Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: DA/01455/2014

THE IMMIGRATION ACTS

Heard at Birmingham Employment Tribunal	**Decision & Reasons Promulgated**
On 3 May 2017	**On 18 May 2017**

Before

UPPER TRIBUNAL JUDGE HANSON

Between

FRED EDWARD DRUMMOND
(anonymity direction not made)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellant: Mr G Lee instructed by Braitch RB Solicitors
For the Respondent: Mr Mills – Senior Home Office Presenting Officer

DECISION AND REASONS

1. This is an appeal against a decision of First-tier Tribunal Judge Birrell promulgated on 18 August 2016 ('the Judge') who dismissed the appellant's appeal against the decision to deport him from the United Kingdom.

Background

2. The appellant is a national of Jamaica born on 1 December 1972.

3. This matter has a long procedural history. An initial appeal against the respondent's decision was heard by a panel of the First-tier Tribunal composed of First-tier Tribunal Judge A J Parker and Mr GH Getlevog (nonlegal member) (hereinafter referred to as 'the Panel') who, in a decision promulgated on 8 June 2015, dismissed the appellant's appeal.

4. The appellant's immigration history shows he entered the United Kingdom on 21 September 2001 where he was encountered by an immigration officer and served with notification of temporary admission with a request to report to an Immigration Officer on the 27 September 2001 at Gatwick Airport for the purpose of deciding whether he will be granted leave to enter or removed from the United Kingdom, although he failed to attend for removal and remained in the UK without lawful leave, making no application to legalise his stay until an application for leave to remain was made on 26 April 2012.

5. The Panel noted the appellant's offending history. In the Decision to Make a Deportation Order the following is recorded:

> 'On 26 April 2012 you applied for further leave to remain in the United Kingdom. The Secretary of State has decided to refuse your application for the reasons given in the attached letter.
>
> In light of your conviction at Wolverhampton Crown Court on 11 December 2013 for making an untrue statement to procure a passport, possessing or controlling identity documents with intent and two counts of doing an act tending and intending to convert the course of public justice. Your sentences by the same court on 11 December 2013 for making an untrue statement to procure a passport and doing an act tending and intending to pervert the course of public justice were terms of eight months' imprisonment on each count to run consecutively and for the counts of doing an act tending and intending to pervert the course of public justice and, possessing or controlling identity documents with intent, you were sentenced to terms of eight months' imprisonment to run concurrently, making a total term of 16 months' imprisonment.
>
> In light of these convictions the Secretary of State deems it to be conducive to the public good to make a deportation order against you. The Secretary of State has therefore decided to make an order by virtue of section 3(5)(a) of the Immigration Act 1971.'

6. The Panel record at [10] of their decision the sentencing remarks of His Honour Judge Challinor in the following terms:

> "I have to deal with your passport offences and perverting the Course of Justice. All these offences are very serious. The Court of Appeal has said that time and time again these offences must always save in the really exceptional circumstances result in a custodial sentence. What you did in 2002 is to lie in order to get a passport. You then some years later lied again to obtain your daughter's passport. Then in your brother's name you appeared at court and were convicted and sentenced. The seriousness of these offences that you have shown is real persistence. I appreciate that once you told the first lie you have to tell the other lies

which you are persistent in your lives and went through it for some 10 years or so and that makes your culpability very high….. This is not the case of you telling one lie at the beginning and covering it up for a long time, this is a lie which was persisted in when you tried to obtain another passport and appeared in court".

7. The Panel noted the appellant's previous convictions on 23 June 2009 for common assault and on 5 July 2007 of using threatening and abusive words with intent to cause fear or provocation of violence.

