



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

Appeal no: **DA/01206/2014**

**THE IMMIGRATION ACTS**

At **Field House**  
on **20.04.2015**

Decision signed: **20.04.2015**  
sent out: **22.04.2015**

Before:

Upper Tribunal Judge **John FREEMAN**

Between:

**Mohd. Arshaar Dawood SILAR**

appellant

and

**Secretary of State for the Home Department**

respondent

Representation:

For the appellant: Rudolph Spurling (counsel instructed by Raj Law)

For the respondent: Mr Sebastian Kandola

**DETERMINATION AND REASONS**

- 1.** This is an appeal, by the respondent to the original appeal against the decision of the First-tier Tribunal (Judge Graham Perry), sitting at Hendon on 15 January, to allow on Article 8 grounds a deportation appeal by a citizen of Mauritius, born 3 April 1994, and sentenced on 24 April 2013 to two years' detention in a young offenders' institution [YOI] for a number of offences, including robbery.

*NOTE: no anonymity direction made at first instance, or by me.*

2. It is agreed that a re-hearing is required, mainly because the judge allowed the Article 8 appeal without fully considering either paragraphs 399 - 399A of the Immigration Rules, or sections 117B or C of the Nationality, Immigration and Asylum Act 2002 (inserted by the Immigration Act 2014 ) at all. There was also a mis-statement of the standard of proof at paragraph 39, setting it out as if it were that appropriate to asylum/Article 3 cases; but this was not a case where much depended on that.
3. So far as the facts are concerned, it seems to me that the judge also decided the case on a basis which was wrong in the light of his own finding that the appellant's father had failed to show he was a French citizen; the judge nevertheless went on to deal with the Article 8 claim as if the appellant's whole family were entitled to go on living here indefinitely. As the only basis for such a right was the French ID produced by his father, about whose authenticity the judge found there were "quite specific" and reasonable doubts, this approach was in my view wrong in law too.
4. I have been told that there are judicial review proceedings pending on the part of the appellant's mother; but there is no further information about that case, in which Mr Spurling has not so far been instructed. It would be a very good thing if the issue of the family's right to remain as EEA citizens or dependants could be decided before there is a re-hearing of this appellant's deportation appeal. I suggest that both sides should keep the First-tier Tribunal at Hatton Cross informed about what is happening: unless there are clear signs that this question is about to be resolved, then the Tribunal should have this case listed for directions three months from now.

**Home Office appeal allowed**  
**Fresh hearing before First-tier Tribunal (not Judge Perry)**

A handwritten signature in black ink, appearing to be 'J. R. Perry', written in a cursive style.

(a judge of the Upper  
Tribunal)