Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: DA/01535/2014

THE IMMIGRATION ACTS

Heard at Stoke	**Determination Promulgated**
on 17th December 2014	**18th February 2015**

Before

UPPER TRIBUNAL JUDGE HANSON

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

SYED MUSTAFA HAIDER TIRMIZI
(Anonymity direction not made)

Respondent

Representation:
For the Appellant: Miss C Johnstone Senior Home Office Presenting Officer.
For the Respondent: Mr Zeb instructed by Invictus Legal (UK) LLP

DETERMINATION AND REASONS

1. This is an appeal against a determination of First-tier Tribunal Judge PJM Hollingworth promulgated on the 30th September 2014 in which he allowed Mr Tirmizi's appeal against an order for his deportation from the United Kingdom.

2. Mr Tirmizi's is a national of Pakistan who was born on the 11th September 1989. His immigration history shows he entered the United Kingdom in April 2006 with his father and siblings and was granted leave to remain until 10th March 2010 before being granted Indefinite Leave to Remain (IRL) on 28th November 2011.

3. The index offences are a conviction on 22nd August 2013 at Nottingham Crown Court of assault occasioning actual bodily harm (ABH) for which sentence was postponed and on 14th October 2013 also at Nottingham Crown Court of Affray. Mr Tirmizi was sentenced to 14 months and 6 month imprisonment respectively to run concurrently in relation to the convictions. There was no appeal against conviction or sentence. The deportation order was signed following consideration of representation made by Mr Tirmizi on the 1st July 2014. It is an automatic deportation order.

4. The Sentencing Judges remarks note the first offence for which sentence was passed involved four defendants, three Khan brothers and Mr Tirmizi who is a friend of the family and their involvement in what was described by them as an 'honour punishment' against a Mr Ali, who was said to be seeing Mr Khans' sister, by luring him to a quite place and then beating him up and stealing his car. As a result of the assault Mr Ali is said to have suffered facial injuries. It was conceded at the Crown Court that it is a Category 1 offence of ABH.

5. The second offence was committed whilst on bail and involved an attack upon another individual in the street. Fourteen months imprisonment was given for the ABH and six months consecutive for the offence of affray.

Error of law

Discussion

6. First-tier Tribunal Judge Hollingworth noted this was an appeal against an automatic deportation order. The Judge noted that no asylum claim arises in this case and that it was conceded before the First-tier Tribunal that Mr Tirmizi could not bring himself within the Immigration Rules [53] although the Judge then stated he found arguably good grounds to continue to consider whether there would be a breach of Article 8 ECHR.

7. The Judge accepted Mr Tirmizi had become engaged to Ms Ahmed in May 2013 following the loss of their child in April 2013. Discrepancies were noted in relation to the evidence of his family members which were not found to be material to the core issues. It was found the relationship with Ms Ahmed has been as close to marriage as permitted in the circumstances and that they intend to marry. It was found they have family life together but Mr Tirmizi had not

established he has family life with his parents or siblings although they form part of his private life.

8. The Judge refers to the relevant provisions inserted into Part 5 of the Nationality Immigration and Asylum Act 2002 by the Immigration Act 2014. In relation to section 117C which applies to deportation, it was found Exception 1 does not apply. Exception 2 was found to apply when the Appellant has a genuine and subsisting relationship with a qualifying partner. The key finding is to be found in paragraph 79 where the Judge states:

> 79. I find that the effect of the Appellants deportation would be unduly harsh on Nabeela Ahmed given the combination of circumstances in this case. They have lost their child. She is deeply committed to the Appellant. She is intending to marry him regardless. I find the effect upon her if the Appellant was to be removed would be more than harsh.

9. As a result the Judge found the public interest did not require Mr Tirmizi's deportation. The Judge also found the legislation does not quantify the application of exceptions in terms of the degree of seriousness of the commission of offences in assessing the degree to which it would be in the public interest or not for an appellant to be removed [81]. As a result the Judge allowed the appeal under Article 8 ECHR [83].

10. No breach of Article 3 was found and nor was it found that Mr Tirmizi would be destitute on return, despite his and Ms Ahmeds claim to the contrary. It was found Mr Tirmizi has transferable skills, has not lost his social skills and cultural ties to Pakistan, and will be able to secure employment and pay for accommodation.

