IAC-FH-CK-V1

Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: OA/03915/2014

THE IMMIGRATION ACTS

Heard at Field House	**Determination Promulgated**
On 6 March 2015	**On 22 April 2015**
Determination prepared 12 March 2015	

Before

UPPER TRIBUNAL JUDGE MCGEACHY

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

AAK
(ANONYMITY DIRECTION MADE)

Respondent

Representation:
For the Appellant: Ms E Savage, Senior Home Office Presenting Officer
For the Respondent: Mr C Decker

DETERMINATION AND REASONS

1. The Secretary of State appeals, with permission, against a decision of Judge of the First-tier Tribunal Youngerwood, who in a determination promulgated on 20 November 2014 allowed the appellant's appeal against a decision of the Secretary of State to refuse to grant him leave to enter after he had been deported to Sierra Leone in March 2014. Judge Youngerwood had concluded that the appellant's appeal should succeed

under the provisions of Section 117C Exception 1 of the Nationality, Immigration and Asylum Act 2002, as amended.

2. Although the Secretary of State is the appellant before me I will for ease of reference refer to her as the respondent as she was the respondent in the First-tier. Similarly, I will refer to AAK as the appellant as he was the appellant in the First–tier.

3. The background to this appeal is that the appellant, who is a citizen of Sierra Leone born on 31 December 1984, claimed to have entered Britain on 30 August 1992 with his grandfather in order to visit his mother. He was granted an extension of stay in April 1993 and indefinite leave to remain in October 1996. On 13 June 2005 he was convicted at the Inner London Crown Court of an offence of possessing a class A drug and he was later sentenced to two years and six months' imprisonment. He did not appeal either the conviction or sentence. Notice of intention to deport was made on 20 March 2006. The appellant appealed. His appeal was dismissed and on 9 August 2006 a deportation order was made against him.

4. On 30 April 2011 he was convicted of a further offence of assaulting a police officer and sentenced to 84 days imprisonment. It appears that before that offence he had committed six further offences including several counts of possession of cannabis and cannabis resin. In November 2012 he was convicted of criminal damage.

5. An application to revoke the deportation order was made in which the appellant claimed, falsely, that he lived with his wife and two children in London. The Secretary of State, however, concluded that the children's mother would be able to care for them and although it was accepted that he had no ties with the country of his nationality it was considered that he could use his qualifications and skills to secure employment and re-establish his life in his home country. It was pointed out that he had lived in Britain for less than twenty years before he was served with the notice of liability to deportation. The Secretary of State in effect stated that his criminality and the public interest in his deportation outweighed his rights under Article 8 of the ECHR.

6. The appellant appealed that decision and his appeal was heard by the First-tier Tribunal in July 2013. The appeal was dismissed.

7. The appellant then appealed to the Upper Tribunal. Permission having been granted his appeal came before me and Upper Tribunal Judge Renton on 17 October 2013. We found that there was no material error of law in the determination of the First-tier Tribunal and that the decision of the First-tier Tribunal should stand.

8. The fact that I had sat on that Tribunal did not come to light until towards the end of the appeal before me. Mr Decker made no application that I should recuse myself from the appeal and, given that I had heard detailed

submissions, while it would have been the case that had I been aware before the hearing started that I had heard the appeal I would have recused myself, I did not consider that at that stage it was appropriate that I should do so.

9. The application made by the appellant for leave to enter was refused under the provisions of paragraphs 390, 391, 391A, 398 and 399A(a) of the Rules, reasons being given in a refusal letter dated 14 February 2014. The Secretary of State took the view that the appellant did not qualify for entry and there were no exceptional factors which made the refusal of his application unduly harsh. While it was accepted that the appellant had a relationship with his two children from his ex-wife it was noted that she was now in a new relationship and could rely on a new partner and other family members in assisting her with the care of the children and it was not accepted that he had formed any family life in relation to another child – he claimed to have a new partner who already had a child – and although the appellant had claimed that this child was his there was no evidence that that was the case.

