Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: DA/01102/2013

THE IMMIGRATION ACTS

Heard at Field House	**Determination Promulgated**
on 5th January 2015	**on 21st January 2015**

Before

UPPER TRIBUNAL JUDGE HANSON

Between

AYODEJI JOHN KAREEM
(Anonymity direction not made)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellant: Mr Chirico instructed by Global Immigration Solutions
For the Respondent: Mr Whitwell Senior Home Office Presenting Officer.

DETERMINATION AND REASONS

1. This is an appeal by the Appellant against a determination of a panel of the First tier Tribunal composed of Judge Buckwell and Judge Lobo (hereinafter referred to as 'the Panel') promulgated on 21st July 2014 following a hearing at Taylor House on the 12th and 13th June 2014.

2. The Appellant is the subject of a deportation order following his conviction on 18th May 2011 at Snaresbrook Crown Court on one count of conspiracy to defraud and

a second count of conspiracy to acquire and use property obtained as a consequence of a criminal act. A 65 month term of imprisonment was imposed upon the Appellant who, as a result, was also served with an order for his deportation made pursuant to section 32 UK Borders Act 2007.

3. The Panel considered the evidence made available and set out its findings from paragraph 100 of the determination. The conclusions are to be found at paragraphs 112 to 114 in the following terms:

> 112. We accept that the Appellant enjoys both private and family life in this country. Having spent some years in the United Kingdom a requirement that he should return to live in Nigeria would interfere with such private and family life rights, thereby engaging Article 8 (1) ECHR. That interference, by way of the deportation order, is in accordance with the law in seeking to protect members of the public.
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> 113. In assessing proportionality we strive to strike a fair balance between the rights of the individual and the interests of the wider community. We take into account all family members and find that the Respondent has discharged her duty in relation to section 55 of the Borders, Citizenship and Immigration Act 2009. Further, Parliament has approved legislation which enables the removal of those who have committed offences from the United Kingdom where they are not British citizens.
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> 114. We find that no exceptional circumstances have been established on the balance of probabilities. Additionally, and for the reasons we have set out above, we do not find that the decision by the Respondent unlawfully breaches the Article 8 ECHR rights of the Appellant. In response to such engagement the Respondent is entitled to rely upon Article 8 (2) ECHR. The Respondent's decision to deport the Appellant was in accordance with the law and not in breach of the requirements of section 6 (1) Human Rights Act 1998.

4. The Appellant committed a number of serious offences of an economic nature. In his sentencing remarks HHJ N Sanders, when dealing with the Appellant and his two co-accused, set out at length the nature of the offences and reasoning behind the sentences imposed. In relation to the Appellant in this appeal the Judge stated:

> Fafore, Kareem and others unknown, you are involved in a sophisticated and concerted attack on the banking credit card system by the criminal misuse of the Internet to fraudulently access and make unauthorised transfers from the bank accounts of innocent account holders to accounts in the name of other persons -- that is count 1 -- and acquired and or used money obtained by fraudulently making unauthorised transactions on the credit and debit cards of innocent account holders, count 2.

5. The Sentencing Judge also notes that "now that so much banking is done on the Internet it is essential that the public should have confidence in the integrity and the security of the system. Actions which undermined that I consider to be very serious". The Judge noted information provided by the banking industry setting

out the overall size of losses suffered by way of credit card fraud which was stated for 'card-not present-frauds' to be £266 million and for card identity fraud £38 million for 2009 which for 2010 is said to be £226 million and £38 million respectively. The Judge noted that given these sorts of figures it is essential that the Courts make it plain to all those who are convicted of sophisticated conspiracies of this nature that they are going to be dealt with [severely] not only to punish them but to make it plain to others that the committing of such offences is a very serious matter. The same is also said to apply to the possession of such information.

6. The nature of the conspiracy was said to involve the use of bogus web-pages purporting to be the banks genuine web page in which customers are tricked into supplying details of their accounts and credit and debit cards together with passwords and the answers to the memorable questions. Armed with that information the accused were able to access the accounts and transfer money to accounts which were created for the benefit of the conspiracy and then siphoned off or used to make payments. By the use of e-mail the details would easily be passed around a number of conspirators. The Sentencing Judge also notes various methods used to try to defeat the bank's internal alert procedures such as in the case of a Mrs M, whose account had £69,000 removed from it, a new joint account being set up in the name of Mrs M and a Miss S into which funds were first transferred and then amounts transferred from that account to a sole account in the name of Miss S.

7. The Sentencing Judge notes there were 18 people originally traced and the total fraud attempted, excluding HBOS, in relation to them was £251,000 of which £241,000 was successfully removed. Within the e-mails of Kareem and Fafore were another 900 accounts with HBOS. Attempted £1,140,000 successful £357,000 so the totals were attempted £1,392,000 and successful £599,000. It is said that specific to the IP addresses there was attempted £121,000 and successful £39,000.

