



Upper Tribunal
Immigration and Asylum Chamber

Appeal Number: DA/00574/2014

THE IMMIGRATION ACTS

Heard at Field House
On 19 January 2015

Determination Promulgated
On 13 February 2015

Before

Upper Tribunal Judge Kekić

Between

Remi Akinyemi
(anonymity order not made)

Appellant

and

Secretary of State for the Home Department

Respondent

Representation

For the Appellant: Mr P Mason, Counsel

For the Respondent: Mr T Melvin, Senior Home Office Presenting Officer

Determination and Reasons

Details of appellant and basis of claim

1. This appeal comes before me following my decision to set aside the decision of First-tier Tribunal Judge Thanki dated 29 August 2014. The reasons for that decision are set out in a separate document promulgated on 20 November 2014.

2. The appellant is of Nigerian ethnicity, born in the UK on 21 June 1983 to Nigerian parents who were students here at the time. His status has never been regularised which means he has never had leave to enter or remain. It is said that his parents believed him to be British on account of his birth here. His father was granted indefinite leave to remain in October 1987 and was naturalised as a British citizen in October 2004. His mother passed away when he was a teenager¹. Her status at the time is not specified in the papers. A death certificate has never been adduced but her demise is not in dispute. The appellant also has two brothers in the UK; one older and one younger than himself. They are both said to be British.
3. A deportation order pursuant to section 32 of the UK Borders Act 2007 was made on 13 February 2014 following the appellant's conviction of four counts of possession of heroin with intent to supply and one count of possession of diamorphine with intent to supply and driving whilst disqualified, resulting in terms of imprisonment of three and a half years and twelve months to be served concurrently. I note that when he was stopped by the police, he gave a false name and was only identified when fingerprinted.
4. The appellant has the following additional criminal convictions:
 - On 14 February 2005 he was sentenced to two months in prison and disqualified from driving for 12 months for handling stolen goods, using a vehicle whilst uninsured and driving other than in accordance with a licence.
 - On 19 May 2005 he was convicted of using a vehicle while uninsured. His licence was endorsed with six penalty points.
 - On 10 October 2005 he was convicted for driving whilst disqualified and sentenced to three weeks' imprisonment, using a vehicle while uninsured for which he was fined £200, and driving whilst disqualified for which he received five weeks' imprisonment.
 - On 1 August 2006 he was convicted for driving whilst disqualified and using a vehicle while uninsured. He was sentenced to 16 weeks' imprisonment and disqualified from driving for two years. He was also convicted of failing to surrender to custody for which he received a 14 days' sentence.
 - On 8 December 2006 he was convicted for driving whilst disqualified and using a vehicle while uninsured. He received four months in prison and his licence was endorsed.
 - On 5 July 2007 he was convicted of causing death by dangerous driving and sentenced to four years' imprisonment.
 - On 12 October 2010 he was convicted of possession of Class A and Class B controlled drugs and fined £170.

¹ Different dates are given for her passing and I deal with that later in the determination.

- On 4 February 2011 he was convicted of using a vehicle while uninsured, taking a vehicle without consent and driving whilst disqualified. He was sentenced to 16 weeks' imprisonment.
5. This information is taken from the detention review details supplied by the respondent but would not seem to be a complete list of convictions as, according to the OASys report, the appellant has amassed 18 convictions for some 42 offences and two cautions, not including the index offences/convictions. His first contact with the police was when he was 15 years old and his first conviction was at the age of 17.
 6. Apart from driving offences, there is also a conviction in January 2001 for conspiracy to rob at knifepoint and two in 2000 for possession of an offensive weapon (a lock knife).
 7. The appellant has no partner in the UK and no children. There is no evidence of any educational qualifications prior to his recent incarceration and no evidence of employment. Consideration was given to his deportation in 2011 but he was given another chance to show he was rehabilitated in view of his long residence here. He denies being aware of this and I shall address this issue later in this determination.