8. The Panel set out their findings and conclusions at [33 – 48] of their decision, the factual findings in which may be summarised in the following terms:

    a. The starting point is paragraph 398C of the Immigration rules and it is only in exceptional circumstances that a person's right to a family or private life for other reasons would outweigh the public interest in seeing a person deported [33].

    b. Paragraph 396 of the Rules provides a presumption that the public interest requires deportation of the person who is liable for deportation. In considering whether the presumptions are outweighed all relevant factors are taken into account [33].

    c. The suggestion the appellant is a devoted family man and greatly loved and admired seems incongruous with the facts of this case [35].

    d. The appellant had a number of relationships [35] including:

    with a Ms D M Drummond with whom he has two children, a son born in 2002 and daughter in 2008.

    with Ms S M Salmon with whom he has a son born in 2007 and daughter born in 2011.

    with a Ms C A Clarke with whom he has a son born in 2008.

    with a Ms A M C Dawkins with whom he has a son born in 2007, a stepdaughter born in 2003, and a son born in 2013.

    with a Ms A R Chilongo with whom he has a stepdaughter born in 2008 and another daughter born in 2013.

    The appellant was married using a false identity to Ms D M Drummond in May 2004 meaning the marriage is not lawful. He has produced birth certificates in his brother's name N A Drummond.

    e. It is possible the Sentencing Judge did not have all the facts on the guilty plea before him [36].

    f. The appellant can hardly be said to be a devoted family man. The opposite is the case. The evidence of the appellant and Ms Drummond was inconsistent. It is most likely the appellant and Ms Drummond split up in 2007 prior to the appellant's incarceration. There is an unstable family life at best between them. The appellant has been released on bail to Ms Drummonds address. Fact is currently on crutches and in a

wheelchair on release severely curtailed his ability to get out and have affairs. Given his past history it is likely in future he will have an equally unstable family life as he has in the past [36].

g. The appellant left Jamaica when his children in Jamaica were 1 – 9 years old and he has been a very poor role model and poor father to them. In Jamaica he had six children by four different partners. Ms Drummond has known about his legal status since they resumed life together. The bail conditions the appellant has mean he has to reside at the stated address and behave himself. The appellant has "caused misery not only to others but to his family including the mother of his children and the children"[37].

h. At best the appellant and Ms Drummond live in the same house. The appellant has failed to show he has a stable relationship with Ms Drummond. Financially the appellant has not been able to support his children in Jamaica or in the UK. There is no credible evidence of relationships with his partners in Jamaica and the number of children means he has not been able to exercise meaningful contact with the children outside the relationship. The appellant's actions have a serious impact on the children and he is far from being a devoted family man. In the context of article 8 cases it cannot be said that it is unduly harsh for the appellant to be deported to Jamaica where he can resume the family life with his six children in Jamaica if the children in the UK are to remain in this country [38].

i. The impact of the appellant's removal will be minimal in relation to his children as he has not been a major part of the children's lives. The main person in the children's lives has been their mother. The appellant has at best had minimal contact with his children. Ms Drummond and her children are Jamaican nationals and can choose whether they return to Jamaica. There are educational and healthcare facilities in Jamaica. The appellant did not reside with Ms Drummond from 2007 until 2014, meaning for the last eight years they have only spent six months together. Ms Drummond has entered a relationship again with a person she knows is liable to be deported. The witness statement by the appellant's son born to Ms Drummond in 2002 was considered by the Panel and weighed against the wider picture the appellant has been an absentee father [39].

j. Prior to arrest the appellant was working as a car mechanic. It is unlikely he will resume the role for some considerable time and will become a financial burden on society. It would not be unduly harsh on the appellant or his children and partner for him to be deported. There is a strong public interest in this case for his removal. Whilst the interests of the children are a

factor, at best the appellant has had occasional contact since he has been separated from them and not lived with any of their mothers since 2007 apart from Ms Drummond, with no suggestion that the children cannot be looked after by their respective mothers which means the situation will continue as before with the appellant not being present [40].

k. The appellant has carried out persisting offending which satisfies paragraph 398(c) of the Immigration Rules. Paragraph 399 (a) is not satisfied as there are existing relationships with their mothers and evidence suggests that the appellant's presence is not necessary to stop his children's care, health, and development from being impaired. The impact upon the children of the appellant's removal will be minimal. He has not shown his in a position to maintain his partner and his children. Paragraph 399 (b) does not apply as he has not been here for 15 years with valid leave and there are no insurmountable obstacles to prevent family life in his home country [41].