8. The Sentencing Judge also noted in relation to the second count; that relating to cards, 15,800 cards were identified of which 10,813 were current. 1,451 were specifically identified in relation to the defendants in relation to which the information showed specified losses of £570,000 or an average of £393 per card. The Judge considered that in light of the number of cards involved it was appropriate to take the average figure provided by the banking industry witness of £336 per card giving, it appears, a potential loss of over £5 million although the figure in the sentencing remarks is £3,000,143,000. Count 2, the conspiracy, the charge is losses in excess of £2 million to which Kareem and Fafore pleaded guilty. The Judge accepted that the maximum figures are not those of the defendants before him but that they did show the nature, extent and sophistication of the conspiracies to which they were parties. Kareem is said to have had 2,660 debit cards, 1,552 bank accounts and 15 bogus web-pages. Specifically in relation to Mr Kareem the Judge stated:

> So far as Mister Kareem is concerned, there are credits of some £61,650 into various bank accounts of his and I point out in his case there are a large number of bank accounts.
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> It is also significant is that he set up an account with Liberty Reserve. This is an Internet bank based in Costa Rica and the statement from DS Harvey establishes and explains how difficult it is to obtain any information from those accounts. It shows two things; firstly, the degree of sophistication; and, secondly, the knowledge that the use of such an account makes investigation at very best very difficult.

9. The Sentencing Judge notes the impact upon the victims by reference to two named individuals. One, a Mrs Finch, had £3,500 removed from her account. In her statement she said the following: "The money that was taken out meant that we had nothing in our bank accounts as our savings had been stolen. I first noticed this when I went in May 2008 to go to the shops to do some shopping. I went to get money from the cash-point. There was only £3.00 there when there should have been £3,500. At the time I felt devastated and shocked as I knew it wasn't me and knew it wasn't my husband. I started crying in the middle of Halifax and felt helpless. I could not pay for or buy anything that day. I told my husband. We went to the bank almost every day for about a week. We had to prove that the money had been stolen and that we hadn't taken it. I felt like we had to prove that we were innocent.

   However, that wasn't the end of the damage. We were left with nothing basically in that week. We could not buy basic essentials such as food. We couldn't pay any bills and we had to ring various companies that we owed money to, to let them know what was happening. There were difficulties with council tax and every night during the week our money was missing I had sleepless nights. I did not sleep for all of that week, especially my husband. This was absolutely emotionally draining. I felt angered and had a lot of other emotions that I went through. I was upset and it was hard to function that week. We had to borrow money from people, our family members, to do our shopping."

10. In relation to a Mr Martin who had £219,000 removed from his account, he stated in his impact statement that the money was saved to pay for building works and to pay contractors which was money that had been drawn from his business. He refers to the impact upon him and his family.

11. In relation to the actual sentencing exercise the Judge records that the conspiracy, of which Fafore and Kareem were part, was fraudulent from the outset and professionally planned. It was carried on over the significant period of time involving multiple frauds. Numbers of people were involved and it had a significant impact on the victims. In relation to the defendant in this appeal, Mr Kareem, the Judge made the following observations:

> "Kareem, you pleaded guilty on the day of the trial and I see no reason whatsoever to reduce your sentence by more than the ten percent.

> I consider that from an examination of e-mails, the documentation that I have read and been referred to and everything that I know about this case and have heard that as between you, Fafore, and you, Kareem, you, Fafore, the more responsible but not to a very large extent".

12. The Judge also refers to the Crown proceeding under section 6 of the Proceeds of Crime Act.

Discussion

13. I find the Panel were fully aware of the nature of the evidence made available to them together with the composition of this family unit. They note in particular that the Appellant has a family and when the Panel state at paragraph 100 that they have carefully taking into account all the evidence presented it is clear from reading the determination that this reflects what the Panel did rather than being a standardised paragraph with no foundation.

14. The decision was made by the First-tier Tribunal prior to the 28th July 2014 and therefore the provisions of section 19 of the Immigration Act 2014 were not applicable.

15. Since paragraph 364 was deleted from the Immigration Rules for post July 2012 applications, the rules simply assert at paragraph 397 that a deport order will not be made if it would be contrary to the UK's obligations under the Refugee Convention or the ECHR or if not contrary to those obligations in exceptional circumstances. Paragraphs 398, 399 and 399A then set out the requirements to consider when assessing the Article 8 position. This is the approach taken by the Panel and no misdirection of law is established.

16. There have been a number of cases providing guidance in the correct approach to be followed in law when considering appeals such as this.