The Hearing

8. At the hearing on 19 January 2015, I heard oral evidence from the appellant, his brother, father and cousin.
9. The appellant adopted his witness statement which he stated was recently prepared although it appears to be a revamp of the statement prepared for the hearing before the First-tier Tribunal. He agreed that much of his offending had been driven by his drug habit. He was asked what steps he had taken to address that. He stated he had spoken to job workers in prison about getting clean but he was unable to complete the CARAT course as he had problems with other prisoners who were trying to force their religion on him. After he was moved elsewhere, he had one to one sessions as part of his programme and was able to explore the issues he had over the loss of his mother and a false accusation of rape made by a former girlfriend some two years later (approximately 15 years ago). He confirmed that his last drugs test in January 2014 was negative. He stated that he now realised that drugs were not the solution to his problems and he felt much "fresher".
10. The appellant was asked further questions about his mother's death. He said that he had been 16 at the time². He had been very close to his mother and after her death he received no counselling or advice. Since then he had seen his GP to discuss his situation and he had been attending church. He had also been able to have talks with Tony Spackman of SEAP (Support Empower Advocate Promote) which had helped him to have a positive state of mind.

² This would mean she died before June 1999.

11. The appellant stated that he knew this was his last chance to move forward. He spoke to his family members more than he had in the past and he had support from the church. He believed that with this support and with counselling he could progress.
12. The appellant was asked about his links to Nigeria. He said had never been there. His mother had been buried there but all his links were with the UK.
13. With regard to his future plans, the appellant stated that he had been to a few job interviews but as he was unsure of his immigration status he had not taken up any work. He stated that his mother had worked in a care home and he wanted to follow in her footsteps. He had been offered a course leading to an NVQ qualification.
14. With regard to friendships, the appellant stated he had seen a few old school friends on Facebook but he did not want to meet negative people and had limited his socialising to his family members and his church.
15. That completed his examination in chief.
16. In response to questions from Mr Melvin, the appellant said that his mother had died in 1997³. Two years later a false accusation of rape had been made against him. He agreed that these events had occurred more than 15 years ago. When asked why he had not made any attempts to deal with these issues earlier, the appellant stated that he did not understand what he had been going through after losing his mother. His mother had told him that he would suffer without her. This had disturbed him. His father found it difficult to speak to him. At 19 the appellant started to smoke and take drugs. The allegation of rape had stayed with him as he still had that reputation. He was asked whether his change in attitude and his reliance on the church had anything to do with the decision to deport him. He replied that he had always had the church in his life. The pastor at the New Life Church made an appointment for him and they began to interact. It was not just because of the deportation. He said he was not blaming past events for his offending behaviour but he had been insecure and negative and had not believed in himself.
17. The appellant stated that since the age of 18 he had lived independently at times.
18. It was put to him that he had been sent a letter from the Home Office in June 2011 warning him that he should stop his offending or face deportation. The appellant stated that he had never received that letter and when he had been released from prison the officers had told him that he needed to apply for his passport. It was put to him that he had never denied having received this letter previously. He maintained that he had not been asked about this before. He then conceded that he may have been asked about it at the hearing before the First-tier Tribunal but he was unsure. He said he had just been told that there had been a warning from the UKBA.

³ He would have been aged 14 or 15 in 1997, depending on which month his mother passed away. Other evidence indicates she died in 1999.

