Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: DA/01096/2014

THE IMMIGRATION ACTS

At Field House	**Decision and Reasons Promulgated**
On 14 September 2015	**On 2 December 2015**

Before

UPPER TRIBUNAL JUDGE HANSON

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

MARTIN SAMA
(ANONYMITY DIRECTION NOT MADE)

Respondent

Representation:
For the Appellant: Mr N Bramble – Senior Home Office Presenting Officer.
For the Respondent: In person.

Decision and Reasons

1. Mr Sama appeared before the Tribunal in person. He has been represented in the past by Pickup Scott Solicitors who in a letter dated 11 September 2015 wrote:

> "We refer to previous correspondence. We note there is a further hearing of the appeal on the 14 September 2015 at 2.00 p.m. However we are still without instructions as we advised in our letter dated 5th August 2015 and

> will not be attending the hearing. As mentioned previously we should be grateful if you would take the content of our letter dated 3rd February, 2015 into account when making the decision whether or not to allow the Home Office appeal."

2. The letter of 3rd February 2015 is Mr Sama's Rule 24 reply to the Secretary of States application for permission to appeal. It states that even if Judge Lloyd made an error of law it was not material. The letter acknowledges that Judge Lloyd made an error in referring to the wrong immigration rules at paragraphs 25-30 of the determination but claims this is not material as on the basis of the findings of fact made by the Judge the appeal would have been allowed applying the correct Rules. The letter sets out the submissions that would be made on Mr Sama's behalf had the solicitor attended.

3. Mr Sama was asked why he failed to instruct his solicitors. He claimed he was saving up to meet their fees. The last occasion he saw his solicitor was when they were last in court. Mr Sama claimed to have saved towards the £1,900 required but no proof of this was available. He made enquires of other solicitor to see if they could assist but they too wanted money. No evidence of such enquires has been provided or of a firm willing to represent Mr Sama.

4. Although Mr Sama would have liked more time it has not been proved it is unfair to refuse the adjournment request. He has had the benefit of legal representation. His previous solicitors have made detailed written submissions on his behalf which shall be treated as a 'speaking statement' for him. His is able to answer questions and explain his position as many appearing in person before courts and tribunals have to in light of legal aid cuts. The hearing shall proceed. The overriding objectives considered.

5. The above respondent, Mr Sama, is a citizen of Sierra Leonne born on the 20 November 1987. He entered the United Kingdom aged 10 to join his father who arrived in 1996.

6. Mr Sama has a considerable history of criminal activity from November 2004 and was warned about the consequences of his conduct by the Secretary of State in 2007. His immigration history, including details of thirteen convictions for forty one offences and cautions, is set out in the Secretary of States letter prepared by the Criminal Casework Directorate for the purposes of the appeal before the Frist-tier Tribunal.

7. On 30 October 2012 Mr Sama was convicted at Winchester Crown Court of two counts of burglary and one count of possession of Class B drugs, namely cannabis resin, for which he was sentenced to two sentences of 42 months imprisonment to run concurrent on 27 November 2012. A copy of the sentencing remarks can be found within the Secretary of States appeal bundle.

8. On 9 June 2014 Mr Sama was made the subject of a deportation order pursuant to UK Borders Act 2007. His appeal against removal was heard by First-tier

Tribunal Judge B Lloyd sitting at Columbus House Newport on 10 November 2014.

9. Judge Lloyd set out his findings from paragraph 48 of the determination. At paragraph 51 it is stated:

> "Having regard to the evidence before me of the strong family support which the Appellant now enjoys in the UK, the increased closeness and intensity of the relationship with his daughter, what I believe is the unfailing support of his partner Ms Griffin and even it has to be said the support of former partner Ms Spratley, I am drawn to the conclusion that there is a compelling case to allow the Appellant's appeal on Article 8 grounds. "

10. At paragraph 56 it is stated:

> "For all these reasons I conclude the removal of the Appellant to Sierra Leone would result in a breach of his rights under Article 8 which would be disproportionate to the need for proper immigration control and the public interest in this case. My view does not lessen the seriousness, historically, of what he has done but looking at the evidence in its totality I do not consider that his deportation is the proportionate solution in this case."

11. The appeal was allowed on human rights grounds.

12. The Secretary of State sought and was granted permission to appeal on the basis it was arguable the judge failed to apply the Immigration Rules in force at the date of the hearing, leading to the judge erring in applying the wrong threshold to Mr Sama's circumstances and failing to establish his deportation would be unduly harsh or there would be significant obstacles to his re-integration.