17. 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". Paragraphs 399 and 399A can be thought of as setting out the exceptions to deportation (see paragraph 14). In **MF (Nigeria)** the main issue concerned the position when the appellant could not succeed substantively under paragraphs 398 or 399 of the rules on a deportation and the determinative question is whether there are "exceptional circumstances" such that the public interest in deportation is outweighed by other factors (paragraph 398 of the new rules). Here the Court accepted a submission for the

SSHD that "the reference to exceptional circumstances serves the purpose of emphasising that, in the balancing exercise, great weight should be given to the public interest in deporting foreign criminals who do not satisfy paras 398 and 399 or 399A. It is only exceptionally that such foreign criminals will succeed in showing that their rights under article 8(1) trump the public interest in their deportation" (paragraphs 39 and 40). The Court went on to say: "In our view, [this] is not to say that a test of exceptionality is being applied. Rather it is that, in approaching the question of whether removal is a proportionate interference with an individual's article 8 rights, the scales are heavily weighted in favour of deportation and something very compelling (which will be "exceptional") is required to outweigh the public interest in removal" (paragraph 42). Although the Court disagreed with the Upper Tribunal in MF's case on the question of form, it did not disagree in substance (paragraphs 44 and 50). It differed from the Upper Tribunal in considering that the rules did mandate or direct a decision maker to take all relevant criteria into account (paragraph 44). Accordingly, the new rules applicable to deportation cases should be seen as "a complete code ... the exceptional circumstances to be considered in the balancing exercise involve the application of a proportionality test as required by the Strasbourg jurisprudence" (ibid). "Even if we were wrong about that, it would be necessary to apply a proportionality test outside the new rules as was done by the Upper Tribunal. Either way, the result should be the same". What the Court said about the test of "insurmountable obstacles" can be seen as obiter but it did say that if that means "literally obstacles which it is impossible to surmount, their scope is very limited indeed. We shall confine ourselves to saying that we incline to the view that, for the reasons stated in detail by the Upper Tribunal in Izuazu [2013] UKUT 00045 at paras 53 to 59, such a stringent approach would be contrary to article 8". MF (Nigeria) was effectively followed in Kabia (MF: para 298 - "exceptional circumstances") 2013 UKUT 00569 (IAC) in which it was said that exceptionality is a likely characteristic of a claim that properly succeeds rather than a legal test to be met. In this context, "exceptional" means circumstances in which deportation would result in unjustifiably harsh consequences for the individual or their family such that a deportation would not be proportionate". 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. 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 Immigration Rule 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. But if the relevant group of IRs is not such a "complete code" then the proportionality test will be more at large, albeit guided by the **Huang** tests and UK and Strasbourg case law. In SSHD v AJ (Angola) and AJ (Gambia [2014] EWCA Civ 1636 it was held that two Upper Tribunal decisions which reversed

deportation orders issued to two foreign criminals contained material errors of law and were remitted for reconsideration. The tribunals had considered the offenders' rights under Article 8 of the ECHR as a free-standing issue separate from the Immigration Rules when they ought instead to have applied the comprehensive code incorporated in the "new rules", issued under the 2012 amendment to the Immigration Rules. The Court explained the importance of taking the correct approach to the new rules.

18. In HA (Iraq) v SSHD [2014] EWCA 1304 the Upper Tribunal was held to have erred in allowing an appeal against a 2010 decision to deport the appellant to Iraq on article 8 grounds without considering paragraphs 398 and 399 which post dated the decision. It was said that MF (Nigeria) made it clear that the new Rules told decision-makers what weight they should give to the public interest in deporting foreign criminals. In the light of the new Immigration Rules and the 2007 Act, the Upper Tribunal was obliged to recognise the weight which the 2007 Act attributed to the deportation of foreign criminals and to recognise that the Rules made it clear that great weight should be given to the public interest. The combination of factors that the Upper Tribunal found to be 'compelling' in the Claimant's case, namely his length of stay in the UK, positive attitude to future behaviour and the considerable effect that removal would have on him and his partner did not engage with the need to identify 'very compelling' countervailing factors or the need to engage a 'very strong claim indeed'.