11. The position in relation to automatic deportation appeals and the relevant law was recently reviewed by the Court of Appeal in YM (Uganda) v SSHD [2014] EWCA Civ 1292. In the lead judgment Lord Justice Aikens states at paragraphs 15 to 23:

> 15. The 2012 Rules were modified by ***Statement of Changes to the Immigration Rules of 10 July 2014 (HC 532)*** which were laid before Parliament on 10 July 2014. I will call these the 2014 Rules. I have set out below the relevant 2012 Rules, as amended by the 2014 Rules. I have put the new 2014 provisions in square brackets and I have crossed through the provisions of the 2012 Rules which are deleted by the 2014 Rules, in the hope that both the 2012 Rules and the 2014 Rules modifications can be plainly seen:
>
> A362. Where Article 8 is raised in the context of deportation under Part 13 of these Rules, the claim under Article 8 will only succeed where the requirements of these rules as at [28 July 2014] are met, regardless of when the notice of intention to deport or the deportation order, as appropriate, was served.'
>
> …

397. A deportation order will not be made if the person's removal pursuant to the order would be contrary to the UK's obligations under the Refugee Convention or the Human Rights Convention. Where deportation would not be contrary to these obligations, it will only be in exceptional circumstances that the public interest in deportation is outweighed.

[A.398. 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 four 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, ~~it will only be in exceptional circumstances that the public interest in deportation will be outweighed by other factors~~ [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 seven years immediately preceding the date of the immigration decision; and in either case (a) ~~it would not be reasonable to expect the child to leave the UK~~ [it would be unduly harsh for the child to live in the country to which the person is to be deported]; and (b) ~~there is no other family member who is able to care for the child in the UK~~ [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, ~~or in the UK with refugee leave or humanitarian protection,~~ and ~~(i) the person has lived in the UK with valid leave continuously for at least the 15 years immediately preceding the date of the immigration decision (discounting any period of imprisonment) and (ii) there are insurmountable obstacles to family life with that partner continuing outside the UK~~ [(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 lived continuously in the UK for at least 20 years immediately preceding the date of the immigration decision (discounting any period of imprisonment) and he 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, he has spent at least half of his life living continuously in the UK immediately preceding the date of the immigration decision (discounting any period of imprisonment) and he has no ties (including social, cultural or family) with the country to which he would have to go if required to leave the UK.~~

> [(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].

399B. ~~Where paragraph 399 or 399A applies limited leave may be granted for periods not exceeding 30 months. Such leave shall be given subject to such conditions as the Secretary of State deems appropriate. Where a person who has previously been granted a period of leave under paragraph 399B would not fall for refusal under paragraph 322(1C), indefinite leave to remain may be granted.~~

[where an ***Article 8*** claim from a foreign criminal is successful:

> (a) in the case of a person who is in the UK unlawfully or whose leave to enter or remain has been cancelled by a deportation order, limited leave may be granted for periods not exceeding 30 months and subject to such conditions as the Secretary of state considers appropriate;
>
> …….]

[399C. Where a foreign criminal who has previously been granted a period of limited leave under this Part applies for further limited leave or indefinite leave to remain his deportation remains conducive to the public good and in the public interest notwithstanding the previous grant of leave.]

[339D. Where a foreign criminal has been deported and enters the United Kingdom in breach of a deportation order enforcement of the deportation order is in the public interest and will be implemented unless there are very exceptional circumstances].

16. The *Statement of Changes in the Immigration Rules HC 532* said, under the heading "Implementation", that the changes set out in paragraphs 14 to 30 of this statement would take effect on 28 July 2014 and would apply to all ECHR Article 8 claims from foreign criminals which were to be decided on or after that date. The changes in paragraphs 14 to 30 include the new 2014 Rules I have set out above.

17. An explanatory memorandum was attached to the Statement of Changes made to create the 2012 Rules. It set out the view of the Government on the relationship between the 2012 rules and ***Article 8.*** Paragraph 4.3 stated:

> "These changes to the Immigration Rules will come into force on 9 July 2012, except as in paragraph 4.4 below.[8] However, if an application is made before 9 July and the application has not been decided before that date, it will be decided in accordance with the rules in force on 8 July 2012, regardless of the date that [the] decision is made. The assessment of Article 8 in deportation proceedings will follow the rules in place on the date on which that consideration is made, regardless of when a person was notified of the Secretary of State's intention to deport them."

18. Paragraph 7.2 stated, in part:

"…The rules will set proportionate requirements that reflect the Government and Parliament's view on how individuals' ***Article 8*** rights should be qualified in the public interest to safeguard the economic well-being of the UK by controlling immigration and to protect the public against foreign criminals. This will mean that failure to meet the requirements of the rules will normally mean failure to establish an ***Article 8*** claim to enter or remain in the UK and no grant of leave on that basis. Outside exceptional cases, it will be proportionate under ***Article 8*** for an applicant who fails to meet the requirements of the rules to be removed from the UK".