10. With regard to the terms of paragraph 399A of the Rules the Secretary of State accepted that the appellant had lived continuously in Britain for at least twenty years preceding the date of the decision but said that it was not the case that he no longer had any ties to Sierra Leone. It was further considered that the decision did not interfere with the appellant's rights under Article 8 of the ECHR.

11. Judge Youngerwood heard evidence from Mrs Petronella West, who had visited the appellant in Sierra Leone who stated that he had been unable to find work in Sierra Leone, lived in a slum in one of the poorest parts of Freetown and was living in "awful conditions with no proper sanitation or running water". The witness said that the appellant appeared to have been totally unprepared for the third world standard of living compared to that he had enjoyed in Britain since he had come to Britain at the age of 7, that he did not speak the local dialect and was desperate to return to Britain. He had been sick with malaria and was at a very high risk of serious illness from the general water supply.

12. A further witness, Benjamin Barker, who was present at the hearing had stated in a statement which was accepted by the Presenting Officer that the appellant had become a Christian, had regularly attended church here and had often brought his children along to children's groups and that he was considered to be a very welcoming and loving personality. Mr Barker said that he would send him money when he could.

13. In paragraph 24 of the determination the judge set out his findings. He stated, that "to a significant degree the current Rules differ from those in force at the time of the decision of 14 February 2014." He then quoted from the current Rules setting out paragraphs 390 to 391A and paragraphs 398, 399 and 399A. He also set out the provisions of part 5A of the Nationality, Immigration and Asylum Act 2002 which had been

introduced by the Immigration Act 2014 including Sections 117A, B, C and D.

14. The judge went on to say that following the decision of the Court of Appeal in **YM (Uganda) [2014] EWCA Civ 1292** he noted that the Court of Appeal had taken note of an explanatory memorandum which stated that the new Rules took effect on 28 July 2014 and should apply to all claims made by criminals which are decided on or after that date and therefore the 2014 Rules, he concluded, applied to all decisions concerning Article 8 claims that were made after that date including decisions by Tribunals and the courts.

15. The judge said that the new Rules meant that:

> "The effective introduction of Article 8 considerations into the Immigration Rules and the 2002 Act means that there will now be cases where the Tribunal will no longer, as before , carry out the traditional balancing exercise involving questions of deterrence and the protection of the public. If the respondent has now effectively provided for cases where, notwithstanding serious convictions and threats to the public, it is accepted that the public interest of the individual outweighs the public interest in his deportation, then, in such circumstances, the Tribunal has no effective role other than to apply the law."

16. He then turned to Section 117C of the rules and stated with regard to the provisions of Section 117C Exception 2 that the appellant could not succeed because he could not conclude that the effect of the appellant's deportation on his two children would be unduly harsh.

17. However, in paragraphs 34 onwards, he stated:-

> "34. In relation to Exception 1, however, there is no issue as to the fact that the appellant has been lawfully resident in the UK for most of his life, having lawfully entered the UK in 1992 and, thereafter, obtaining indefinite leave to remain. On that basis, it is clear that he has become 'socially and culturally integrated in the United Kingdom' and, given the clear findings of the earlier Tribunal that the effect of deportation would be 'exile', the appellant having no family or roots remaining in Sierra Leone, it is self-evident that he meets this relevant Exception and that, accordingly, the respondent takes the view that the public interest does not require his deportation. Mr Bose accepted that the appellant did, indeed, meet Exception 1.
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> 35. Similarly, in relation to the new Rules, Mr Bose accepted that the appellant met the provisions of paragraph 399A, in like terms to Section 117C (above).
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> 36. The above findings remove any discretion in this Tribunal to consider the public interest because it is clear that the appellant's Article 8 claim must succeed as he meets the requirement of the Rules and the 2002 Act.
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> 37. For the purposes of completeness, I would have found that, even had the matter been considered under the old Rules, in force at the time of the decision, the respondent would have faced the problem that, in the

> current refusal letter of February 2014, the respondent concedes that the appellant met the requirements of over twenty years' residence in the UK, and cannot argue, on the basis of the findings in the earlier determination, that the appellant still has ties in the UK, *(sic)* notwithstanding the attempt to reopen that issue. Therefore, the appellant would have met the provisions of the former Rules had that been effectively in issue.
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> 38. Given that the appellant's Article 8 claim must succeed, and given his present dire circumstances following deportation to Sierra Leone, I consider it appropriate to give a direction in this case."