19. In LC (China) [2014] EWCA Civ 1319 it was held that the starting point for any such assessment was the recognition that the public interest in deporting a foreign criminal was so great that only in exceptional circumstances would it be outweighed by other factors, including the effect of deportation on any children. In McLarty (Deportation- balance) [2014] UKUT 00315 it was held that there can be little doubt that in enacting the UK Borders Act 2007 Parliament views the object of deporting those with a criminal record as a very strong policy, which is constant in all cases (SS (Nigeria) v SSHD [2013] EWCA Civ 550). The weight to be attached to that object will, however, include a variable component, which reflects the criminality in issue. Nevertheless, Parliament has tilted the scales strongly in favour of deportation and for them to return to the level and then swing in favour of a criminal opposing deportation there must be compelling reasons, which must be exceptional; (ii) What amounts to compelling reasons or exceptional circumstances is very much fact dependent but must necessarily be seen in the context of the articulated will of Parliament in favour of deportation; (iii) Where the facts surrounding an individual who has committed a crime are said to be "exceptional" or "compelling", these are factors to be placed in the weighing scale, in order to be weighed against the public interest; (iv) In some other instances, the phrase "exceptional" or "compelling" has been used to describe the end result: namely, that the position of the individual is "exceptional" or "compelling" because, having weighed the unusual facts against the (powerful) public interest, the former outweighs the latter. In this sense "exceptional" or "compelling" is the end result of the proportionality weighing process.

20. It is not suggested the Appellant is able to succeed under the Immigration Rules and the Panel were therefore required to identify the existence of exceptional circumstances sufficient to tip the balance in the Appellants favour if they were to allow the appeal. They found no such circumstances had been shown to exist.

21. The determination is challenged on four grounds. The first alleges the Panel failed to adequately consider Beoku-Betts and section 55 and failed to take into account in particular the Independent Social Workers report and failed to provide a sufficiently reasoned explanation for material findings.

22. It was submitted by Mr Chrico that this error was material unless the decision could only be made in the way the Panel had and that it would be perverse to allow this matter to stand. He submitted it is not possible to know what findings the Panel made regarding the children that the findings made did not consider all the available evidence. The family members include a wife and two children and the Appellant's case was supported by a report from the social worker in relation to the impact of deportation upon the family.

23. The social workers report is dated the 3rd January 2014 and sets out the composition of the family and the discussions and observations made in relation to the preparation of that document. The consequences of the Appellant's deportation to Nigeria formed the core element of the discussions with the Appellant's wife who is a qualified solicitor working in the United Kingdom.

24. There are two children of the family, IK born in 2006 and AMK born in 2009.

25. Under the heading "the effect deportation would have on the appellant's wife's ability to care for the children" the social workers states:

> 5 (ii) Joy Diali was very clear that following her husband's arrest and imprisonment she found it increasingly difficult to cope on her own with the children without him. Indeed, by September 2012 she was not coping, and this was despite having been given a time when she thought her husband was being released (December 2012) although this was proved not to be the case as he was then further detained for immigration purposes. In September 2012 Joy Diali wrote to the prison authorities to plead for her husband to be made a category D prisoner (so that she could see him more with a view to getting support from him, spending more time with him), and in that letter told the authorities how desperate she felt she could not manage, and that she had episodes of feeling suicidal because of her situation.
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> 5(ii).2. Asked in what ways she was not coping, Joy Diali told me that it was the emotional anguish she was feeling at not having her husband living with her which was so consuming that it impacted on the attention she was able to give her job, and on the quality of care she was able to give the children because she had her high-pressure work as a solicitor specialising in mental health, with

irregular working hours and sometimes evening work, and to meet the total care needs of the children.

5(ii).3. Prior to his arrest and imprisonment, Ayodeji Kareem had been responsible for the children's care, as he is now, to relieve his wife of the everyday tasks of looking after them while she worked. Then having that responsibility when he was no longer around was a sudden and considerable burden to her, both practically and emotionally and she struggled with it, and even now feels guilty that she did not fulfil this expectation of her in a manner that best suited to children's needs.

5(ii).4. The greatest problem in relation to the children was in organising their daily childcare for taking them to and collecting them from school, (with someone caring for them until their mother of returned from work), and being emotionally available for them both as they too (but IK particularly) was suffering from the loss of their father and their changed circumstances. Additionally Joy Diali had to fit in all the practical tasks such as the children's washing and food preparation, and other household tasks.

5 (ii).5. Referring to her childcare arrangements, Joy Diali told me that finding someone upon whom she could rely was a significant difficulty and when I asked about the relatives that have written letters of support to the Home Office about her husband Joy Diali responded 'I do have a good family with my relatives, and the children did go to relatives the holidays (because their own children were also on holiday) but I could not use them every day (in term time) because they all work too and they all have busy family lives, so I would only turn to them if I had to'. Joy Diali realised she could not regularly impose on them for childcare arrangements because she is very familiar with their lifestyles and the extent of their family activities. She added that she also 'wanted to keep the family together', implying that she did not want to be so demanding of a busy family members that they felt burdened and possibly resentful so it impacted on their relationship.