19. The appellant stated that he had worked at a care home called the Excel care centre in Milton Keynes for nine months between 2011 in 2012. He had no evidence of this as he had not thought to bring any with him. He stated that his father had dropped him there on one occasion. In 2002 he worked with New Start in Old Street, inputting data and answering calls. He had worked for DHL for four months in 2012. He also worked on and off for his father, answering calls, in 2006 and more recently.
20. The appellant confirmed that he had last been released from prison on 8 October 2014. Since then he had been living with his brother in Dagenham (his brother is his surety in respect of his bail). He was helping out his father in Milton Keynes. He would get the train from Euston to Milton Keynes. Initially this was twice a week and then from November he went Monday to Fridays. The fare was £14.50 return and he would leave the house in Dagenham at about eight o'clock in the morning and then get the nine o'clock train to Milton Keynes from Euston.
21. The applicant stated that he was on medication for epilepsy. When asked whether he had any evidence of this, he stated that he had the medicine with him at that moment. When asked who had prescribed this he replied that he received "a big batch" when he had been released and since then had received a prescription from his doctor. He conceded there was no evidence from his GP in the bundle.
22. He stated that he had been put in contact with Tony Spackman (from SEAP) by his CARAT worker. He spoke to him just before Christmas and last saw him in the summer of 2014. The organisation was based in Oxford. Whilst in prison he had seen him once or twice a week. That completed cross-examination. There was no re-examination.
23. In reply to questions I then put for clarification, the appellant confirmed that he had been on housing benefit when living "independently". He supported himself from jobseeker's allowance and disability living allowance. When asked how he supported his drugs habit, he stated that most of his wages would be spent buying drugs⁴. He had been living in Milton Keynes where he had his own (council) place. He worked temporarily with his father and also received benefits.
24. I asked the appellant what he felt he had contributed to the UK. He stated that he had passed his GCSEs and had an NVQ. He played football and had done some charity work for the Salvation Army in Milton Keynes. He also helped to look after the children of some friends. He had done a mentoring course in 2009 and a gym course. He agreed that these courses had not helped him because his mental state was "very bad".
25. I asked why I should believe that he had changed. He said that he had the ability to progress. He had had nine job interviews out of which three had been successful. His family had shown him support as had the church. He wanted to move forward. I pointed out to him that the sentencing judge had remarked on the appellant's previous claims of remorse each time he had come before a court. The appellant insisted that he had been remorseful every time but had not known how to get out of the cycle of bad

⁴ He did not clarify how he supported his habit when not working.

behaviour. He had not sorted out his job issues or his mental health issues. He was now determined to do this. He said now that the situation had come to deportation, "it's got to stop".

26. I asked whether there was any evidence of the successful job interviews. The appellant said he had only received e-mails. I asked if he had evidence of the course he wanted to start in March. He said he did not. He stated that his father had paid him £30 or £40 a day but that varied. He also received help from his brother and uncle. He spent the money on travel fares from Euston and also for his Oyster card. Those were my questions. Neither party had any matters arising.
27. At this stage, Mr Mason asked if he could put in e-mail evidence of the appellant's job offers which he had on his mobile phone. I agreed and was then shown an e-mail to say that the offer's start date would be after Christmas. I asked whether he had received a date. The appellant replied that the firm had then done credit and reference checks following which he had not been offered the job. I asked whether there were any current offers of work. The appellant stated that he had been offered work on a "face-to-face" basis in Old Street and Milton Keynes but his credit reference had not been what had been required. There were no questions arising.
28. I then heard evidence from the appellant's brother, Femi Akinyemi. He adopted his witness statement and confirmed the contents were true. He also confirmed that the appellant had been living with him since he had been granted bail. He was asked about changes he had seen in the appellant. The witness replied that being around a family unit had had an impact on him. Occasionally he would help out by taking the youngest child to school. The witness stated he had given him financial support and also encouraged him. The appellant had been on a few interviews and was trying to sort himself out. He stated that the appellant had not been living with him previously but if he had known his circle of friends, things could have been different. Previously the appellant had lived by himself and was isolated.
29. The witness was asked about his ties to Nigeria and he replied he had few or no ties. He had been there once with his father in 2006 to visit his mother's grave. The witness was asked how the appellant would cope if sent to Nigeria. He replied that he could not see how he could. He had been here all his life. It would be a shock for him to go there. He questioned where the appellant would go as there was no family home there. He said there were cultural differences and a language barrier.
30. The witness was asked about the June 2011 letter from the Home Office. He said he did not remember anything about this. He did not think he had seen it.
31. The witness was asked what had changed between previous releases from prison and the present time. He replied that there came a point when enough was enough. The appellant had not received any help after their mother's death and the false allegations of rape.