18. The judge's decision was to allow the appeal on Article 8 grounds and find therefore that the decision was not in accordance with the law. He directed that the respondent take "all reasonable and necessary steps to secure the urgent return of the appellant to the United Kingdom". He then made an anonymity order.

19. The Secretary of State appealed stating that the judge had misdirected himself with regard to paragraph 399A of the Rules, that the judge was wrong to find that the appellant was socially and culturally integrated in the United Kingdom for the purposes of paragraph 399A(b) (with reference to Section 117C(b)) solely on the basis of his length of residence and the fact that he had indefinite leave to remain in the United Kingdom. It was stated that his length of residence and status alone were entirely insufficient to demonstrate social and cultural integration in the United Kingdom and that in order to consider social and cultural integration it was required that the judge consider all relevant factors including criminality which the First-tier Tribunal clearly had not taken into account.

20. The grounds went on to say that there was no evidence of a positive contribution to society, for example evidence of financial independence, employment and paying of taxes and therefore his level of integration could not be said to outweigh the public interest in deportation. Moreover, it was argued that the judge had failed to properly consider whether there were very significant obstacles to the integration of the appellant into Sierra Leone and that the judge "erroneously equates no ties with an inability to integrate". As the appellant could speak to others in Sierra Leone he should be able to integrate. The grounds further asserted that:

> "… the appellant is required to provide evidence that he has made a genuine and sincere attempt to reintegrate whilst he has been in Sierra Leone. There is no such evidence in this case and as such, he cannot succeed."

21. It was also argued that the judge had erred in law by relying on the concession which he said had been made by the Presenting Officer. It was claimed that the concession "is not a concession fact but rather a concession of law. Consequently, in accepting this concession the FtT has made a material misdirection of law" *(sic).*

22. The third ground asserted that the judge had erred by stating that the Immigration Rules had "removed any discretion in the Tribunal to consider the public interest because the appellant's claim must succeed as he met the requirements of the Rules and the 2002 Act".

23. The grounds went on to state:-

> "15. The Immigration Rules provide clear statements as to the government's and Parliament's view of how the balance should be struck under ECHR Article 8 between the qualified right to respect for private and family life and the public interest. Section 19 of the Immigration Act 2014, which inserts a new part 5A in the Nationality, Immigration and Asylum Act 2002, gives the force of primary legislation to the policies reflected in the Immigration Rules by requiring a court or Tribunal, when determining whether a decision is in breach of Article 8 ECHR, to have regard to the public interest considerations as set out in the Act. As such, it is submitted that the Immigration Rules clearly incorporate consideration of the public interest."

Reference was then made to the judgment of the Court of Appeal in **Richards v SSHD [2013] EWCA Civ 244** which emphasised the strong public interest in deporting foreign criminals.

24. Permission having been granted to the Secretary of State, a very lengthy Rule 24 notice was submitted asserting that the decision of the judge was correct. The notice referred to evidence given to the judge that the appellant was living in appalling conditions in Sierra Leone and that the judge had taken that evidence into account as well as evidence in the determination of the First-tier Tribunal who heard the appellant's appeal against the decision to deport that the appellant had no social, cultural or family ties in Sierra Leone and that removal would amount to exile and the evidence that "the language barrier and difficulty of the geography of Sierra Leone, and the lack of support network" meant that the appellant was struggling to cope in Sierra Leone and had little prospect of coping for the future as he was totally unprepared for life in a country that he left at the age of 7. The notice also submitted that prior to his detention and removal the appellant had lived "a law-abiding life, was offering chef services to St Mark, from which he received allowance, and was playing a great role in assisting the youth at the church".

25. The notice stated that the index offence had been committed over ten years before and apart from an 84 day sentence which did not merit deportation the appellant had not committed any other offence – there had not been an increase in the appellant's criminality since 2005 and he was living a law-abiding life. It was stated that that was the basis on which the judge had allowed the appeal.