13. Guidance in relation to the approach to be adopted when considering an appeal against a deportation decision has been provided by the Court of Appeal in a number of leading cases. In YM (Uganda) v SSHD [2014] EWCA Civ 1292 it was found that it is the Immigration Rules in force at the date of hearing which are those to be applied.

14. In MF (Nigeria) [2013] EWCA Civ 1192 the Master of the Rolls indicated that where the "new rules" (in force from 9 July 2012) apply (in a deportation case), the "first step that has to be undertaken is to decide whether deportation would be contrary to an individual's article 8 rights on the grounds that (i) the case falls within para 398 (b) or (c) and (ii) one or more of the conditions set out in para 399 (a) or (b) or para 399A (a) or (b) applies. If the case falls within para 398 (b) or (c) and one or more of those conditions applies, then the new rules implicitly provide that deportation would be contrary to article 8" (paragraph 35, underlining added). Paragraphs 399 and 399A can be thought of as setting out the exceptions to deportation (see paragraph 14).

15. In YM (Uganda) v SSHD [2014] EWCA Civ 1292 it was confirmed that the 2012 Rules were a complete code for dealing with a person facing deportation under

the Immigration Acts, and who claimed that deportation was contrary to his Article 8 rights.

16. In MM (Lebanon) and others [2014] EWCA Civ 985 it was said that where the relevant group of IRs, upon their proper construction, provide a "complete code" for dealing with a person's Convention rights in the context of a particular IR or statutory provision, such as in the case of "foreign criminals", then the balancing exercise and the way the various factors are to be taken into account in an individual case must be done in accordance with that code, although references to "exceptional circumstances" in the code will nonetheless entail a proportionality exercise.

17. In CG (Jamaica) [2015] EWCA Civ 194 it was again confirmed that the Rules relating to deportation constitute a complete code.

18. In SSHD v AQ (Nigeria) CD (Jamaica) and TH (Bangladesh) [2015] EWCA Civ 25 it was held that when a foreign criminal appealed against a deportation order on the ground that the public interest in his deportation was outweighed by his private or family life in the UK, the tribunal would need to examine the factors that would, under the Respondent's policy in part 13 of the Immigration Rules, outweigh the public interest in deportation. Ultimately, the assessment of proportionality was for the tribunal or the court to make, but national policy as to the strength of the public interest in deporting foreign criminals was a fixed criterion against which other factors and interests had to be measured.

19. This principle has been reinforced by the Court of Appeal in the more recent judgment in SSHD v Boyd [2015] EWCA Civ 1190 in which the Court set out reference to case law in the following terms:

> "26. My above remarks would apply to a case that preceded the introduction of paragraphs 398 to 399B of the Immigration Rules. However, these provisions did apply to the decision of the Secretary of State in relation to the Respondent, and were referred to by the First-tier Tribunal. In *Secretary of State for the Home Department v AJ (Angola) and AJ (Gambia)* [2014] EWCA Civ 1636, Sales LJ set out those Rules at paragraph 9. Having referred to the judgment of this Court in *MF Nigeria* [2013] EWCA Civ 1192; [2014] 1 WLR 544, Sales LJ said, in a judgment with which the other members of the Court agreed:
>
> > "39. The fact that the new rules are intended to operate as a comprehensive code is significant, because it means that an official or a tribunal should seek to take account of any Convention rights of an appellant through the lens of the new rules themselves, rather than looking to apply Convention rights for themselves in a free-standing way outside the new rules. This feature of the new rules makes the decision-making framework in relation to foreign criminals different from that in relation to other parts of the Immigration Rules, where the Secretary of State retains a general discretion outside the Rules in exercise of which, in some circumstances, decisions may need to be made in order to accommodate certain claims for leave to remain on the basis of Convention rights, as

explained in *Huang* and *R (Nagre) v Secretary of State for the Home Department* [2013] EWHC 720 (Admin).

40. The requirement that claims by appellants who are foreign criminals for leave to remain, based on the Convention rights of themselves or their partners, relations or children, should be assessed under the new rules and through their lens is important, as the Court of Appeal in *MF (Nigeria)* has emphasised. It seeks to ensure uniformity of approach between different officials, tribunals and courts who have to assess such claims, in the interests of fair and equal treatment of different appellants with similar cases on the facts. In this regard, the new rules also serve as a safeguard in relation to rights of appellants under Article 14 to equal treatment within the scope of Article 8. The requirement of assessment through the lens of the new rules also seeks to ensure that decisions are made in a way that is properly informed by the considerable weight to be given to the public interest in deportation of foreign criminals, as declared by Parliament in the 2007 Act and reinforced by the Secretary of State (as the relevant Minister with responsibility for operation of the immigration system), so as to promote public confidence in that system in this sensitive area."