32. The witness confirmed that he went to church with his family. The appellant had attended a few times with him but the appellant's church was in Milton Keynes. He stated that the appellant went there three or four times a week. He helped their father with bookkeeping and accounting. He did not know if this was paid employment.
33. The witness stated that the appellant suffered from epilepsy and was trying to switch to a local doctor. He knew that the appellant took medication but he did not know the name of it. He stated that there had been a couple of incidents when he had had an epileptic fit which was brought on by stress. He then just had to be held down. He was asked why he had made no mention of this in his statement and he replied no one had asked him.
34. The witness was asked about the appellant's past work. He said that he had worked in a care home with elderly people a few years ago, probably around 2011. He did not know of any other jobs. At the present time a friend of his had helped the appellant get some job interviews and the appellant had been looking in the West End area. He helped around the office for his father. That completed cross-examination.
35. In response to my questions the witness stated that he had realised from the start that the appellant's offending had been due to their mother's death. I asked why then it taken so long for him to offer the appellant any support. He said that he had talked to him and asked him to have counselling. He was not aware of all his driving offences. He was however aware of the death of the cyclist. I asked why nothing had been done at that stage to address the appellant's behaviour. Again the witness said "we talked" and he tried to get him to go for counselling but the appellant had his own flat and it was difficult to get help. Although he lived near their father, he was still by himself. I asked when he had become aware that the appellant used drugs. The witness stated that he became suspicious around 2011. The appellant had then admitted this to him. The witness confirmed that his mother had been in the UK since the late 70s. She used to visit Nigeria every three or four years to see her parents but they were now dead. It had been her wish to be buried there. He stated that when he visited Nigeria his maternal and paternal grandmothers had been there; both are now deceased. Mr Melvin asked the witness when he had been born and he replied in Nigeria in 1974. Mr Mason had no questions.
36. The next witness was Lawrence Akinyemi, the appellant's father. He confirmed that the contents of his witness statement were true and he adopted it as part of his evidence. He said he had no ties to Nigeria and his last visit had been in 2009. He had visited after the death of his mother when a friend asked him to come to Abuja.
37. The witness stated that he gave the appellant some paperwork and secretarial work to do. He said he had changed a lot as he was now "level headed" and followed the advice he was given by the family and the church. He realised what he had done and knew that he had to make a change in order to have a future. He said he had told the appellant that he needed to go to college and learn a trade.

38. In cross examination the witness stated that his friend had a hotel in Abuja but lived here. He had intended to visit Europe in 2009 but his friend had said to go to Abuja so he went there instead.
39. He had seen the appellant twice a week since his release. He last saw him four days earlier and they spoke on the telephone every day. The appellant was on medication for epilepsy. He had suffered from this condition for 15 or 20 years.
40. The witness stated that he did not pay the appellant but gave him an allowance. His travel cost him about £22-£25 daily and this was covered by the witness.
41. The witness also stated that the appellant used to work for the Salvation Army and that he looked after old people before he last went to prison.
42. He was asked about the New Life Church. He said it was not his church but was close by and the appellant attended it.
43. He was asked what had changed now compared to the appellant's previous releases from prison. The witness said that he had now told him to stay with the family and to stay away from his friends. The witness was asked whether the only reason the appellant was now living with family was because of bail conditions. He denied this was the case and said that he was with his brother because they were very close.
44. In response to my questions the witness stated that the appellant had previously had his own place when he came out of prison on the last occasion. They had kept it for him whilst he was in prison and the witness had paid the rent. He thought it would be easier for him to stay there when he came out. However when he went back into prison the council took the property back. The witness confirmed that when the appellant came to Milton Keynes to work in the office, he was always present. He also stated that the appellant's epilepsy began after the appellant's mother's death.
45. Mr Melvin had some questions arising. He asked when the appellant first started living independently and the witness stated this was in 1999 or 2000 when he was aged about 17. The witness was asked whether he had any siblings in Nigeria and he replied that he did not since his brother had died. He added that his mother had also died. Mr Mason had no questions.
46. The last witness was the appellant's cousin, Ayo Fagbohun. He adopted his witness statements and confirmed its contents as true. When asked to describe the changes in the appellant since his last release, the witness stated that his general attitude had changed; he had a desire to make a livelihood and to have stability and responsibility. When asked how he knew this, he stated that the appellant would come round and they would speak. They saw each other once or twice a fortnight. The witness said his son enjoyed playing with the appellant. He stated that they had been close for a long time. When asked what was different about this situation now, the witness replied that the appellant had believed in a certain lifestyle previously; he had sought success through criminality but now felt that only hard work would lead to success.