9. Permission to appeal to the Upper Tribunal was sought and granted by another judge of that Tribunal on the basis there was merit in the ground the Panel misquoted and misinterpreted paragraph 399(a) of the Immigration Rules and that the Panel erred and misdirected itself in law when it found the appellant is a persistent offender.

10. In a decision promulgated on 28 January 2016 Upper Tribunal Judge Clive Lane found arguable material error of law in the decision of the Panel and accordingly set aside that decision and remitted the matter for a further hearing with a direction that none of the findings of fact made by the Panel shall stand.

11. The matter therefore came before 'the Judge' who having noted the evidence sets out findings of fact at [42 – 88] of the decision under challenge. Those factual findings made can be summarised in the following terms:

a. The starting point that underpins the decision in accordance with paragraph 117C(1) and paragraph 396 the Immigration Rules is that the public interest requires the deportation of a person who is liable to deportation and the deportation is in the public interest [44].

b. There is no dispute that the appellant is a foreign criminal and is liable to deportation [44].

c. Section 117C(2) requires consideration of the seriousness of the offence because the more serious the offence the greater the public interest in deportation. The Refusal Letter also refers to paragraph 398 of the Rules. The author of the Refusal Letter relied upon subsection (c) which found "the deportation of the person from the UK is conducive to the public good because, in the view of the Secretary of State, the offending

has caused serious harm or they are a persistent offender who shows a particular regard for the law" [45].

d. The Judge was satisfied paragraph 398 (b) only applied for a single sentence in excess of 12 months and does not apply where the aggregated sentences are of 12 months, meaning issues are to be considered by reference to subsection (c) 'serious harm' and 'persistent offender' [46].

e. The Judge was satisfied the offences for which the appellant was sentence are intrinsically serious as the Sentencing Judge described them as 'very serious' and found the appellant was persistent in his behaviour and his culpability was high requiring an immediate significant sentence of imprisonment as the behaviour in issue stretched over a period of 10 years [47].

f. The appellant accepted that prior to the date he handed himself into the police he had travelled regularly back to Jamaica using the false passport [48].

g. At [49] "I am therefore satisfied that in respect of the offending behaviour on the indictment the Appellant has demonstrated that he was a persistent offender as the offences are over a period of 10 years but also because there was other regular and persistent behaviour when he travelled on the false passport not reflected in the indictment that shows a repeated and particular disregard for the law"

h At [51] "I am also satisfied that this offence caused serious and wide ranging harm: the Judge's sentencing remarks make clear that harm was done to the integrity of the passport system which is an important feature of immigration control. The maintenance of immigration control is in the public interest and therefore anything that undermines it must be viewed seriously. It is also clear that the offending will have potentially devastating consequences for all of those of his children who were granted passports on the basis of his false passport which purported to show he was a British citizen. They and their mothers face a period of uncertainty in relation to their status while it is determined whether any or all of them are removed as none of the mothers are British Citizens".

i. In relation to whether the appellant has a genuine subsisting parental relationship with a qualifying child and whether the effect of the appellant's removal would be unduly harsh on that child, the Judge examined each child individually to determine whether they are a qualifying child at [58] to [63] before concluding at [64] that only the children named in that particular paragraph are qualifying children, of which there are six.

j. The Judge then assesses whether the nature of their relationship with the appellant is genuine and subsisting. There

has not been a consistent level of contact will all of the children evidenced in either statements or documents [66].

k. Ms Drummond provides the appellant with a bail address at the time of need and no more [67].