19. An explanatory memorandum was also attached to the Statement of Changes made to create the 2014 Rules. Paragraphs 3.4 , 3.5 and 4.7 provide:

"3.4. The changes relating to family and private life will come into force on 28 July 2014, in line with the commencement of section 19 of the Immigration Act 2014. The Home Office regrets that it was not possible to finalise this Statement of Changes on a basis that, consistent with normal practice, would have allowed the changes to be laid at least 21 days prior to their coming into force. This is because many of the changes to the Immigration Rules need to coincide with the coming into force of sections 17(3) and 19 of the Immigration Act 2014 on 28 July 2014.

3.5. However, the substance of those changes which concern the alignment of the Immigration Rules relating to family and private life with sections 117B, 117C and 117D of the Nationality, Immigration and Asylum Act 2002, inserted by section 19 of the 2014 Act, along with section 94B of the Nationality, Immigration and Asylum Act 2002, were extensively debated by both Houses of Parliament during the passage of the Immigration Act.

4.7. The changes set out in paragraphs 14 to 30 of this statement take effect on 28 July 2014 and apply to all ECHR Article 8 claims from foreign criminals which are decided on or after that date."

Paragraphs 14 to 30 of the statement contain the amendments to the provisions of the 2012 Rules that I have set out above, ie. the 2014 Rules.

20. On 13 June 2012 the Home Office had issued a statement entitled "Immigration Rules on Family and Private Life: Grounds of Compatibility with ***Article 8*** of the European Convention on Human Rights". This statement said at paragraph 20 that:

"The intention is that the rules will state how the balance should be struck between the public interest and private right, taking into account relevant case law, and thereby provide for a consistent and faire decision-making process. Therefore, if the rules are proportionate, a decision taken in accordance with the rules will, other than in exceptional cases, be compatible with ***Article 8.***"

21. Paragraph 67 of the same document accepted that there could be cases where a discretion might be used to grant leave to remain outside the new rules. However, it was considered that those cases would be rare, since the new rules reflected the Government's view on how the balance should be struck "between individual rights under ***Article 8*** and the public interests in safeguarding the UK's economic well-being in controlling immigration and in protecting the public from foreign criminals".

22. This document has apparently not yet been revised in the light of the 2014 Rules.

23. At the time of the 2012 Rules the SSHD also issued immigration directorate instructions, chapter 13 of which is stated to explain how decision makers consider claims that the deportation of a foreign criminal would be in breach of his ***Article 8*** rights. The chapter is entitled "Criminality Guidance for ***Article 8*** ECHR cases".

> The latest version (5.0) is dated 28 July 2014 and is clearly intended to reflect government thinking on how the new ***sections 117A-D*** and the 2014 Rules should be interpreted by case workers when they have to apply these provisions.

12. As the date of hearing was 17th September 2014, which post dates 28th July 2014, the Judge was required to consider the merits of the claim by reference to the provisions of the Immigration Rules in force at that time, i.e. what the Court of Appeal in YM (Uganda) refer to as the 2014 Rules. This finding is reinforced by paragraph A363 of the Rules and the relevant provisions of the Statement of Changes which state that the 2014 Rules are to be applied to all decisions concerning Article 8 claim made after 28th July 2014. The Judge clearly failed to adopt this approach determining the matter solely by reference to the statutory provisions which I find to be an error of law. The nature of the legal error is reinforced by the Judges reference to Gulshan which is not a deportation case and failure to follow the guidance of the Court of Appeal in MF (Nigeria) [2013] EWCA Civ 1192.

13. The amendments to the 2014 Rules reflect the statutory provisions to be found in Part 5 of the 2002 Act which underpin the Rules but which do not provide a separate assessment outside the Rules, and to their exclusion, as the Judge may have thought.

14. As a result it was indicated to the advocates at the hearing that the decision was infected by clear legal error and the key issue to be determined was whether that error was material in light of the assessment undertaken if applied to the correct legal provisions.

15. Ground 1 of the application for permission to appeal alleges a failure to give adequate reasons for the finding there is a genuine relationship between Mr Tirmizi and Ms Ahmed for the purposes of paragraph 399(b) as a result of inconstancies in the evidence noted in the grounds. I find this ground not proved for the Judge heard the witnesses and was able to assess their oral evidence with the written material before him and to make a factual finding as to the nature of the relationship based upon the evidence when considered as a whole. As a result the weigh to be given to that evidence was a matter for the Judge.