47. The witness was asked about his links to Nigeria. He said that he had family on the appellant's side but had not seen them since 2000. He also said that he had maternal relatives there who came here to visit and he saw them then.
48. In cross examination the witness said that he had grown up in south-east London whilst the appellant had grown up in east London. He confirmed that the appellant's mother was his father's sister. He stated that the appellant had begun having problems with epilepsy in his teens but could not say exactly when. When asked for what had changed between the appellant's release in 2009 or 2011 and now, the witness stated that the appellant was in a different frame of mind. He realised that the choices he had made had got into a stage where he was threatened with losing his home and that had sharpened his mind. He now wanted to make a livelihood for himself. When asked what had made him change his mind, the witness replied that the appellant realised the seriousness of the situation. Additionally, he was older and did not want to be a career criminal. He added that he did not feel that the appellant should have to leave. He said the appellant realised that he now had to take responsibility for his actions and that this was his last chance. When asked whether he would have reached that realisation if he had not had the threat of deportation hanging over him, the witness conceded that was a good question but added that he did not think that the appellant would have wanted to be in prison in his 30s or 40s or 50s. He was asked whether he believed that the family could help him on this occasion and he replied in the affirmative. When asked why he said that, he replied he was part of the family. He was also close to the appellant's brother. They were not happy seeing him in and out of prison and were sure they could help him. That completed cross examination. There was no re-examination.
49. I sought to clarify the position regarding family in Nigeria and the witness replied that his father had siblings but he was not close to them and his mother had family who visited the UK. That completed the oral evidence.
50. After the lunch break the appellant sought to admit a fresh document. It was a contract from an agency agreeing to take him onto their books. He was then recalled to give evidence. He confirmed the nature of the document. He was asked why there was no mention of this in his witness statements. He maintained that he had told his solicitor and he did not know that he needed to bring proof. He was asked why he had not previously mentioned his work at Solar Enterprise in Milton Keynes. He replied that he had told his solicitors but they had only told him to put what was in his statement. That completed the further evidence.
51. I then heard submissions. These are fully recorded in my record of proceedings and summarised below.
52. For the respondent, Mr Melvin submitted that the case failed to be considered under paragraph 398A and was dependent on positive findings based on the appellant's private life. He submitted that the appellant had become independent of his family since the age of 17 and apart from brief returns to them and the last three months, he had not been part of the family unit and there was no particular dependency between them. He

submitted that great weight had to be placed on the public interest in deporting serious criminals. This appellant had 18 convictions and his longest sentence had been for 4 ½ years. On that occasion he pleaded guilty to drug offences. The Tribunal was required to consider the appeal under section 117C. The respondent's guidance made it plain that very compelling circumstances were required over and above the exceptions in 399 and 399A. There was a very high threshold to be met. The case law made it plain that the rules were a complete code where Article 8 was considered in deportation cases. Mr Melvin relied on Uner v Netherlands⁵ for the principle that even those who were born in a host state could be expelled. He submitted that although the appellant claimed to have turned a corner in his offending, there was very little to show what had changed between now and the previous occasions when he had been convicted. He submitted that the appellant's father had visited Nigeria more than once. The last witness had referred to relatives in Nigeria. The issue of ties was, however, not determinative. The appellant's medical condition was managed by medication. It was not a reason to prevent his removal. The two events the appellant relied on as the excuse for his offending occurred in 1997 and 1999 and there had been ample opportunity to address those issues. Very little evidence on medical matters had been adduced.