26. It was then argued that there was no misdirection of law with regard to paragraph 399A of the Rules as the judge was entitled to accept that the appellant was socially and culturally integrated into Britain where he had lived since the age of 7 – reference was made to the criteria in the

judgment of the European Court of Human Rights in **Maslov [2008] GC ECHR 1638/03**.

27. With regard to the concession made by the Presenting Officer, it was properly made and made on the evidence before the Tribunal.

28. With regard to the third ground of appeal the Rule 24 notice referred to the judgment of the Court of Appeal in **MF (Nigeria)** [2013] EWCA Civ 1192 stating that that judgment stated that the Rules provided implicitly that a person who meets the requirements of Rules 399 or 399A and to whom 398(b) or (c) applies should succeed in their Article 8 claim.

29. In her submissions Ms Savage referred to the terms of Rule 399A and stated that the judge had not properly assessed whether or not the appellant was socially and culturally integrated here. She referred to the Immigration Directorate Instructions dated 28 July 2014 headed "Chapter 13: criminality guidance in Article 8 ECHR cases". At paragraph 5.3.4 it stated that:-

> "Section 117B(3) of the 2002 Act states that it is in the public interest that persons who seek to remain in the UK are financially independent. If a foreign criminal cannot demonstrate that he is financially independent, this will indicate that he is not integrated in the UK because he may be reliant on public funds, wider family members or charities rather than contributing to the economic wellbeing of the country. If a foreign criminal can demonstrate that he is financially independent, this alone will not be sufficient to demonstrate integration, but it will count in the foreign criminal's favour when balancing all the evidence for and against integration."

She stated that the appellant had not indicated that he was financially independent or that there was evidence that he had been employed in Britain. Moreover, his criminal offending was a factor which would show that he was not integrated. She stated that the burden was on the appellant to show social integration.

30. She went on to refer to paragraph 5.3.7 which stated that:-

> "To outweigh any evidence of a lack of integration, the foreign criminal will need to demonstrate strong evidence of integration. Mere presence in the UK is not an indication of integration. Positive contributions to society may be evidence of integration, e.g. an exceptional contribution to a local community or to wider society, which has not been undertaken at a time that suggests an attempt to avoid deportation. If such a claim is made, decision-makers should expect to see credible evidence of significant voluntary work of real practical benefit."

31. She referred to paragraph 399A(c) and stated that the judge had not identified any factors which would mean that the appellant could not integrate in Sierra Leone nor was it shown that he required any assistance to integrate. She argued that it should be assumed that he could integrate unless there was evidence to the contrary. She argued moreover that the conclusions of the judge were inadequately reasoned.

She stated in any event that the respondent was entitled to withdraw the concession made but what had happened was that the judge's decision regarding that "concession" had led to a misapplication of the law. She went on to argue that the judge had not considered the public interest in the deportation of the appellant and again had erred in law in not so doing.

32. In reply Mr Decker referred to the judgment in **Maslov** and the determination of the Upper Tribunal in **Ogundimu (Article 8 - new rules) Nigeria [2013] UKUT 00060 (IAC)**. In the head note to that determination it was stated that "little weight should be attached to this Rule" (paragraph 399(a)) when consideration was given to the assessment of proportionality under Article 8 of the Human Rights Convention.

33. He emphasised that the appellant's offences had taken place almost ten years ago and that the appellant had never been to Sierra Leone nor did he have any family ties there. He referred to the evidence from the witness who had met with him in Sierra Leone and said that his health was failing and that he had no social network there. It was not in the public interest, he argued, that the appellant should be left to deteriorate in Sierra Leone. He argued that the appellant could not work here was because he had not been allowed to do so. He emphasised the appellant's ties with this country and stated that these should outweigh the interest in the appellant's remaining away from his children and his partner.

Discussion

34. It is a matter of concern that the Secretary of State chose not to deport the appellant when his appeal against the decision to deport was dismissed but rather allowed him to remain in this country for a further five years, strengthening his claim to an entitlement to remain here on Article 8 grounds. Nevertheless, when the appellant was able to make an application for revocation of the deportation order that application was refused and the appeal was dismissed both in the First-tier Tribunal and in the Upper Tribunal. The reality was that on the law as it stood at the date of hearing in the Upper Tribunal I and my colleague were entitled to conclude that the public interest lay in the deportation of the appellant and we gave clear reasons for reaching that conclusion in the determination.

