



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

Appeal Number: OA/14798/2013

**THE IMMIGRATION ACTS**

**Heard at Birmingham, Sheldon Court**

**Determination  
Promulgated**

**On 11<sup>th</sup> July 2014**

**On 21<sup>st</sup> July 2014**

**Before**

**DEPUTY UPPER TRIBUNAL JUDGE JUSS**

**Between**

**MR SAMUEL QUAYE  
(ANONYMITY DIRECTION NOT MADE)**

Appellant

**and**

**THE SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Respondent

**Representation:**

For the Appellant: Ms E Rutherford (Counsel)

For the Respondent: Mr D Mills (HOPO)

**DETERMINATION AND REASONS**

1. This is an appeal against the determination of First-tier Tribunal Judge Snape, promulgated on 22<sup>nd</sup> April 2014, following a hearing at Birmingham Sheldon Court on 7<sup>th</sup> April 2014. In the determination, the judge allowed

the appeal of Mr Samuel Quaye. The Respondent applied for, and was granted permission to appeal to the Upper Tribunal, and thus the matter comes before me.

### **The Appellant**

2. The Appellant is a citizen of Ghana who was born on 20<sup>th</sup> February 1973. He appealed against the decision of the Respondent Secretary of State dated 18<sup>th</sup> July 2013, refusing revocation of the deportation order made against the Appellant on 10<sup>th</sup> February 2009 and implemented on 19<sup>th</sup> February 2009, on the basis of the Appellant's alleged Article 8 ECHR rights, which the Appellant claimed to have been infringed by the decision against him.

### **The Appellant's Claim**

3. The Appellant's claim, with respect to his Article 8 rights, is that he is now married to a British citizen, Ms Doreen Abu, and the couple have a child who was born in April 2013. The Appellant would not be able to relocate to Ghana, because his wife could not go back there, as she is settled in this country. He had discussed this matter with his wife (paragraph 8).

### **The Judge's Findings**

4. The judge had regard to all the facts before him. He noted that the Appellant's wife could not relocate to Ghana because she was completing a nursing course which would not finish until 2015 (paragraph 8). Although she had married the Appellant knowing about his criminal convictions she was not aware that the effect of the deportation is that he would be banned for ten years from re-entering the country (paragraph 14). The judge heard submissions from the Respondent's representative that the Appellant had married the Sponsor knowing that he would be removed and would be illegible to return to the UK for ten years (paragraph 19). Moreover, the birth of the Appellant's and Sponsor's child was planned deliberately and the parties had a child in the hope that "it would strengthen his claims of returning to the United Kingdom" (paragraph 20).
5. On the Appellant's behalf himself, there were submissions by his Counsel that the Appellant had already been out of the UK for five years and there was no evidence he had committed further offences, and the offence that he had committed involved the use of a false passport in order to obtain employment. There were no allegations of drug use or of violence or of theft (paragraph 22).
6. The judge went on to consider the position with respect to Article 8 and clearly and carefully laid down the applicable law in relation to Article 8 (see paragraph 28). The judge also methodically followed through the steps that have to be applied with respect to Article 8 (see paragraphs 29 to 31).

7. Proper consideration was given by the judge to the best interests of the child (paragraph 33). Furthermore, the judge fully recognised that “the Appellant and the Sponsor are architects of their personal situations by deciding to marry whilst the Appellant was subject to a ten year ban in returning to the United Kingdom...”(paragraph 35). However, all things considered as far as Article 8 was concerned, the balance of considerations fell in favour of the Appellant (paragraph 37).

### **Grounds of Application**

8. In the Grounds of Appeal, it was submitted that the judge failed to provide adequate reasons for her decision and failed to give adequate consideration to the Secretary of State’s public interest in the field of deportation.
9. On 22<sup>nd</sup> May 2014, permission to appeal was granted by the Tribunal.

### **Submissions**

10. At the hearing before me on 11<sup>th</sup> July 2014 Mr Mills, appearing on behalf of the Respondent, submitted that the judge fell into error in two fundamental ways. First, the application was refused under paragraphs 390 and 391 of HC 395, and yet the judge did not refer to these provisions at all.
11. Second, insofar as the judge did refer to Article 8, she did not consider the balance of considerations, in the specific context of deportation proceedings, where the Secretary of State’s interest with respect to the deterrence of foreign criminals and the expression of firm disapproval of criminality, is a vital consideration. The latter, indeed, was referred to in the Grounds of Appeal itself by the Secretary of State in the case of **Masih [2012] UKUT**. This makes it clear that it is not enough to say that there is no further risk of reoffending. That is not the sole issue.
12. Given these errors, Mr Mills submitted that I should make a finding of an error of law and remit this matter back to be reheard again by a First-tier Tribunal Judge.
13. For her part, Ms Rutherford submitted that although it was the case that the judge had not expressly referred to the “public interest” with respect to matters arising from deportation, nevertheless, the judge was alive to the issues before her, as was clear from the final sentence at paragraph 37 which read as follows: “In considering the issue of proportionality I have also taken into account the Appellant’s offences, although serious, did not involve crimes of violence, terrorism or drug use” (paragraph 37). Therefore, the judge did take into account the nature of the offences as being serious and properly evaluated the crime. It was unnecessary for the judge to cite case law.
14. In reply, Mr Mills submitted that, although it was clearly correct that it was unnecessary for a judge to recite the case names, nevertheless, regard

had to be given to the public interest in the particular context of deportation proceedings. This had not happened.

15. As an indication of how important the issue was, he handed up the Court of Appeal judgment in **SS (Nigeria) [2013] EWCA Civ 550**, where Laws LJ explained how even children's interests do not necessarily outweigh the public interest in favour of removal or deportation, which may be stronger in particular circumstances (see paragraph 45).

### **Error of Law**

16. I am satisfied that the making of the decision by the judge involved the making of an error on a point of law (see Section 12(1) of TCEA 2007) such that I should set aside this decision. I come to this conclusion notwithstanding the judge's otherwise very comprehensive and clear determination. My reasons are as follows.
17. First, the refusal decision was predicated on the basis of paragraph 390 and 391 of HC 395. The judge does not give consideration to these.
18. Second, whilst it is clearly the case that the judge does refer to "the Appellant's offences although serious, did not involve crimes of violence..." (paragraph 37), nevertheless, this is not enough to deal fully with the weight of public interest considerations that the Secretary of State must bring to bear in cases of this kind. The case of **Masih [2012] UKUT** is already cited in the Grounds of Appeal. There are other cases as well. (See **Lee**).
19. In the circumstances, it seems to me that this matter must be remitted back to the First-tier Tribunal, after the decision of the judge below being set aside, so that it can be considered on the basis of the range of cases that nowadays attest to the importance of the public interest of the state when it comes to dealing with criminality of foreign nationals.

### **Decision**

20. The decision of the First-tier Tribunal involved the making of an error of law such that it falls to be set aside. I set aside the decision of the original judge. This matter is remitted back to the First-tier Tribunal in Birmingham to be heard by a judge other than Judge Snape at the first available opportunity.
21. No anonymity order is made.

Signed

Date

Deputy Upper Tribunal Judge Juss

21<sup>st</sup> July 2014