l. The evidence of a Ms Bayo, who has a Diploma in Social Work, was found to be undermined by errors and "a rather unprofessional approach" which limited the weight that can be attached to the report albeit that it confirmed what the Judge found might be expected, that the children she saw would like to continue to see their father and that they love him [74]. The comment by Ms Bayo that the appellant has nine children by three women was found to be factually incorrect. The Judge notes Ms Bayo confirmed the appellant has a 'positive and secure' relationship with all of six children she saw although in the report it is also claimed he took the role the father seriously with '5 of his children' and does not specifically address the best interests of the children other than in the vaguest and very brief terms at 4.3 [74].

m. The best interests of the children are to be brought up by both parents in a stable and loving relationship though that cannot happen as a result of lifestyle choices made by the appellant who has never lived in a stable family unit with any one of his partners when he was not having an affair with someone else, even accepting his case at its highest, to 2014. All the children have stable family homes with their mothers and there is nothing to suggest the mothers are not capable of continuing to provide them with the care and support they need whether that be in the UK or in Jamaica, if removed as a result of their status being revoked [77].

n. It is in the children's best interests to maintain contact with their father and each other although it is said the appellant has not provided a positive role model in terms of personal relationships or criminal offending. The Judge accepted, however, that children in the UK of the appellant enjoy the treats and outings they go along to with him, and feel his presence enables them to enjoy time with their siblings both those who are blood relatives and those who are not [78].

o. It is accepted that the appellant is in a genuine subsisting relationship with the six children named in [80] two further children being included in the treats and outings according to the evidence provided in 2014, although other evidence relating to one of named child is stated to be "far less clear" [80].

p. It is necessary to assess whether it will be unduly harsh on the children to remove the appellant even if he was a good father [81].

r. At [84] it is found "The wording of the provision makes clear that separating a child from its father is harsh but the Appellant only succeeds if he can establish that in his case it would be 'unduly' harsh. There is nothing in the facts of this case that persuades me that deporting the Appellant would have unduly harsh consequences on those children who are qualifying children or indeed for the sake of completeness, on the other children who may not meet that test".

s. At [85] "Finally, although Mr Vokes did not argue the matter, I am satisfied that there are no facts in this case that would bring it within the 'safety valve' very compelling circumstances test in paragraph 117C(3) which is a high threshold of application".

12. The Judge summarises his position by concluding that there is very considerable weight to be attached in this case to deporting the appellant for the reasons stated. There will be prejudice to the appellant's family and private life, but overall it is not in the children's best interests that he should be deported although for reasons set out in the decision under challenge, on the facts of this case, that should not be overstated. It was found deportation will affect their already limited contact with the appellant but it will not affect the children's fundamental interest in their home lives with their mothers in a stable home environment. Having taken all the relevant factors into account the Judge then states "I am satisfied that this is a case in which the factors weighing in favour of deportation outweigh prejudice to private and family life applying the tests set out in the Rules in paragraph 117C".

Grounds and submissions

13. The appellant sought permission to appeal asserting the Judge had erred in law in relation to which permission to appeal was refused by another judge of the First-tier Tribunal on 20 September 2016. The application was renewed to the Upper Tribunal on the basis of different grounds drafted by Mr Lee, dated 11 October 2016. Permission to appeal was granted by Deputy Upper Tribunal Judge Taylor in the following terms:

> "The grounds argue that it was not open to the judge to consider the appellant's case on the basis that he was a persistent offender who had shown particular disregard for the law or that he had caused serious harm, because he had only been convicted on two occasions, once in 2007, when he received a non-custodial sentence and the second in December 2013, when he pleaded guilty to 4 counts on the same indictment relating to a similar course of conduct, namely the obtaining possession and use of a false passport to pretend to be someone else.
>
> It is arguable that since the 2013 offences were on a single indictment, the appellant was being punished for a series of offences which arose out of substantially the same conduct, which is a different paradigm to an offender offending, being convicted, and then offending again.

It is also arguable that there was no specific evidence of serious harm before the judge.