35. After that determination the Secretary of State amended the Rules and inserted Section 117A to D into the 2002 Act. The rules now read as follows:

> Revocation of deportation order
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> 390. An application for revocation of a deportation order will be considered in the light of all the circumstances including the following:
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> (i) the grounds on which the order was made;

(ii) any representations made in support of revocation;

(iii) the interests of the community, including the maintenance of an effective immigration control;

(iv) the interests of the applicant, including any compassionate circumstances.

390A. Where paragraph 398 applies the Secretary of State 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 maintaining the deportation order will be outweighed by other factors.

391. In the case of a person who has been deported following conviction for a criminal offence, the continuation of a deportation order against that person will be the proper course:

(a) in the case of a conviction for an offence for which the person was sentenced to a period of imprisonment of less than 4 years, unless 10 years have elapsed since the making of the deportation order when, if an application for revocation is received, consideration will be given on a case by case basis to whether the deportation order should be maintained, or

(b) in the case of a conviction for an offence for which the person was sentenced to a period of imprisonment of at least 4 years, at any time, Unless, in either case, the continuation would be contrary to the Human Rights Convention or the Convention and Protocol Relating to the Status of Refugees, or there are other exceptional circumstances that mean the continuation is outweighed by compelling factors.

391A. In other cases, revocation of the order will not normally be authorised unless the situation has been materially altered, either by a change of circumstances since the order was made, or by fresh information coming to light which was not before the appellate authorities or the Secretary of State. The passage of time since the person was deported may also in itself amount to such a change of circumstances as to warrant revocation of the order.

392. Revocation of a deportation order does not entitle the person concerned to re-enter the United Kingdom; it renders him eligible to apply for admission under the Immigration Rules. Application for revocation of the order may be made to the Entry Clearance Officer or direct to the Home Office.

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 would be deported.

36. The amendments to the 2002 Act including sections 117A, B, C and D state:

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).

117B - Article 8: public interest considerations applicable in all cases

(1) The maintenance of effective immigration controls is in the public interest.

(2) It is in the public interest, and in particular in the interests of the economic well-being of the United Kingdom, that persons who seek to enter or remain in the United Kingdom are able to speak English, because persons who can speak English—

(a) are less of a burden on taxpayers, and

(b) are better able to integrate into society.

(3) It is in the public interest, and in particular in the interests of the economic well-being of the United Kingdom, that persons who seek to enter or remain in the United Kingdom are financially independent, because such persons—

(a) are not a burden on taxpayers, and

(b) are better able to integrate into society.

(4) Little weight should be given to—

(a) a private life, or

(b) a relationship formed with a qualifying partner,

that is established by a person at a time when the person is in the United Kingdom unlawfully.

(5) Little weight should be given to a private life established by a person at a time when the person's immigration status is precarious.

(6) In the case of a person who is not liable to deportation, the public interest does not require the person's removal where—

(a) the person has a genuine and subsisting parental relationship with a qualifying child, and

(b) it would not be reasonable to expect the child to leave the United Kingdom.

117C - Article 8: additional considerations in cases involving foreign criminals

(1) The deportation of foreign criminals is in the public interest.

(2) The more serious the offence committed by a foreign criminal, the greater is the public interest in deportation of the criminal.

(3) In the case of a foreign criminal ("C") who has not been sentenced to a period of imprisonment of four years or more, the public interest requires C's deportation unless Exception 1 or Exception 2 applies.

(4) Exception 1 applies where—

(a) C has been lawfully resident in the United Kingdom for most of C's life,

(b) C is socially and culturally integrated in the United Kingdom, and

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

(5) Exception 2 applies where C has a genuine and subsisting relationship with a qualifying partner, or a genuine and subsisting parental relationship with a qualifying child, and the effect of C's deportation on the partner or child would be unduly harsh.