In *LC (China) v Secretary of State for the Home Department* [2014] EWCA Civ 1310, this Court again emphasised the points made in both *SS (Nigeria)* and *MF (Nigeria)*. It dismissed an appeal from the Upper Tribunal, which had allowed an appeal from the FTT. This Court held that the FTT in that case "clearly erred" in its understanding and application of the new rules, by considering the case of a foreign criminal based on Convention rights outside the new rules (see para. [14]), just as the Upper Tribunal has done in both the cases before us. As in the cases before us, the error had occurred because the decision of the FTT had been made before the judgment of this Court in *MF (Nigeria)* was handed down. At para. [17], Moore-Bick LJ (giving the leading judgment) said this:

> "Two points of importance emerge from the decisions in *SS (Nigeria)* and *MF (Nigeria)*. First, both emphasise the great weight to be attached to the public interest in the deportation of foreign criminals and the importance of the policy in that regard to which effect has been given by Parliament in the UK Borders Act 2007, a weight and importance neither of which seem to have been fully appreciated by the First-tier Tribunal in this case. The second is that it is wrong to consider the question of infringement of article 8 rights outside the terms of the Immigration Rules, as the First-tier Tribunal did.""

27. More recently, in *MA (Somalia)* [2015] EWCA Civ 48, Richards LJ said:

"17. It follows from *MF (Nigeria)* that MA's case should have been considered only within the Immigration Rules and on the basis that the scales are heavily weighted in favour of deportation and that something very compelling is required to outweigh the public interest in deportation."'

20. This issue arises as the judge appears to have concentrated on assessing the merits of the claim by reference to Article 8 ECHR rather than within the structure of the correct Rules as per the guidance provided.

21. It is accepted the judge makes mention of paragraphs 398, 399 and 399A which are set out at paragraphs 23 to 30 of the determination but those are not the versions of these rules in force at the date of the hearing. Those were as follows:

> 'Deportation and Article 8
>
> A398. These rules apply where:
>
> > (a) a foreign criminal liable to deportation claims that his deportation would be contrary to the United Kingdom's obligations under Article 8 of the Human Rights Convention;
> >
> > (b) a foreign criminal applies for a deportation order made against him to be revoked.
>
> 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
>
> > (a) the deportation of the person from the UK is conducive to the public good and in the public interest 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 and in the public interest 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 deportation of the person from the UK is conducive to the public good and in the public interest because, in the view of the Secretary of State, their offending has caused serious harm or they are a persistent offender who shows a particular disregard for the law,
>
> the Secretary of State in assessing that claim will consider whether paragraph 399 or 399A applies and, if it does not, the public interest in deportation will only be outweighed by other factors where there are very compelling circumstances over and above those described in paragraphs 399 and 399A.
>
> 399. This paragraph applies where paragraph 398 (b) or (c) applies if –
>
> > (a) the person has a genuine and subsisting parental relationship with a child under the age of 18 years who is in the UK, and
> >
> > > (i) the child is a British Citizen; or
> > >
> > > (ii) the child has lived in the UK continuously for at least the 7 years immediately preceding the date of the immigration decision; and in either case
> > >
> > > > (a) it would be unduly harsh for the child to live in the country to which the person is to be deported; and

(b) it would be unduly harsh for the child to remain in the UK without the person who is to be deported; or

(b) the person has a genuine and subsisting relationship with a partner who is in the UK and is a British Citizen or settled in the UK, and

(i) the relationship was formed at a time when the person (deportee) was in the UK lawfully and their immigration status was not precarious; and

(ii) it would be unduly harsh for that partner to live in the country to which the person is to be deported, because of compelling circumstances over and above those described in paragraph EX.2. of Appendix FM; and

(iii) it would be unduly harsh for that partner to remain in the UK without the person who is to be deported.

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

(a) the person has been lawfully resident in the UK for most of his life; and

(b) he is socially and culturally integrated in the UK; and

(c) there would be very significant obstacles to his integration into the country to which it is proposed he is deported.'