There may be less in ground two for the reasons set out in the First-tier Judges decision to refuse permission to appeal, but for completeness, all grounds may be argued."

Error of law

14. It was submitted on the appellant's behalf that the Judge's finding that the appellant fell within paragraph 398(c) is legally unsustainable. Mr Lee submitted that it was a question of interpretation of the law in relation to the term 'serious harm' or being a 'persistent offender' who had shown a particular disregard for the law.

15. It was not disputed that the most recent case before the Upper Tribunal on this point is that of *Chege ("is a persistent offender") [2016] UKUT 187 (IAC)* the head note of which reads

> *"1. The question whether the appellant "is a persistent offender" is a question of mixed fact and law and falls to be determined by the Tribunal as at the date of the hearing before it.*
>
> *2. The phrase "persistent offender" in s.117D(2)(c) of the 2002 Act must mean the same thing as "persistent offender" in paragraph 398(c) of the Immigration Rules.*
>
> *3. A "persistent offender" is someone who keeps on breaking the law. That does not mean, however, that he has to keep on offending until the date of the relevant decision or that the continuity of the offending cannot be broken. A "persistent offender" is not a permanent status that can never be lost once it is acquired, but an individual can be regarded as a "persistent offender" for the purpose of the Rules and the 2002 Act even though he may not have offended for some time. The question whether he fits that description will depend on the overall picture and pattern of his offending over his entire offending history up to that date. Each case will turn on its own facts."*

16. It was submitted by Mr Lee that the findings in *Chege* are inconsistent with the Judges approach as it is necessary for a person to be a persistent offender for them to have been before the court and for the person to persist in offending in the face of the court. It is also argued there is a difference between a person who commits one or more offences arising at the same time and a person who commits a series of offences over a different period. It was argued on the appellant's behalf that he fell within the category of one or more offence arising at the same time and so is not a persistent offender.

17. The definition of a persistent offender in *Chege* is set out in the head note above. It applies to a person who keeps breaking the law. It was argued that it was found in *Chege* at 'the offences must be sequential i.e. not properly regarded as part of the same incident, otherwise the necessary characteristic of repetition will be absent. Time over which

they are committed will of course be a relevant factor. Sporadic instances of isolated offending over the course of several years are unlikely to suffice. On the other hand, the facts may demonstrate that although he has committed very few offences, the offender's experience of the criminal justice system has provided him with insufficient deterrence and that is plainly someone who is going to keep on reoffending'.

18. The comparison by Mr Lee of the fact that in Mr Chege's case he had committed 25 offences resulting in 16 convictions in the previous 15 years whereas this appellant had been convicted on only two separate occasions some six years apart, is not a sufficient comparison to find arguable legal error. The Upper Tribunal in *Chege* set out a simple but efficient definition of a persistent offender as a person who keeps breaking the law. In this case the appellant obtained a British passport to which he was not lawfully entitled using a false identity a considerable period of time ago. It is not suggested that since obtaining that passport the appellant declared his Jamaican nationality and it is clear that for a substantial period of time the appellant maintained the deception by fraudulently holding himself out as a British citizen. It cannot be said on an interpretation of the term "persistent" that the appellant's conduct did not satisfy this definition. It was continuous and deliberate. The appellant knew it was wrong as he was not lawfully entitled to the document he was seeking to rely upon showing that throughout the period of continuous and deliberate conduct the appellant was aware that he was committing an offence.

19. That offence would have been committed every day the appellant held himself out to be a British citizen and again on each and every occasion that he obtained a benefit based upon his claim to be a British citizen that he would not otherwise be entitled to as a national of Jamaica. This may include the full range of benefits to which British citizens are entitled including medical treatment free at source on the NHS, social assistance, financial assistance, the protection of the police, the support of the British government, the ability to evade immigration control when he flew to Jamaica and returned to the United Kingdom on a number of occasions effectively undermining the integrity of the United Kingdom's immigrations system and security measures in force to protect nationals of the United Kingdom and those engaged in international travel, and obtaining passports for certain of his children as British citizens which it is said have subsequently been revoked as they are documents to which those children were not entitled as a result of the appellant's criminal activities.