(6) In the case of a foreign criminal who has been sentenced to a period of imprisonment of at least four years, the public interest requires deportation unless there are very compelling circumstances, over and above those described in Exceptions 1 and 2.

(7) The considerations in subsections (1) to (6) are to be taken into account where a court or tribunal is considering a decision to deport a foreign criminal only to the extent that the reason for the decision was the offence or offences for which the criminal has been convicted.

117D - Interpretation of this Part

(1) In this Part—

- "Article 8" means Article 8 of the European Convention on Human Rights;
- "qualifying child" means a person who is under the age of 18 and who—

  (a) is a British citizen, or

  (b) has lived in the United Kingdom for a continuous period of seven years or more;
- "qualifying partner" means a partner who—

  (a) is a British citizen, or

  (b) who is settled in the United Kingdom (within the meaning of the Immigration Act 1971 — see section 33(2A) of that Act).

(2) In this Part, "foreign criminal" means a person—

(a) who is not a British citizen,

(b) who has been convicted in the United Kingdom of an offence, and

(c) who—

(i) has been sentenced to a period of imprisonment of at least 12 months,

(ii) has been convicted of an offence that has caused serious harm, or

(iii) is a persistent offender.

37. The reality is that, whereas prior to the changes to the Rules and the amendment to the 2002 Act the Secretary of State had been asserting the importance of the public interest in the deportation of criminals, by Section 117D and Rule 399A the Secretary of State appeared to remove from the relevant proportionality exercise the emphasis to be placed on the public interest in the deportation of foreign criminals. Rule 399A sets out circumstances where a foreign criminal should not be deported and Section 117C(iv) makes a clear exception to the public interest in the deportation of a foreign criminal. The reality is that the law as now drafted appears to ignore, in certain circumstances, the public interest in the deportation of a foreign criminal. I consider, however, that it was the duty of the judge to analyse in detail whether or not the appellant met the terms of Exception 1 of Section 117C.

38. In the determination the Judge stated that the Presenting Officer accepted that the appellant did meet Exception 1 and the provisions of paragraph 399A and that therefore the appeal must succeed as the appellant met the requirements of the Rules.

39. It is surprising that there is no statement from the Presenting Officer as to what concession he did or did not make. Indeed it may have been that he accepted that *if* the appellant met the provisions of paragraph 399A and Section 117C then the appeal should be allowed. However, that has not been argued before me. What is argued was that that concession has been withdrawn. I follow the judgment of the Court of Appeal in **NR** (Jamaica) [2009] EWCA Civ 856 and consider that the respondent is entitled to withdraw that concession.

40. In ant event, I find that there are errors of law in the determination in that it is the duty of the judge to give reasons for the decision which he has made. In this case he has to give reasons as to why he concluded that the appellant met the provisions of paragraph 399A and Section 117C.

41. Although in paragraph 37 of the determination the judge stated that while it was accepted that the appellant met the requirements of over twenty years' residence in Britain and the findings of the First-tier Tribunal, which the judge had taken into account following the principles in **Devaseelan**, that the appellant still had ties in Britain and that he would have met the terms of the former Rules that is not a sufficiently clear analysis of the Rules as they stood at the time of the determination. He gives no reasons for his decision that the terms of Rule 399 A are met and he did not even consider the provisions of Rule 399A (c). That is a clear error of law. Similarly he also erred in that he did not consider the terms of Section 117(C) (4) (c) Exception 1. I therefore set aside the decision of the Judge of the First-tier.

42. I have therefore considered afresh the Statute and the Rules and in particular paragraph 117C (4) which states:-

> "Exception 1 applies where –
>
> (a) C has been lawfully resident in the United Kingdom for most of C's life,
>
> (b) C is socially and culturally integrated in the United Kingdom, and
>
> (c) there would be very significant obstacles to C's integration into the country to which C is proposed to be deported."

43. It has been accepted that the appellant, who entered Britain at the age of 8 in 1992 and against whom the decision to deport was made in 2006, had been lawfully resident in Britain for most of his life.