22. In paragraph 25 the judge noted:

'Paragraph 399A applies if –

(a) The person has lived continuously in the UK for at least twenty years immediately preceding the date of the immigration decision (discounting any period of imprisonment) and 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 of age he has spent at least half his life living continuously in the UK immediately preceding the date of the immigration decision (discounting nay periods of imprisonment) and he has no ties (including social, cultural or family) with the county to which he would have to go if required to leave the UK.'

23. The version of the Rules the judge should have applied is arguably tougher, requiring an applicant to demonstrate that they can satisfy all three of the specified criteria.

24. By virtue of paragraph 398(b) the deportation of Mr Sama from the UK is conducive to the public good and in the public interest because he has been convicted of an offence for which he was sentenced to a period of imprisonment of less than 4 years but at least 12 months.

25. As 398(b) is met the judge needed to assess the merits of the human rights element of the case by reference to the criteria set out in paragraph 399 and make a specify finding in relation to whether Mr Sam had shown he was able to succeed under the Rules or not. I find the judge erred in his application of the wrong Immigration Rules and in assessing the merits of the case by reference to Article 8 ECHR rather than by the correct Rules which meant insufficient consideration being given to the Secretary of State's case in this matter.

26. To consider whether the error is material, as the judge did consider many relevant aspects under the Article 8 ECHR assessment, the following conclusions arise:

> 399(a) requires Mr Sama to prove he has a genuine and subsisting parental relationship with a child under the age of 18 years who is in the UK. The judge noted in paragraph 38 that it was accepted that Mr Sama had a genuine and subsisting relationship with his young daughter.
>
> 399(b)(i) – the chid is a British citizen.

27. The correct version of the Rules then requires consideration of whether (a) it would be unduly harsh for the child to live in the country to which Mr Sama is to be deported; and (b) it would be unduly harsh for the child to remain in the UK without Mr Sama. Judge Lloyd found at paragraph 54 of the determination that it would not be reasonable to expect the young child to leave the UK and that, in any event, her mother would not permit this to happen. Reasonableness is not the test set out in the Rules.

28. The term 'unduly harsh' has been the subject to two decisions of the Upper Tribunal which some commentators have suggested take opposing views. In MAB (para 399; "unduly harsh") USA [2015] UKUT 00435 (IAC) it was held that (i) the phrase "unduly harsh" in para 399 of the Rules (and s.117C(5) of the 2002 Act) does not import a balancing exercise requiring the public interest to be weighed against the circumstances of the individual (whether child or partner of the deportee). The focus is solely upon an evaluation of the consequences and impact upon the individual concerned; (ii) Whether the consequences of deportation will be "unduly harsh" for an individual involves more than "uncomfortable, inconvenient, undesirable, unwelcome or merely difficult and challenging" consequences and imposes a considerably more elevated or higher threshold; (iii) The consequences for an individual will be "harsh" if they are "severe" or "bleak" and they will be "unduly" so if they are 'inordinately' or 'excessively' harsh taking into account of all the circumstances of the individual. (MK (section 55 – Tribunal options) Sierra Leone [2015] UKUT 223 (IAC) at [46] and BM and others (returnees – criminal and non-criminal) DRC CG [2015] UKUT 293 (IAC) at [109] applied.)

29. In KMO (section 117 – unduly harsh) Nigeria [2015] UKUT 00543 the panel declined to follow MAB and held that the Immigration Rules, when applied in the context of the deportation of a foreign criminal, are a complete code. Where

an assessment is required to be made as to whether a person meets the requirements of para 399 of the Immigration Rules, as that comprises an assessment of that person's claim under article 8 of the ECHR, it is necessary to have regard, in making that assessment, to the matters to which the Tribunal must have regard as a consequence of the provisions of s117C. In particular, those include that the more serious the offence committed, the greater is the public interest in deportation of a foreign criminal. Therefore, the word "unduly" in the phrase "unduly harsh" requires consideration of whether, in the light of the seriousness of the offences committed by the foreign criminal and the public interest considerations that come into play, the impact on the child, children or partner of the foreign criminal being deported is inordinately or excessively harsh.

30. The observation that there is a need to consider the impact of a decision by reference to the effect upon an individual of the proposed action is necessary to ascertain if the result is harsh. This is a fact sensitive assessment for what may be harsh for a person with a partner, children, and/or health issues may not be for a healthy single person. The term 'unduly' is suggestive of a proportionally/balance assessment in which the relationship to the reason(s) the issue is having to be considered must be discussed. A minor shoplifting offence is not likely to warrant a person's removal per se if the consequences are harsh whereas a repeat offender or a person committing more serious offences will have to accept that the bar for them is set somewhat higher. This is the approach I have adopted for the purposes of this determination in light of the fact the proportionally assessment has to be considered within the Rules.

