



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

Appeal Number: IA/11694/2011

**THE IMMIGRATION ACTS**

**Heard at Royal Courts of Justice**

**Decision and Reasons**

**Promulgated**

**On 5 October 2015**

**On 12 October 2015**

**Before**

**UPPER TRIBUNAL JUDGE O'CONNOR**

**Between**

**Miniru Israel Newton Adiss**

Appellant

**and**

**Secretary of State for the Home Department**

Respondent

**Representation:**

For the Appellant: Not represented

For the Respondent: Mr D Clarke - Senior Presenting Officer

**DECISION AND REASONS**

1. The appellant is a citizen of Ghana born 15 August 1980. He appealed to the First-tier Tribunal against the Secretary of State's decision of 16 November 2010 that section 32(5) of the UK Borders Act 2007 applies to him. That appeal was dismissed by a panel of the FtT (Judge Jhirad and Mr Baines J.P.) in a determination promulgated on 2 June 2011. Subsequently, in a decision made on, or around, 16 December 2011 UTJ Allen set aside the FtT's determination and directed that the appeal would be re-heard in the Upper Tribunal. That process has been significantly delay, primarily as a consequence of the appellant undertaking a course of further criminal offending, for which he was eventually sentenced to a 15-year term of

imprisonment at Snaresbrook Crown Court earlier this year. As a consequence the appellant is not due to be released from criminal detention until 2028.

2. The upshot of the appellant's recent lengthy criminal sentence is that the current proceedings have become somewhat academic. For this reason I was informed at the hearing that the respondent had taken the sensible approach of withdrawing her decision of 16 November 2010. I have no doubt that she will revisit the issue of the appellant's deportation when time is approaching for the appellant to be released from custody, or earlier if there are changes in the law requiring her do so, but at this time - given that the appellant still has a very lengthy period of his prison sentence to serve - there is little to be gained from accumulating the costs of ventilating such matters now.
3. The Secretary of State does not require the permission of the Upper Tribunal to withdraw a decision she has made, even if such decision is the subject of the appeal before the Tribunal. The withdrawal of the decision underlying the appeal does not, however, extinguish the jurisdiction of the Upper Tribunal under section 12(2)(b)(ii) of the 2007 Act to re-make the decision in the appeal brought under the 2002 Act: See SM (Withdrawal of appeal decision effect) Pakistan [2014] UKUT 64 (IAC).
4. The SSHD does, however, require consent to withdraw her case before the Upper Tribunal, which Mr Clarke also sought. Having had regard, *inter alia*, to the matters identified in paragraph 72 of SM, and in particular observing that (i) the appellant's circumstances have significantly changed since the last time the Secretary of State gave substantive consideration to his case (ii) that the respondent should, ordinarily, be the primary decision maker in the immigration field and (iii) there are no matters of general legal or procedural guidance to be addressed in this appeal, I conclude, having also considered the overriding objective in the 2008 Rules, that consent should be given the Secretary of State to withdraw her case.
5. Following the reasoning of the Tribunal in SM, I must formally dispose of this appeal. The normal course in such circumstances would be to dismiss the appeal, unless there are matters which points towards not doing so (SM - paragraph 72). In all the circumstances of this case, and having taken into account the reasons provided by the respondent for withdrawing her decision, I conclude that it is appropriate to formally dismiss the appellant's appeal. I make clear however that this is no reflection on the merits of the case of either party and is no more than a formality to bring these proceedings to an end.
6. Given the terms of Judge Allen's decision setting the FtT's determination aside, it is prudent for me to emphasise that none of the findings of the First-tier Tribunal are to remain standing and the findings of that Tribunal should not be relied upon by either party in the future.

7. I carefully explained all of the above matters to the appellant at the hearing. He indicated that he took no objection to the Tribunal taking the course identified above.

**Decision**

The determination of the First-tier Tribunal is set aside for the reasons given by Judge Allen.

The appellant's appeal is formally dismissed, such conclusion having been reached without the Upper Tribunal having given substantive consideration to the merits of the appeal.

Signed:



Upper Tribunal Judge O'Connor  
Date: 9 October 2015