



Upper Tribunal  
(Immigration and Asylum Chamber)

Appeal Numbers: DA/00377/2013

**THE IMMIGRATION ACTS**

Heard at Birmingham  
On 16 January 2014

Determination Promulgated  
On 12 March 2014

Before

UPPER TRIBUNAL JUDGE PITT

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

and

THABANI MOYO

Appellant

Respondents

**Representation:**

For the Appellant: Mr Mills, Senior Home Office Presenting Officer  
For the Respondents: Mr Hussain, instructed by Polpitiya & Co Solicitors

**DETERMINATION AND REASONS**

The Appeal

1. This is an appeal by the Secretary of State against a determination dated 3 November 2013 of First-tier Tribunal Judge Holmes and Mr Griffiths which allowed the respondent's appeal against deportation.

2. For the purposes of this determination, I refer to Mr Moyo as the appellant and to the Secretary of State as the respondent, reflecting their positions as they were before the First-tier Tribunal.
3. The undisputed background to this matter is that the appellant came to the UK at the age of 18 in 1999. He had leave until 30 September 2002 and has been an overstayer since then. He nevertheless completed a B.Sc. and worked. He formed a relationship from which he has two children. He remained in contact with the children until August 2012 when he was prevented from being in touch by his former partner but commenced contact proceedings and is now in indirect contact with them again with a court order to the effect that he should be allowed unsupervised contact for 3 hours every 3 weeks. The appellant formed a new relationship after that with the mother of the children broke down and is now married to a British national.
4. On 26 September 2008 the appellant was convicted of possession of a false identity document with intent and was sentenced to 12 months imprisonment. As a result of that offence, the respondent commenced automatic deportation proceedings against him, a deportation order was made on 31 January 2013 and notice of the decision to deport him under served on 13 February 2013.
5. The challenge to the decision of the First-tier Tribunal was that it:
  - a. applied the wrong legal approach to or placed insufficient weight on the public interest in the deportation of the appellant
  - b. failed to show how the circumstances of the appellant were exceptional or sufficiently compelling so as to outweigh the strong public interest in deportation
  - c. did not consider the risk of reoffending
6. With respect to those acting for the Secretary of State in this matter, the challenges brought appeared to me to amount only to disagreement rather than identifying anything that might amount to an error of law, notwithstanding the complexity of the law and legal principles in deportation cases.
7. As regards the weight to be given to the public interest, the panel set out the correct approach at [11], referring to MF (Nigeria) [2013] EWCA Civ 1192. They weighed the appellant's offence as "serious" at [21]. It is expedient to mention here also that the panel assessed the risk of reoffending in that paragraph and found it to be low. There is no challenge to the reasoning behind that latter finding. Ground c. above was taken no further by Mr Mills before me. That ground can be found to be without merit quite easily given the clear assessment of risk of reoffending at [21] and absence of any challenge to the Tribunal's reasoning for that finding.
8. The First-tier Tribunal went on to note at [25] that the decision pursued the legitimate aim of the prevention of crime and disorder. The panel addressed the weight to be

given to the public interest at [26]. I set out most of that paragraph as it was the subject of some discussion at the hearing:


“...we accept that as an objective, the respondent’s aim of prevention of disorder or crime is different from, and should be considered to carry *more weight* than, that of the maintenance of effective immigration control. We accept that in the balancing exercise, *great weight* should be given specifically to the public interest in deporting foreign criminals who do not satisfy paragraph 398 and 399 or 399A. We refer to the view of the Court of Appeal in MF (Nigeria) that “the scales are *heavily weighed in favour of deportation* and something *very compelling* (which will be ‘exceptional’) is required to outweigh the public interest in removal”. That comment however should not be taken out of context. We observe that the Court expressly approved of the way in which the Upper Tribunal in MF had dealt with the issue of proportionality, in applying Maslov criteria. The only point of disagreement was that whilst the Tribunal regarded the full consideration of proportionality as something that must take place outside the Rules, the Court found that the Rules themselves mandated or directed the decision-maker to consider all of the relevant article 8 criteria as required by the Strasbourg jurisprudence to. Hence the question whether this was to be done within or outside the Rules was, the Court said, “a sterile question”, and one of form not substance (my emphasis).”

9. Firstly, then, at [11] and [26] the panel was clearly applying the correct approach to the weight to be placed in favour of the public interest in deportation. They set out the high degree of weight to be given to the public interest clearly, did so more than once and cannot be said to have failed to give “adequate consideration” to the public interest in deportation which is the respondent’s first ground of appeal. The panel does not refer in terms to the case of SS Nigeria v SSHD [2013] EWCA Civ 550 but the test set out there for a case having to be very strong to defeat the view of Parliament that deportation is in the public interest is adopted in MF (Nigeria) to which they had thorough regard. I did not find that this ground had merit.
10. Also arising from [26] of the determination, Mr Mills sought to argue that the First-tier Tribunal failed to apply the correct guidance from MF (Nigeria). He based that submission on the latter part of [26] commencing “That comment however should not be taken out of context”. My reading, however, of the latter part of [26] is that the First-tier Tribunal was stating that the Court of Appeal were not seeking to suggest in MF (Nigeria) that the recognition of the significant weight to be given to the public interest in deportation cases makes Strasbourg jurisprudence redundant or sidelines ECHR case law on deportation. If that were so the Court of Appeal in MF (Nigeria) would not have expressly approved of the reliance of the Upper Tribunal on Maslov. That comment appears to me to be uncontentious and does not indicate that the panel took an incorrect approach to the weight to be afforded to the public interest or high threshold to be reached in order for a deportation case to succeed.
11. For these reasons, I did not find that the respondent’s first ground of appeal had any merit.
12. I also did not find that the panel failed to give any or adequate reasons for finding exceptional circumstances that outweighed the public interest in deportation, the

second ground of appeal. No challenge is brought to the First-tier Tribunal's assessment at [23] that the best interests of the appellant's children are in having direct contact with their father. That is not surprising given that this is the view of the specialist family court which has investigated the circumstances of these children in detail and made an order for direct contact. The reasoning at [27] clearly identifies the best interests of the appellant's children as "a consideration of great weight" and as the factor that led the panel to find that the public interest in deportation was outweighed on the facts of this particular case. That was a conclusion open to them on the evidence before them. Mr Mills suggested that the panel did not state in terms that the best interests of the children here were very compelling or exceptional such that the test in MF (Nigeria) could be said to have been properly applied. That appeared to me to be merely a question of semantics. As above, this panel clearly had the correct test in mind, stating it more than once.

Decision

17. The decision of the First-tier Tribunal does not disclose an error on a point of law and shall stand.

Signed:   
Upper Tribunal Judge Pitt

Date: 10 March 2014