16. Ground 2 refers to the misdirection in law in failing to consider the 2014 Rules which is accepted above.

17. Ground 3 asserts the Judge erred in failing to consider the relationship between Mr Titmizi and Ms Ahmed in the context of the correct legal provisions. Paragraph 398 of the 2014 Rules states that if 399 or 399A do not apply 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.

18. Mr Tirmizi was convicted of an offence for which he was sentenced to a period of imprisonment of less than four years but with at least 12 months (398 (b)) and so the provisions of paragraph 399 are applicable if (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 (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 that partner to remain in the UK without the person who is to be deported.

19. Paragraph 399A will apply if 398 (b) applied 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 will be very significant obstacles to his integration into the country to which it is proposed he is deported.

20. The Judge failed to assess the merits of the case by specific reference to the above criteria. The determinative factor is said to be that set out in paragraph 79 of the determination based upon issues the Judge referred to earlier in the determination but which does not assess and set out exactly what the impact of deportation would be upon Ms Ahmed or give adequate reasons for the ultimate finding by reference to the relevant provisions of the Rules.

21. The Judges statement in paragraph 81 in relation to the legislation to which he referred not requiring an assessment of the degree of seriousness of the offence in the context of the application of an exception is arguably a material error of law. The statutory provisions make clear that a balancing exercise is required if Article 8 is being assessed which is reflected in Immigration Rules.

22. Section 117A Application of this Part

    (1) This Part applies where a court or tribunal is required to determine whether a decision made under the Immigration Acts—

        (a) breaches a person's right to respect for private and family life under Article 8, and

        (b) as a result would be unlawful under section 6 of the Human Rights Act 1998.

    (2) In considering the public interest question, the court or tribunal must (in particular) have regard—

        (a) in all cases, to the considerations listed in section 117B, and

(b) in cases concerning the deportation of foreign criminals, to the considerations listed in section 117C.

(3) In subsection (2), "the public interest question" means the question of whether an interference with a person's right to respect for private and family life is justified under Article 8(2).

23. Section 117A(3) specifically provides that having regard to the relevant provisions, including section 117C, the decision must still be proportionate by reference to Article 8 (2) which requires a balancing exercise to be conducted.

24. Even taking it as accepted that the finding that a genuine subsisting relationship exists with Ms Ahmed in the United Kingdom, who is a British citizen, is legally sustainable, there was a requirement to make findings on whether it was unduly harsh for Ms Ahmed to live in Pakistan because of compelling circumstances over and above those described in EX.2 of Appendix FM. Which states:

> 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.

25. It was submitted on behalf of Mr Tirmizi that even if the matter was re-heard there would be no change to the decision as a Judge had considered all relevant issues including the exceptions contained within the statutory provisions and made a decision within the range of permissible decisions leading to the only conclusion that the First-tier Tribunal could have arrived at on the facts.

26. It is correct that a number of positive findings were made in Mr Tirmizi favour including:

a. Mr Tirmizi had indefinite leave to remain
b. Mr Tirmizi arrived in the United Kingdom when he was 16
c. Mr Tirmizi's whole family are in United Kingdom. They are British citizens or settled.
d. The offences had 'explanations' for them which the Judge and the Crown Court sentencing judge had noted.
e. The risk of reoffending was noted as being referred to as low.
f. Mr Tirmizi had a relationship akin to marriage which commenced at a time his immigration status was not precarious.

g. There would be a devastating effect on the claimant's partner because of the pregnancy loss and the difficult situation in which there had to be an abortion to save her life.
h. Mr Tirmizi speaks English.
i. Mr Tirmizi has been self-sufficient or reliant on his father and so not a burden.
j. The effect of removal on Mr Tirmizi was also relevant as it was on the rest of his family including his British/settled parent's siblings and others.

27. Notwithstanding what is painted as a picture of a supportive settled family in the United Kingdom Mr Tirmizi committed a number of violence offences for which he was convicted. He is the subject of an automatic deportation order in relation to which a line of authorities has reminded us of 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 affect has been given by Parliament in the UK Borders Act 2007 and now within the Immigration Rules.

