcohol, manifest in the 1997 offence, and should have noted that he still had the same associates. The panel treated the appellant as now being older and a family man, but when he reoffended in 2007 he was already aged 42 and a family man with young children. The concepts of deterrence and of public revulsion at serious offending were given insufficient weight. There was nothing to justify finding "a very strong claim indeed". Notwithstanding a degree of rehabilitation, some crimes were so serious that it would always be proportionate to deport. While all cases were fact sensitive, the lengthy custodial sentences for offences, one involving serious violence and both involving firearms, were such that deportation ought not to have been found disproportionate. The determination should be set aside and the decision remade. That could be done in the Upper Tribunal as there was no need to revisit the findings of primary fact.

6. I pressed Mr Whitwell on whether his final submission amounted to an argument that no rational panel of the First-tier Tribunal could properly have found in favour of the appellant. He said that the respondent did not go so far as to argue that the decision was perverse, rather that it was flawed by inadequacy of reasoning on exceptional circumstances and on the public interest.

7. Mr Jafar in his helpful skeleton argument and in submissions argued along the following lines. The panel justifiably found that the family situation was not just of ordinary but of exceptional strength. The appellant's absence was seriously detrimental to all four children, and to one in particular. The panel applied all the relevant authorities. There had been no evidence to suggest ongoing problems with alcohol. The matter of continuing undesirable associations was dealt with in re-examination, and the panel resolved the point in the appellant's favour. There was strong evidence of rehabilitation and of low risk of reoffending from a probation officer. The matters of revulsion and deterrence, and of the very

serious nature of the offending, were all dealt with, and the public interest fully factored in. The panel reached conclusions properly open to it and the grounds amounted only to reargument and disagreement.

8. Mr Jafar accepted my observations that this was a finely balanced case which different panels might have decided otherwise, and that a determination rehearsing all the points mentioned in the SSHD's grounds and in submissions and coming down on the other side would have been very difficult to attack as a matter of law.

9. I indicated that the SSHD's appeal would be dismissed.

10. The SSHD does not go so far as to submit that there could rationally have been only one outcome. The case was at best for the appellant finely balanced. No doubt some panels would have decided the other way. Whether the outcome might be considered generous is beside the point. While the grounds and submissions have mounted all available challenges to the determination, I agree with the submission for the appellant that these resolve into no more than reargument and disagreement. All the legal and factual matters stressed by the SSHD in the grounds and in submissions are thoroughly and carefully dealt with in the determination.

11. The First-tier Tribunal reached a conclusion properly open to it. No flaw in its factual analysis or legal approach has been exposed. Its determination shall stand.

20 May 2014
Judge of the Upper Tribunal