20. These offences are sequential. They are not a one-off offence that could be regarded as the same incident. Using a false identity to obtain a passport is distinct from using that passport to obtain a British passport for family member to which they are not entitled when the appellant using that passport knows he is also not a British citizen. Holding yourself out as a British citizen and obtaining benefits flowing from such status is again a separate matter from the initial act of obtaining the

passport which is used in a variety of ways. The fact the 2013 offences were contained on a single indictment does not support the argument that what was being punished was a series of offences that arose out of substantially the same incident, even though there may be common elements to each offence the appellant committed through the use of the passport/fraudulent claim to British citizenship to which he was not entitled, as it was found earlier that it is not clear whether the Crown Prosecution Service were fully aware of the extent of the appellant's offending. Even if they were, it is not made out they would have chosen to put each offence on an indictment rather than follow what is the normal practice of several specimen offences sufficient to set out the nature of the offending to enable the Crown Court to pass an appropriate sentence, or in some cases to only record those offences of which they are actually aware, on the indictment. The offence of perverting the course of justice as a result of court proceedings the appellant was involved in using his false identity are also distinct elements of deliberate criminal conduct.

21. It is accepted this is not a case in which the appellant had been convicted and then offended again as following his conviction for the passport related offences the document was confiscated and cancelled and so he could not continue with offences of a similar nature using that passport. It does not require a criminal court to pass a sentence for an individual to realise that they should not offend. The criminal law sets out conduct which is not acceptable to society which will result in a conviction if an individual is proved to have behaved in such a manner, which will then result in appropriate punishment. The appellant was fully aware from the outset that what he was doing was illegal and his repeated and persistent offending clearly demonstrates a particular disregard for the criminal law. It must be remembered that the requirement is for a disregard for the law not disregard for a sentence passed by a criminal court. A person committing an offence in the first place clearly demonstrates a disregard for the law. A person who persistently offends shows a particular disregard for the law. A criminal court is not "the law" but the avenue of the State through which breaches of the criminal law are pursued and enforced.

22. Even though the Judge noted the appellant handed himself into the police that does not change the course of conduct and would have been recognised by the Sentencing Judge when considering an appropriate period of sentence.

23. In relation to the requirements of paragraph 398(c), the requirements are in the alternative, that a person's offending has caused serious harm or that they are a persistent offender who shows a particular disregard for the law. It is not necessary for both elements to be proved.

24. The Judge found that the appellant's offending had caused serious harm. Mr Lee submitted that if serious harm means breaking the law then there was no need for that to be specifically included and that

something more was required to show in an individual case that offending had caused serious harm. It was submitted there was a need for more than importing the offence generally and that serious harm could not be ‘’potential’ but had to be ‘actual’.

25. I do not accept that Mr Lee has made out his case in relation to this element. Whilst the wording of the paragraph does state that offending has caused serious harm, meaning there must be an example of the nature of that harm rather than it being said there is a possibility of harm in the future which may not materialise, in this case there is clear evidence that the appellant’s actions do satisfy the definition of serious harm. The appellant used the identity of another to obtain an important document purporting to confer upon the appellant recognition of his status as a British citizen to which he was not entitled. The appellant use that document in his chosen fraudulent identity to provoke the criminal justice system. That damages not only the integrity of the documentation that underpins the immigration system of the United Kingdom but it is clear the appellant also used such documentation for personal benefit both for himself and to confer such status upon certain of his children. I have commented above upon the consequence of a person having British citizenship. In addition to the above there is the fact the appellant held himself out both to an immigration officer in the UK, airlines in which he flew to Jamaica, and the Jamaican immigration services, that he was a British citizen. Such deceit clearly gives rise to finding of serious harm to the integrity of the immigration system and safety issues underpinning international transport. It was submitted by Mr Mills that the appellant also used his status to obtain employment and housing over the 12-year period before he was caught. It has not been made out that the use of fraudulent identity in the manner in which the appellant did is a victimless crime.