31. When Mr Sama was asked why he should not be deported he stated it was because he has a child. He claims to be working and to have "moved forward with his life". He claims his daughter will grow up without a father and will miss her father. It has accepted the child's mother is her main carer. He also claims the mother works and he makes a financial contribution.

32. What the above did not identify is anything unique to this case that could be factored into the equation. It is accepted Mr Sama has contact with his daughter and that if he is removed such direct contact will cease. It is accepted his daughter is likely to miss him but it must also be accepted that it has not been shown the child's mother is unable to provide for the needs of the child by way of financial, emotional and physical security. Although Judge Lloyd concluded, at paragraph 57 of his determination, that the daughter's interests are best served by her having the opportunity to grow up in the close emotional bond she has developed with her father, he fails to make any finding upon the consequences of such opportunity being lost other than the loss of the opportunity to strengthen the bond and the disadvantage of having to grow up without the physical presence of her father. The judge does note that it has only been "quite recently" that the bond has been supported by physical contact. The child was aged 8 at the date of the hearing before Judge Lloyd.

33. It was not found the child's mother is unable or unwilling to help the child understand the fact her father is unable to continue to see her and for the child to understand it is not as a result of something she has done. Judge Lloyd noted at paragraph 13 of the determination that the child was informed of her father's situation a week before the appeal and visited him in prison and that the child has been made aware that her father faces the prospect of being returned to his home country. There is no evidence of the impact of this information being shared with the child suggesting a harsh adverse reaction. It has not been shown that if the mother requires additional help that this is not available from the medical or educational services in the UK. It has not been shown that the loss of opportunity to strengthen the bond with her father will result in an adverse impact upon the child that after the initial distress can be categorised as being 'harsh', let alone unduly harsh on the facts if Mr Sama is removed and the child remains in the UK.

34. It is noted the child's mother, who on the one hand claims to be supportive to the extent she arranged a job for Mr Sama and took their daughter to see him in prison and who must have been supportive of the reinstatement of face to face contact, claimed that if Mr Sama was deported she would not permit indirect contact. If such contact was in the best interests of the chid as a means of maintaining the bond it appears to be a contradictory approach. In any event if such contact was all that was available and in the best interests of the child, it has not been shown that Mr Sama will not be able to make an application to the Family Court for a Family Arrangement Order to enable indirect contact to be maintained.

35. The failure to adequately examine this element of the Rules is a material legal error such that the determination shall be set aside.

36. In re-making the decision the above analysis is carried over although as per the case law it is necessary for me to apply the Rules in force at the date of the hearing. In relation to the child these state:

> (a) the person has a genuine and subsisting parental relationship with a child under the age of 18 years who is in the UK, and
>
> (i) the child is a British Citizen; or
>
> (ii) the child has lived in the UK continuously for at least the 7 years immediately preceding the date of the immigration decision; and in either case
>
> (a) it would be unduly harsh for the child to live in the country to which the person is to be deported; and
>
> (b) it would be unduly harsh for the child to remain in the UK without the person who is to be deported;

37. I find it has not been established that it would be unduly harsh for the child to remain in the UK with her mother if Mr Sama is deported.

38. In relation to a partner:

> (b) the person has a genuine and subsisting relationship with a partner who is in the UK and is a British Citizen or settled in the UK, and
>
> > (i) the relationship was formed at a time when the person (deportee) was in the UK lawfully and their immigration status was not precarious; and
> >
> > (ii) it would be unduly harsh for that partner to live in the country to which the person is to be deported, because of compelling circumstances over and above those described in paragraph EX.2. of Appendix FM; and
> >
> > (iii) it would be unduly harsh for that partner to remain in the UK without the person who is to be deported.

39. The evidence shows Mr Sama had a former relationship with Ms Spratley who is the mother of their child. There is no evidence of an ongoing relationship between Mr Sama and Ms Spratley although she has been supportive of him in the appeal process and gave evidence that she has strong personal and business connections which has enabled her to secure a job opportunity for Mr Sama in a call centre. It has not been shown Mr Sama is in a genuine and subsisting relationship with Ms Spratley.

40. Mr Sama has a genuine and subsisting relationship with Ms Griffin, a British citizen. It is said they have been in a relationship for three years having met in 2011 and cohabited from 2012. They hope to start a family although Ms Griffin suffered a miscarriage in 2012. Paragraph 399(b) contains a number of other requirements which must be met.