53. I was asked to treat with scepticism the appellant's claim that he had not received the warning letter from the Secretary of State in 2011. This denial had never been made before. It was referred to in the refusal letter and by the First-tier Tribunal Judge and there had been no dispute about its receipt.
54. The appellant was a persistent offender. He had committed 42 offences over 15 years and the OASys report put his risk of reoffending as 64% in the first year and 74% within two years. There were letters from church members but they had not attended the hearing.
55. The appellant had been in brief employment but that had to be off set against the periods he had been in prison. He had made very little positive contribution to the UK. He was a persistent offender with no regard for the law. His residence here did not outweigh the public interest in his deportation.
56. Mr Mason, in his submissions, relied on the appellant's private and family life. He submitted that the statutory provisions under 117 B and C did not set out what was "expected" of the Tribunal but rather matters to which the Tribunal must have regard. Mr Kendal who had prepared a statement had not been able to attend because he was suffering with cancer.
57. He submitted that the argument that the appellant should have addressed his behaviour after receiving a warning from the UKBA did not take account of his drug issues and lack of consequential thinking. The appellant accepts his offending behaviour and is remorseful but it cannot be said that he disregarded the warning letter without looking at the reasons for his behaviour.

⁵ 18 October 2006 Application no. 46410/99.

58. It was not disputed that the respondent could remove him and his birth in the UK was not a trump card but it was also a factor that he had been here for 30 years. There was evidence of rehabilitation. The appellant had addressed his drug offending and had moved on. The factors at 117B and C were to be considered along with other factors when addressing proportionality.
59. It was accepted that 399A did not apply but there were compelling circumstances and the high threshold had been met. He had been here his whole life and had no ties to Nigeria.
60. Deportation was not necessary for the prevention of crime as there was no risk of any significant level of re-offending. The OASys report put the risk to others as low to medium. The appellant had undertaken work with CARAT and SEAP. This time it was different because he had the support of his family. Previously he had been living on his own and associating with criminals. The appellant had addressed his problems. He had sought help and was on the waiting list for counselling. His drug habit was a driving force for his offending but he had addressed that. He was seeking stable employment alongside a supportive family. These were all matters that went towards showing that he had turned around his life. His removal would be disproportionate. It was speculative to say he had ties to Nigeria.
61. At the conclusion of the hearing I reserved my determination which I now give with reasons.

The legal background

62. It is established by the courts that the current Immigration Rules are a complete code when dealing with deportation (as per MF (Nigeria) [2013] EWCA Civ 1192). The relevant sections at Part 13 have this to say about potential deportees:
63. 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.

64. Neither 399 or 399A apply to the appellant. This is because 399 relates to an individual with a genuine and subsisting parental relationship with a child and 399A concerns a person to whom paragraph 398(b) or (c) applies and where the person has been lawfully resident in the UK for most of his life; and is socially and culturally integrated in the UK; and there would be very significant obstacles to his integration into the country to which it is proposed he is deported.
65. Part 5A of the Nationality, Immigration and Asylum Act 2002 deals with article 8 and public interest considerations. It states:

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).....

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).....

(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).....

66. Guidance on the application of the rules is found in the case law and in the Immigration directorate instructions (IDIs) at Chapter 13 ⁶. The following are relevant to the appellant's case:

1.2.4 An Article 8 claim from a foreign criminal who has been sentenced to at least four years' imprisonment will only succeed where there are very compelling circumstances over and above the circumstances described in the exceptions to deportation at paragraphs 399 and 399A.

2.1.1 The definition of a foreign criminal is set out at section 117D(2) of the 2002 Act and means a person who is not a British citizen, who has been convicted in the UK of an offence, and who has been sentenced to a period of imprisonment of at least 12 months, or has been convicted of an offence that has caused serious harm, or is a persistent offender.

67. There is guidance on what constitutes serious harm and on the definition of a persistent offender; although the appellant's circumstances would fall within either of those

⁶ I was provided with a copy of Version 5.0 dated 28 July 2014.

categories, it is not necessary to consider them as he meets the first category - a person sentenced to at least 12 months imprisonment.