26. It is necessary, as reinforced by *Chege* to consider the case as a whole. Mr Mills submitted the decision makes it clear that it is not a requirement for the appellant to be a constant offender or that there is a need for the offender to be convicted and offend again. The rule only requires a person to offend persistently, i.e. over and over again.

27. In [46] of *Chege* it is written:

> “46. Mr Mackenzie submitted that, on that basis, a persistent offender is one “between whose offences there is some connection in nature and/or time and/or who displays a degree of obstinacy or refusal to be corrected by punishment”. He sought to draw analogies with other contexts in which the words “persistently” or “persistent offender” have been used, relying primarily upon the use of such phrases in the context of sentencing for youth offending. He referred to cases such as R v L [2012] EWCA Crim 1336, [2013] 1 Cr.App R. (S) 56 in which earlier authorities on the question of what might or might not amount to a “persistent offender” for the purposes of passing a sentence of a detention and training order on a young offender were considered. In that case, the Court of Appeal (Criminal Division) held, quite understandably, that multiple offences committed on a single occasion within a minute or two of each other

could not be characterised as "persistent offending" for the purposes of s.91 of the Powers of the Criminal Courts (Sentencing) Act 2000."

28. This approach was, however, rejected by the Tribunal at [47 and 48] where it is found

> "47. However, it would be very unwise for this Tribunal to import the interpretation placed on a phrase used in another statute, in a context to which very different policy considerations apply, into part 5A of the 2002 Act, even if the words used are identical. In the context of youth offending, where a custodial sentence is regarded as a last resort, there are valid reasons for adopting a narrow approach to the question whether the requirements for exercising the jurisdiction to make such an order have been fulfilled. There are no reasons to justify adopting a similarly restrictive approach in the context of deportation.
>
> 48. In any event, the Court of Appeal stated in R v L that the earlier authorities on s.91 signified that the term "persistent offender" is an ordinary term of the English language and falls to be applied in its clearly understood meaning. They also endorsed the observation in an earlier case by the then Recorder of Liverpool that "the term "persistent offender" is a wide one, allowing for some latitude of interpretation of the facts of particular cases"."

29. Mr Lee's invitation for this Tribunal to accept his definition of a persistent offender, such that the appellant does not satisfy that requirement, has not been shown to be supported by the case law.

30. In relation to the issue of serious harm, Mr Mills submitted that for a person to fall within paragraph 398(c) of the Immigration Rules they must have been convicted of an offence for which they received a prison term of less than 12 months indicating that their offending is still serious. A person who gets more than a non-custodial sentence because of passport abuse and false identity is illustrative of the fact the view of the Criminal Courts and the public at large is that they have cause serious harm. Documentary evidence is not a trivial offence.

31. I find no arguable legal error in the Judge's conclusion in relation to 398(c) in relation to both elements of the test, namely that the appellants offending has caused serious harm and that he is a persistent offender who showed a particular disregard for the law. An examination of the overall picture and pattern of the appellants offending over his entire offending history clearly shows he fits the description set out in the relevant provisions of the Immigration Rules.

32. In relation to Ground 2, in which Mr Lee challenged the findings relating to the best interests of the children and unduly harshness, no arguable legal error is made out. The Judge properly directed himself as to the relevant legal provisions and fully examined the facts appertaining to the children individually before coming to sustainable conclusions that although the best interests of the children may be for the appellant to remain in the United Kingdom, when weighing up all competing elements of this case, it had not been established that the appellant's

removal would amount to unduly harsh consequences. No arguable legal error in the approach taken by the Judge or the overall conclusions reached has been made out, material to the decision to dismiss the appeal.

Decision

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

Anonymity.

34. 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 1^{6t}h of May 2017