26. The report examines the question whether Joy Diali would give up her work if her husband is deported in relation to which she has considered both options and the impact of the situation upon her. It is recorded at 5(ii).14. that "there must be a real anxiety that if the appellant is deported Joy Diali will become more depressed or low in mood than previously as a consequence of the loss of him, the demands on her as the sole carer of the children, and the pressures of being in work or reliant on benefits which she is unlikely to be able to conceal from the children and which could result in repercussions upon them. It is also stated that her moods may impact upon the mood the children and that children are more vulnerable when living with a lone parent who also suffers from mental illness because when the parent is experiencing difficulties there is no other adult living in the home to take the parenting role.

27. In relation to the effect on the children the social worker sets out the findings at section 5 (iii) pages 21 to 30 of report. It is said the children have a strong close and affectionate relationship with their father and that the children are likely to be

very distressed at their father's sudden and permanent disappearance with a sense of loss which will be considerable and as a bereavement because their relationship will with him will have suddenly ended. It is said no meaningful relationship can be maintained indirectly as such relationships involve physical contact, care and attentive interaction to enable the children to develop.

28. At paragraph 5 (iii).8. The social worker states that if their father is removed again, and this time permanently (and it has to be remembered that previously the children and their mother reacted as they did despite believing that separation was time-limited) and their mothers mood deteriorates again, the emotional and psychological impact on the children is likely to be considerable, leaving them extremely vulnerable to the problems that research into the lives of children who live without their fathers referred to above has identified.

29. In relation to the question whether it is in the best interests of the children for their father to remain in the United Kingdom, the social worker makes the following observations:

5 (iv).1. It is in the best interests of [I] and [M] for their developmental needs to be met and [I] and [M,] aged seven years and four years respectively, have the same developmental needs for all children of their ages for emotional stability and security, positive, and affectionate and consistent child focused care with guidelines for their behaviour, stimulation and encouragement with their schoolwork to reach their potential, the opportunity to socialise and develop their social skills, and adequate housing, food, clothing and access to medical care.

5 (iv).2. [I] and [M] have a close, loving relationship with both their parents and when their father is in the family with them they understand that as their mother has a job to earn money for the family that demands the time for lengthy parts of each day, their father cares for them as their primary carer by taking them to and from school, playing and interacting with them, encouraging them with their homework and listening to them read. Ayodeji Kareem has been caring for both children since they were young babies up until the time that he was arrested in August 2010, and again since he has been released on bail in May 2013. The routine and consistent nature of the children's care when living with their father and their mother (Joy Diali has shared the parenting task with her husband at weekends, and during the week after work when she is able), will have been a significant factor in helping the children develop the important sense of stability and security, although it has to be acknowledged that their experience of family life will have been greatly enhanced by the improved relationship between their parents that has been a consequence of Ayodeij Kareem's imprisonment, and a greater understanding and awareness he has gained through the relevant courses he voluntarily undertook .

5 (iv).3. If Ayodeij Kareem is deported and Joy Diali becomes sole carer of the children, from her own account and based on her sense of desperation and despair when trying to cope as a single, working mother, she will struggle again when she's working or she gives up her job and relies on benefits, and in light of the fact there will be no endpoint this time to her changed circumstances as there was previously, and she will be suffering the grief of her husband's permanent removal, there is a considerable risk that her mental health will deteriorate which will further impact upon her ability to cope and to care. [I] particularly, but also [M] are likely to suffer adversely in this situation, and while the children do have a large number of extended family members, despite their best intentions, none have shown that they have the time available to consistently commit

themselves to practically and emotionally supporting the children, nor that they have the full understanding of [I] or [M's] psychological and emotional needs in this situation and how they can best be helped

5 (iv).4. If [I] and [M] are to emotionally flourish and experience the stability and emotional security that they need, it would be in their best interests if their father is allowed to remain with his family in this country. If he is able to do that, it is his and his wife's plan that he continues to have much of the responsibility for the children as that relieves his wife of providing it. If it is that he can get work with hours that suit this role, and this is likely to be in night work, he will accept it as any additional financial contribution to the household will help to clear the family debts more quickly. His financial contribution is not essential for the couple to clear their debts, it just means that it will take longer if they are solely reliant on Joy Diali's income, but what would be enormously difficult for Joy Diali would be if she cannot rely on her husband's support for childcare and has to return to paying others to mind the children while she works. Such payments created debts themselves in the past, and even if this was not the case again (which it is likely to be) such payments would seriously reduce what she has available from paying their rent arrears and care lone and the housing department at least, this may lead to threats about her continuing tendency.