68. 2.2.2 *Once a foreign criminal has been sentenced to a period of at least four years' imprisonment, he will never be eligible to be considered under the exceptions⁷. This applies even if deportation was not pursued at the time of the four year sentence because there were very compelling circumstances such that deportation would have been disproportionate, and the foreign criminal goes on to re-offend and is sentenced to a period of imprisonment of less than four years. This is because his deportation will continue to be conducive to the public good and in the public interest for the four year sentence as well as any subsequent sentences.*

2.3.1 *Parliament has set out its view of the public interest in Article 8 claims from foreign criminals in sections 117B and 117C of the 2002 Act. A foreign criminal's claimed private and/or family life must be carefully assessed and balanced against Parliament's view of the public interest to determine whether deportation would breach Article 8.*

2.3.2 *Consideration must be given to the public interest in deportation to determine whether it is outweighed by a foreign criminal's private or family life when assessing whether:*

- *the effect of deportation on a qualifying partner or a qualifying child would be unduly harsh;*
- *a foreign criminal is socially and culturally integrated in the UK; and*
- *there are very compelling circumstances over and above the circumstances described in the exceptions to deportation.*

2.3.4 *When considering the public interest in deporting a foreign criminal who is liable to deportation other than by virtue of the provisions of the 2006 EEA Regulations:*

- *the more serious the offence committed by a foreign criminal, the greater the public interest in deportation; and*
- *the more criminal convictions a foreign criminal has, the greater the public interest in deportation; and*
- *it is in the public interest to deport a foreign criminal even where there is evidence of remorse or rehabilitation or that he presents a low risk of reoffending; and*
- *the need to deter other non-British nationals from committing crimes – by leading them to understand that, whatever the other circumstances, one consequence may well be deportation – is a very important facet of the public interest in deporting a foreign criminal; and*
- *the role of deportation as an expression of society's revulsion at serious crimes, and in building public confidence in the treatment of non-British nationals who have committed serious crimes, is a very important facet of the public interest in deporting a foreign criminal; and*

⁷ The exceptions are set out in paragraphs 398-399A of the rules.

- *where a foreign criminal has also been convicted of an offence outside the UK, the overseas conviction will usually add to the public interest in deportation. An example of an exception to this general rule might be where there is evidence that prosecution was pursued solely for political reasons; and*
- *there are factors which are capable of adding weight to the public interest in deportation, including where a foreign criminal:*
 - *is considered to have a high risk of reoffending;*
 - *does not accept responsibility for his offending or express remorse;*
 - *has an adverse immigration history or precarious immigration status;*
 - *has a history of immigration-related non-compliance (e.g. failing to co-operate fully and in good faith with the travel document process) or frustrating the removal process in other ways;*
 - *has previously obtained or attempted to obtain limited or indefinite leave to enter or remain by means of deception;*
 - *has used deception in any other circumstances (e.g. to secure employment, benefits or free NHS healthcare to which he was not entitled);*
 - *has entered the UK in breach of a deportation order.*

2.3.5 Section 117B(1) of the 2002 Act states that the maintenance of effective immigration controls is in the public interest. The exceptions to deportation at paragraph 399(b) (family life with a partner) and paragraph 399A (private life) of the Immigration Rules contain requirements to be met in relation to immigration status. A person's immigration history must also be taken into account when considering whether there are very compelling circumstances.

2.3.7 As a general principle, where a foreign criminal cannot demonstrate that he speaks English and/or that he is financially independent, he will find it more difficult to show that the effect of deportation will be unduly harsh, that he is socially and culturally integrated or that there are very compelling circumstances.

2.3.8 Section 117B(4) of the 2002 Act sets out that little weight should be given to a private life or a relationship with a qualifying partner established when the person is in the UK unlawfully. Section 117B(5) sets out that little weight should be given to a private life established at a time when the person's immigration status is precarious. A person is in the UK unlawfully if he requires leave to enter or remain in the UK but does not have it. For the purposes of this guidance, a person's immigration status is precarious if he is in the UK with limited leave to enter or remain but without settled or permanent status, or if he has leave obtained fraudulently, or if he has been notified that he is liable to deportation or administrative removal. These provisions are taken into account in the exceptions to deportation at paragraphs 399(b) and 399A of the Immigration Rules and must be taken into account when considering whether there are very compelling circumstances.

2.3.9 *Where a foreign criminal:*

- *is in the UK unlawfully, or no longer meets the conditions of the leave he was granted; and/or*
- *formed a private life or a relationship with a qualifying partner while in the UK unlawfully; or*
- *formed a private life while his immigration status was precarious,*

the claim to respect for private or family life will be weaker and so will be less capable of outweighing the public interest in deportation.