44. I turn to the issue as to whether or not the appellant is socially and culturally integrated in the United Kingdom. While I note the terms of the Immigration Directorate Instructions the issue of whether or not an

appellant is socially and culturally integrated into Britain must depend on a large number of factors. Neither the Secretary of State nor the judge engaged with these to any extent. It must be relevant that the appellant came to Britain at the age of 8 and attended school here. I note the evidence of Mrs West and the evidence of the other witnesses including Mr Barker. Mrs West's evidence largely related to the appellant's circumstances in Sierra Leone and in particular the very difficult circumstances in which he is living, his difficulty in finding work and his problems because he does not speak the local dialect. However, she referred to his being employed as a chef at St Mark's Church in Battersea. Mr Barker's evidence was that he was a friend of the appellant whom he had known for over a year and a half since the appellant had started attending St Mark's, the appellant having become a Christian. He had stated that the appellant was willing to contribute to the group discussions "in a wise and considerate manner", had regularly attended church and has brought his children along to children's groups. He had volunteered to help regularly in the church and Mr Barker understood that he was quick to make a good impression and was a hard worker. Mr Barker described him as being "a very welcoming and loving personality". He helps him with money.

45. Juliet Barrett, the mother of his former partner and the grandmother of his two children, referred to him as having studied electronics and referred to the appellant working "with one of the world's known chefs Mr Gordon Ramsay as his star apprentice". There were also statements from the appellant's sister emphasising that his children missed their father and stating that he had contributed immensely to providing the stability and continuity they needed.

46. A statement from Richard Seychell praised the appellant, particularly with regard to his relationship with his children and nephew. His wife had also prepared a statement in which she set out his children's need for him.

47. While it is the case that the appellant has not had paid employment in Britain the reality is that he has been barred from doing so by the service of the deportation order. While I accept that criminality is a factor to be taken into account when assessing whether or not an individual is integrated into Britain I do not consider that it can be determining factor and, taking into account all the evidence before me and indeed noting that the First-tier Tribunal referred to the appellant being "exiled" from Britain, I conclude that the appellant is socially and culturally integrated into the United Kingdom.

46. I then consider the terms of Section 17(C) (4) Exception 1 (c) which is whether or not there are "very significant obstacles" to the appellant's integration into Sierra Leone. The evidence of Mrs West and indeed from the other witnesses was that the appellant was living in Sierra Leone in extremely difficult circumstances and that he has been unable to find work there. For some reason the factor that he would be unable to work as a driver has been highlighted. However, there is nothing to indicate that the

appellant, who is entitled to work in Sierra Leone, would not be able to work there, albeit it may well be a country of high unemployment. There is no background evidence before me to suggest that the appellant would either be barred from the workforce or that he could not make some sort of living there let alone that he is unable to form relationships there. The reality appears to be that he has been taken in by a family in Sierra Leone and has some contacts with a church there through the church he attended in Britain. I therefore conclude that he has not discharged the burden of proof upon him to show that there are very significant obstacles to his integration into Sierra Leone. I therefore consider that Exception 1 does not apply.

46. I revert to the terms of Rules 390 and 391A. The order for deportation was made because of the appellant's criminality. There have of course been representations made in support of revocation which carry considerable weight both with regard to his relationship with his family and the wider community here including the relationships he has formed while attending St Mark's Church and also the distressing circumstances in which he is living in Sierra Leone. These indeed are compassionate circumstances which should be taken into account. However, Rule 390A refers to exceptional circumstances and states that where paragraph 398 applies if the circumstances set out in paragraphs 399 and 399A do not apply it will only be in exceptional circumstances that the public interest in maintaining the deportation would be outweighed by other factors. It has been determined that the appellant did not meet the requirements of paragraphs 399 and 399A. The reality is that the appellant does not qualify under paragraph 399 and the test in 399A is the same as that in Section 117C of the Rules. My conclusions thereon are the same.

47. I therefore conclude that notwithstanding the extremely harsh nature of the appellant's life in Sierra Leone this is a case where, having been sentenced to a period of imprisonment for less than four years, continuation of the deportation order is the proper course.

48. I therefore set aside the decision of Judge of the First-tier Tribunal Youngerwood, and remake the decision dismissing this appeal.

Signed Date **12 March 2015**

Upper Tribunal Judge McGeachy