5 (iv).5. Clearly [I] and [M] will not experience the essential sense of stability and security that their father remaining in the family could give them, if he becomes involved in further criminal activity and there is further imprisonment and it could be thought that if he and his wife have financial debts there might be a temptation for Ayodeji Kareem to resume that lifestyle to pay debts. However, his return to criminal activity has been assessed as being a 'low risk'(Oasys report dated 19.3.2013, esp. pages 53, 56, 57, 58). Significant in this assessment has been a greater understanding and awareness Ayodeji Kareem has gained from the different courses he has undertaken and from serving and learning of his wife and children's suffering without him. He now recognises the significant impact his behaviour has on others and, relevant to this report, his family in particular and he is shamed and saddened by it and is confident that it will not be repeated. Importantly, he also now accepts that even in caring for the children and supporting his wife without earning money, he is meaningfully contributing to the family's functioning, which contrasts with his previously held cultural belief that husbands and fathers should and can only be, the providers for their families, a view that contributed towards his involvement in criminal activity at that time.

5 (iv).6. If Ayodeji Kareem is allowed to remain with his wife and children, and continue in his current role, there is research into the influence of father involvement in child development outcomes that shows that infants of highly involved fathers are better problem solvers as toddlers (Easterbrooks and Goldberg 1984) and have higher IQ's by age 3 (Yogman, Kindlan and Earls 1995) and both [I] and [M] had their father's support and encouragement being as he was at that time as now, highly involved as their primary carer.

5 (iv).7. Research also demonstrates that school age children of involved fathers are better academic achievers. They are more likely to get high grades, have better quantitative and verbal skills (Bing 1963, Goldstein, 1982), have higher grade point averages or perform a year above their expected age level on academic tests (Astone & Maclanahan 1991; Blanchard & Biller 1971; Cooksey & Fondell 1996). They are also more likely to enjoy school, have better attitudes towards school, participate in extra curricular activities and graduate. They are also less likely to fail a grade, have poor attendance, or have behavioural problems at school (Astone and Lanahan 1991, Brown and Rife 1991). Ayodeji Kareem is supportive of [I] and [M's] education and he is wanting both of his children to ultimately achieve their academic potential but is aware that they need to experience parental support and enthusiasm to do this.

5 (iv).8. There is an argument that acknowledges that there can be a negative impact on a child's educational attainment as a consequence of their father's removal, but insists that when weighed against the need to remove the father, the latter is more important. However, where the father is very involved in his children's care and the children are aware of this support and are emotionally fulfilled by it such that they have better self-esteem and motivation, the educational as well as emotional and psychological impact of losing this relationship can be a life long. I would observe from my own professional experience that there can therefore be a very significant cumulative impact on society in having to provide emotional, psychological and educational support that is likely to be unnecessary if the relationship is not lost but is allowed to continue to grow and develop.

5 (iv).9. Indeed, research on the emotional development and well-being of children whose fathers are actively involved in their care show that father's involvement is positively correlated with children experiencing overall life satisfaction, less depression (Field et al 1995), a greater tolerance of stress and frustration (Micshel, Shod and Peake 1988), have superior problem-solving and adaptive skills (Biller 1993), and are better able to manage their emotions and impulses in an adaptive manner (Easterbrooks and Goldberg 1990), and display less impulsivity or loss of control (Micshal 1961). If Ayodeji Kareem was able to remain in this country and continue to be an actively involved and supportive parent as he is at present, his children will benefit both emotionally and psychologically.

30. The social worker also considered what were deemed to be other relevant matter to the issue of separation of the father and child in section 5 (v) which is said to be the issue of the family relocating to Nigeria and the social worker being told by Joy Diali that she could not accompany her husband and that neither she nor her husband want the children to have to grow up in Nigeria.

31. The fact the determination does not set out the social workers report in the same detail as above is not in itself a material error. The First-tier Tribunal Panel noted and found there was a strong bond between family members and that the Appellant's wife and two children are British citizens. The Appellant's wife's profession is noted as is the children's schooling in the United Kingdom. It is noted in paragraph 110 that in the usual course of life it will be preferable for the children to continue their lives in this country in the company of their father and mother in accordance with their best interests. This finding is in accordance with the opinion of the social worker.

32. In paragraph 111 the Panel acknowledge all the reports relating to the Appellant and matters set out in the skeleton argument including progress made by the Appellant in prison although then specifically state "Whilst those factors are all to the good, we here consider the nature of the offences and the seriousness thereof as being by far the most significant to be weighed in our deliberations".

33. The Panel find that no exceptional circumstances have been established on the balance of probabilities and therefore find that the decision is lawfully, the breach of article 8 proportionate, and accordingly that the appeal shall be dismissed. In doing so they find the children's best interests are to remain within the family unit having taken the evidence from all sources into account. The Panel have not misdirected themselves in law in relation to the children and an assertion they

have erred in relation to section 55 has no arguable merit. A reading of the determination does not shown that best interest of the children have not been given the considerably weight they require.