28. Considering the elements in the Rules to which there is certainly no specific reference in the Judge's determination being (i) whether it would be unduly harsh for Ms Ahmed to live with Mr Tirmizi in Pakistan due to compelling circumstances over above those described in paragraph EX.2. and (iii) whether it would be unduly harsh for Ms Ahmed to remain in the UK without Mr Tirmizi, the evidence does not support the submission made that the Judge's finding is the only finding that could have been made and indeed suggests that it was not a finding properly open to the Judge once the evidence had been adequately considered and the correct legal test applied.

29. In relation to (i) above, the evidence of Ms Ahmed in her witness statement of 12 September 2014 related to her own situation in the United Kingdom and the development of her relationship with Mr Tirmizi. The statement speaks of his family arrangements in the United Kingdom and asserts he has no ties to Pakistan and in relation to her own position states:

> 29. I personally have never been to Pakistan nor have I ever travelled outside the United Kingdom. I can understand Urdu Punjabi however I find it difficult to speak and when I try my sentences are very broken.
>
> 30. I am a British citizen and I will not immigrate to Pakistan. I have no intentions of living there; I will not abandon my family or my life for a life in Pakistan. My personal circumstances are such that I need the applicant in my life. The applicant supports emotionally and our relationship is such that we are in the process of getting married and it is our intention to live in the United Kingdom together with our immediate families close by.

30. What neither the written nor oral evidence of Ms Ahmed does is prove that there are compelling circumstances over and above those described in EX.2. of Appendix FM leading to it being found it would be unduly harsh for the partner to live in Pakistan. The fact of the matter is that she does not wish to give up her life in the United Kingdom and does not wish to move to Pakistan and wishes to live in this country with Mr Tirmizi. That may be so but Article 8 is not give individuals the right to choose the country in which they wish to live and the required legal test is not cast in terms of what a person wishes to do but focuses upon the consequence of a particular course of action.

31. In relation to (iii), whether it would be unduly harsh for Ms Ahmed to remain in the UK without Mr Tirmizi, it is important to note the word 'and' between the two criteria as it is necessary for all criteria to be satisfied before it is found that the public interest does not require an individuals deportation. In this case condition (ii) has not been shown to be satisfied. In relation to whether it has been shown to be unduly harsh, an element considered by the Judge, this must relate to the impact upon the partner on both a practical and emotional level if she had to remain without Mr Tirmizi. In her witness statement she claims that deportation would have a detrimental effect on her life without specifying what exactly that impact would be and such a claim is not supported by adequate evidence from other sources.

32. The witness statement speaks of the unplanned pregnancy in January 2013 and the fact Ms Ahmed was very ill and that she and Mr Tirmizi had to make a difficult decision between the survival of the unborn child and her survival as a result of which, in April 2013, she had an abortion. Whilst it is accepted that this will be a tragic event for any family, especially where such a choice had to be made, it is not suggested in the evidence or adequately supported that the impact of removing Mr Tirmizi will be such that the consequences for Ms Ahmed will make it unduly harsh or disproportionate.

33. Ms Ahmed was born on the 18th January 1990 in the United Kingdom and is a British citizen. Is has not been shown that she will not be able to access medical and other services that are available on the NHS or from other statutory providers to provide support and assistance if required upon Mr Tirmizi's deportation. The witness statement also states that Ms Ahmed has her mother, three brothers and two sisters living in the United Kingdom and that she is employed at Domestic and General and has worked there since October 2013 indicating that she will not be destitute or without family support if Mr Tirmizi is deported.

34. When one takes the into account the evidence made available to the First-tier Tribunal and applies the correct legal provisions in

paragraph 399, it can be seen that contrary to the Judge's finding Mr Tirmizi is unable to discharge the burden of proof upon him to the required standard to show that he is able avoid deportation, on the basis of an inability to satisfy the requirements of the Immigration Rules. The Judge in fact records at paragraph 53 of the determination that it was conceded by Mr Tirmizi's Counsel that he could not succeed under the Immigration Rules which is factually correct. The Judge proceeding to undertake a freestanding assessment under Article 8 outside the Rules which was clearly wrong.

35. I therefore set the decision aside. The Upper Tribunal is satisfied it can substitute a fresh decision on the basis of the material and evidence given to the First-tier Tribunal on the basis of which Mr Tirmizi has not discharged the burden of proof upon him to the required standard to show he is able to satisfy the requirements of the 2014 Immigration Rules which, in relation to deportation decisions, are a complete code. This is an automatic deportation order. The public interest requires Mr Tirmizi's deportation from the United Kingdom as a result of the offences for which he was convicted. He has not substantiated his claim to the contrary. I substituted a decision dismissing the appeal.

Decision

36. **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.**

Anonymity.

37. 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 17th February 2015