41. In relation to whether the relationship was formed at a time when the person (deportee) was in the UK lawfully and their immigration status was not precarious; Mr Sama was granted ILR. The deportation order was made on 9 June 2014. The relationship with Ms Griffin was therefore formed at a time when Mr Sama had lawful leave to remain and his immigration status was not precarious.

42. In relation to whether it would be unduly harsh for that partner to live in the country to which the person is to be deported, because of compelling circumstances over and above those described in paragraph EX.2. of Appendix FM; the starting point must be to consider the terms of EX.2 which at the date of this hearing which stated:

> "EX.2. For the purposes of paragraph EX.1.(b) "insurmountable obstacles" means the very significant difficulties which would be faced by the applicant or their partner in continuing their family life together outside the UK and which could not be overcome or would entail very serious hardship for the applicant or their partner."

43. The evidence recorded by Judge Lloyd from Ms Griffin, in paragraph 16 of the original determination, included the fact Mr Sama had not told her of his past criminality which she only discovered when he was arrested for the index offence and faced trial and imprisonment. It was also stated:

> "16. ... She is wholly committed to the Appellant as her partner and she will do anything to support him; financially or in any other way. She is a qualified dental nurse and is very ambitious to make the best of her career opportunities. She is undertaking further studies and experience so as to qualify as an orthodontic therapist. Her professional qualifications however are not recognised in Sierra Leonne and it would be too massive a sacrifice for both her and the Appellant if she were to accompany him to Sierra Leone. She is also a British citizen and her way of life in the UK is all that she has known. The Appellant's deportation to Sierra Leone would almost inevitably mean an enforced indefinite separation for them"

44. It is arguable the above statement is based upon conscious choice of lifestyle and fails to establish that even the threshold of EX.2 is met It is not shown Mr Sama and Miss Griffin are unable to resettle in Sierra Leone or obtain work to support themselves even if UK based qualifications are not recognised in Sierra Leone. It has not been shown Ms Griffin is unable to retrain to pursue her chosen profession.

45. The requirement is for compelling circumstances over and above those referred to in EX.2 which have not been proved to exist on the facts. It has not been shown to be unduly harsh for Mr Sama and Ms Griffin to continue their relationship in Sierra Leonne. The fact she is saying she will not follow him is a matter for her but does not change this assessment.

46. In relation to whether it would be unduly harsh for Ms Griffin to remain in the UK without Mr Sama, it has not been proved this requirement can be satisfied. There is insufficient evidence to show this is the case. Ms Griffin herself has also stated she will chose to remain, putting career choice above the relationship, indicating she does not consider this an unduly harsh option.

47. Ms Sama has failed to discharge the burden of proof upon him to show he is entitled to succeed by reference to paragraph 399.

48. Paragraph 399A applies where paragraph 398(b) or (c) applies if (a) the person has been lawfully resident in the UK for most of his life; and (b) he is socially and culturally integrated in the UK; and (c) there would be very significant obstacles to his integration into the country to which it is proposed he is deported.

49. Mr Sama entered the United Kingdom aged 10 on 31 July 1998 and has lived here for most of his life. Mr Sama is integrated into life in the UK. Mr Sama claimed to have lost his mother and three sibling in Sierra Leone and to have no support network there. It is reasonable to conclude that the knowledge Mr Sama has of life in Sierra Leone is limited and reintegration will not be easy, but

that is not the test. It is not significant obstacles but very significant obstacles that need to be established on the evidence. It is accepted that until established Mr Sama may experience hardship but he is an intelligent individual, educated in the UK, with experience of employment. It has not been shown he is unable to work or obtain accommodation. Despite claiming she would not come to Sierra Leonne with Mr Sama, Ms Griffin did state she would support him financially or in any other way. His father is from Sierra Leonne. It has not been proved that Ms Sama will be without support which, in financial terms, may assist him in obtaining accommodation and meeting his basis needs. Even without such support Mr Sama has not shown that very significant obstacles exist to his reintegration. Mr Sama has failed to show he is entitled to succeed under the Immigration Rules. Accordingly the appeal is dismissed.

Decision

50. The First-tier Tribunal Judge materially erred in law. I set aside the decision of the original Judge. I remake the decision as follows. This appeal is dismissed.

51. The First-tier Tribunal did not make an order pursuant to rule 45(4)(i) of the Asylum and Immigration Tribunal (Procedure) Rules 2005. I make no such order pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008.

Signed…….
Upper Tribunal Judge Hanson

Dated the 25 November 2015