34. The Panel also note the impact upon the Appellant's wife if he is deported, according to her own account given in her evidence and as reported to the social worker, but this is not a determinate factor and either are the best interests of the children. They are part of the balancing exercise. The Appellant's wife may have found it difficult to cope with the children as well as pursuing her profession but the evidence does not established that that is the only option available to her or that if the Appellant is deported and there is a down turn in her moods, this will lead to an adverse impact upon the children such as to make the decision disproportionate. The Appellant's wife recognises that she may have to make a choice regarding her family or her work or to juggle the two. If she chose not to give up her work she will have to make other arrangements as many thousands of working mothers do in the United Kingdom to ensure a routine is established that meets the children's needs. The Appellant's wife did write to the prison and copy correspondence is in the bundle to this effect. It is noted the authorities recommended that professional help may be available. If difficulties arise it has not been show on the evidence that the family remaining in the UK will not be able to obtain appropriate help or support if required. The statement by the Appellant's wife and the social worker that she may be of low mood with consequences is unsupported by any evidence of a psychological or psychiatric nature from an expert physician in this field. Even if it is accepted that the emotional impact upon the Appellant's wife following his deportation could cause her to be of low mood, most people experience ups and downs in their life, and can feel unhappy, depressed, stressed or anxious during difficult times which is a normal part of life. It was not suggested that she would not be able to obtain help through the NHS including necessary prescriptions to help with anxiety and or depression which would not prevent her from continuing to function as many do in a similar situation.

35. It is accepted there may be an adverse impact upon the children who will be upset at the loss of their father with whom they are close but again there is no expert evidence from a child or educational psychologist to show that the impact will be such to tip the balancing exercise in their favour. No unjustifiably harsh consequences have been made out even allowing for the upset and distress that may arise on deportation and the fact they may not realise their full potential. The evidence fails to address the availability of statutory services to which the Appellants wife and children as British citizens are entitled to address any psychological consequences and to help the children re-adjust to the life without their father. The comment that other family members are not aware of the actual needs of the children may be true, but it is not clear that anyone has taken the time to explain these to them in detail and properly assess any assistance they are able to give. The comment by the social worker that "there can therefore be a very significant cumulative impact on society in having to provide emotional, psychological and educational

support that is likely to be unnecessary if the relationship is not lost but is allowed to continue to grow and develop" acknowledges that such services exist and are available.

36. I have also considered the material afresh to ascertain whether the Panel erred in finding as they did that the impact upon the family did not make the decision disproportionate. This is not a case in which the only rational outcome is that the appeal should have been allowed as Mr Chirio infers, far from it. It is recognised that the consequence of deportation can be that a family is separated. This family face such an impact as the Appellants wife has said she intends to remain in the UK with the children even though it has not been established that the children will not be able to adjust and adapt with their parents support if the family return to Nigeria as a unit. All the points made by the social worker regarding the effect of a family being together must apply if the family relocate too. The conclusion that best interests of the children are not the determinative factor, and neither is the impact upon the Appellants wife, has not been shown to be a decision outside those the Panel were permitted to make on the evidence.

37. I find the Appellant has failed to substantiate his claim that the Panel made a material legal error in the way in which this aspect of the case was considered. I also find the conclusions to be adequately reasoned.

38. Ground 2 asserts the Panel erred in failing to take into account material evidence when concluding the Appellant had no remorse to the victims and society, alternatively they failed to provide a sufficiently reasoned explanation for a material finding.

39. In paragraph 104 the Panel found:

> 104. We detail above certain specific issues addressed and referred to by the sentencing judge because we find, in assessing matters of proportionality, that the seriousness and significance of the crime committed by the Appellant is a matter to which we give considerable weight. The Appellant is clearly skilled in information technology and generally in the use of computers. During the evidence we heard that the computer used to undertake these crimes was in the living room of the family home. However from that computer the Appellant clearly wreaked havoc upon the lives of many individuals, including those who were simply not in a position to afford even a temporary diminution of their savings. It is utterly clear to us that the Appellant had no thought whatsoever at the time for his victims, of whom there were many.

40. This paragraph was mentioned in the original refusal of permission to appeal to the Upper Tribunal. The Appellant admitted he did not give any thought to his victims at the time he committed the offences. Of more relevance is paragraph 108 in which the Panel find:

> 108. We entirely accept that there are strong bonds between family members. However this leads, on the basis of the evidence heard from the Appellant and all family members, to our finding that the Appellant appears to have greater concern

> about the effect on his family of the sentence which he underwent rather than the concern for the victims and in particular remorse to society generally. From the evidence we heard we do not find that the Appellant genuinely has remorse towards the victims or to society. We find that he is overwhelmingly concerned that he damaged his relations with other family members.

41. The Panel heard the evidence and record in this paragraph their opinion of that evidence in relation to an issue they were asked to consider. The grounds assert legal error in that the Pane failed to state why they attached no weight to the evidence given by the Appellant that he did express remorse and has undertaken courses in prison focussing on victim issues.

42. It may be the case the Appellant expressed remorse as stated and undertook courses but this is not determinative. The Panel considered the evidence with the required degree of anxious scrutiny and have given adequate reasons for the findings they made which are based upon the evidence they heard. As such the weigh to be attributed to that evidence was matter for the Panel. They do not find the Appellant has not stated he shows remorse. The specific finding is that they do not find he genuinely (my emphasis) has remorse towards the victims or to society and that the focus of his concerns is that he damaged his relations with other family members. It has not been shown this is an irrational conclusion on the basis of the evidence. No legal error is made out.

43. Ground 3 asserts the Panel failed to take into account material evidence when considering the benefit received by the Appellant from the proceeds of his crime, alternatively, the Panel drew inferences from the evidence they were not entitled to draw, alternatively they failed to provide a sufficiently reasoned explanation for a material finding. It is asserted the finding of the Panel that the Appellant had benefitted more than could be found and confiscated is to go behind the findings of the Crown Court who it is said addressed these matters during to confiscation proceedings. It is also said the finding ignored a number of submissions made that are set out in the Grounds.

44. The Panel addressed this matter in paragraphs 106-107 where they state:

> 106. We have referred to the amount which the sentencing judge found had been transferred to the Appellant. This was in excess of £60,000. The Appellant in his evidence before us referred to having benefitted from his criminal activities to the limited extent of £10,000 or £20,000. From which ever sum, he said he had given probably only £1,000 to his wife towards the needs of the family. No explanation given by the Appellant could establish why the stated lower sum he had received was different from the funds which the sentencing judge clearly found the Appellant had received through his criminal activities into accounts which were in his name.
>
> 107. We find the Appellant has not been truthful about the amount of money from which he benefitted. We do not accept the contention that if he received more the family would not be in debt. Indeed, perhaps there is evidence of the priorities

of the Appellant and his family. In that we note that the Appellant's wife has repaid £900 to the brother of the Appellant from the costs of a family holiday to Nigeria whilst the Appellant was in prison. However there were significant rent and council tax arrears which accrued and which are sums owed to Southwark MBC.

45. The submissions recorded in the grounds fail to address the core finding of the Panel which is that the Appellant has not told the truth in relation to the sums he received from the crime. No evidence of a judicial finding has been provided which creates a binding precedent upon the Panel. The Panel considered the Sentencing Judges remarks, the claims made by the Appellant in his evidence, and having done so reached conclusions which have not been shown to be irrational when all the available evidence is considered.

46. The automatic deportation order also arose as a result of the conviction, not the amount gained from the same. There may be differing figures available to the Courts at different times in different proceedings. There is nothing perverse in the Panel considering the Sentencing Judges remarks in relation to the amounts shown to be transferred to the Appellant and then noting the substantial discrepancy in the Appellants own evidence in relation to the same matter.

47. It has not been shown that the findings made by the Panel on the material available to them fall outside those there were entitled to make, or will make a material difference to the overall conclusion of the Panel in dismissing the appeal.

48. As stated, the Panel considered the material available to them with the required degree of anxious scrutiny even though it is not set out in detail. In relation to the question of whether they gave adequate reasons, a reader of the determination can clearly understand why they came to the conclusion they did. The Panel clearly considered the relevant legal provisions and found that even if everything that had been advanced on the Appellant's behalf is put on one side of the scale, including the effect on his wife and children, the weight given to the Secretary of State's case in light of the serious nature of the offending, the sentence imposed, the appropriate legal provisions, and deterrent element which is a strong factor in this case, tipped those scales in favour of the Secretary of State. The finding that on the evidence it had been shown to be decision that was proportionate (Article 8 (2)) is the key finding. That conclusion is within the range of findings the Panel are entitled to make on the available evidence and it has not been shown that any legal error material to that decision has been made. Mere disagreement or a desire for a different outcome does not establish arguable legal error. A desire for greater weight to be attributed to a piece of evidence than the Panel chose to give it, individually or cumulatively, does not assist the Appellant. As found by Blake L in Green (Article 8 – new rules) [2013] UKUT 254 (IAC): "Giving weight to a factor one way or another is for the fact finding Tribunal and the assignment of weight will rarely give rise to an error of law". In this case it has not been proved it does.

Decision

49. **There is no material error of law in the First-tier Tribunal Judge's decision. The determination shall stand.**

Anonymity.

50. 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 save in relation to the names of the children.

Signed…….
Upper Tribunal Judge Hanson

Dated the 20th January 2015