5.1.1 *The exception to deportation on the basis of private life is set out at paragraph 399A of the Immigration Rules. It can only be considered in the case of a foreign criminal who has not been sentenced to a period of imprisonment of four years or more.*

5.1.3 *The exception will be met where:*

- the person has been lawfully resident in the UK for most of his life; and*
- he is socially and culturally integrated in the UK; and*
- there would be very significant obstacles to his integration into the country to which it is proposed he is deported.*

5.1.4 *All three limbs of the exception must be met, otherwise the public interest in deportation will outweigh the foreign criminal's right to respect for his private life in the UK.*

5.2.1 *In assessing a foreign criminal's residence in the UK Lawful residence means where the person had limited or indefinite leave to enter or remain, had a right of residence in accordance with the 2006 EEA Regulations, or was in the UK while exempt from immigration control.*

5.2.2 *The onus is on the foreign criminal to substantiate any claim that he has been lawfully resident in the UK for most of his life. Claims of residence, including unlawful residence, will only be accepted where they are supported by original, documentary evidence from independent sources. There is no prescribed evidence which must be submitted, but the evidence submitted should cover the whole period of claimed residence.*

5.3.1 *Positive and negative factors will need to be balanced against each other to form an overall assessment of whether a foreign criminal is socially and culturally integrated in the UK.*

5.3.2 *Section 117B(2) of the 2002 Act states that it is in the public interest that persons who seek to remain in the UK are able to speak English..... If a foreign criminal can speak English, 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.*

5.3.4 *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.

5.3.5 Financial independence here means not being a burden on the taxpayer. It includes not having access to income-related benefits or tax credits, on the basis of the foreign criminal's income or savings or those of his partner, but not those of a third party. There is no prescribed financial threshold which must be met and no prescribed evidence which must be submitted. Decision-makers should consider all available information, though less weight will be given to claims unsubstantiated by original, independent and verifiable documentary evidence, e.g. from an employer or regulated financial institution.

5.3.6 Immigration status is likely to be important. A person who has been in the UK with limited leave to enter or remain is less likely to be integrated because of the temporary nature of his immigration status. A person who is in the UK unlawfully will have even less of a claim to be integrated. Criminal offending will also often be an indication of lack of integration. The nature of offending, such as anti-social behaviour against a local community or offending that may have caused a serious and/or long-term impact on a victim or victims (e.g. sexual assault, burglary) may be further evidence of non-integration.

5.3.7 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.

5.3.8 It will usually be more difficult for a foreign criminal who has been sentenced more than once to a period of imprisonment of at least 12 months but less than four years to demonstrate that he is socially and culturally integrated, because he will have spent more time excluded from society, than for a foreign criminal who has been convicted of a single offence.

5.3.9 Less weight will usually be given to claims unsubstantiated by original, independent and verifiable documentary evidence.

5.4.1 When assessing whether there would be "very significant obstacles to the foreign criminal's integration into the country to which he is proposed to be deported", the starting point is to assume that the foreign criminal will be able to integrate into his country of return, unless he can demonstrate why that is not the case. The onus is on the foreign criminal to show that there would be very significant obstacles to that integration, not on the Secretary of State to show that there are not.

5.4.7 The degree of private life a foreign criminal has established in the UK is not relevant to the consideration of whether there are very serious obstacles to integration into the country to which he is to be deported.

5.4.9 Where there are no family, friends or social networks in the country of return, that is not in itself a very significant obstacle to integration. Many people successfully migrate to countries where they have no ties. If there are particular circumstances in the foreign criminal's case which

mean he would need assistance to integrate it will also be relevant to consider whether there are any organisations in the country of return which may be able to assist with integration.

5.4.10 If a foreign criminal has never lived in the country of return, this will not necessarily mean that there are very significant obstacles preventing him from integrating, particularly if he can speak a language of that country, e.g. if the country of return is one where English is spoken or if a language of the country was spoken at home when he was growing up. For these purposes, fluency is not required – conversational level language skills or a basic level of language which could be improved on return would be sufficient. The cultural norms of the country and how easy it is for the person to adapt to them will also be relevant.

5.4.11 Where there is credible evidence that a foreign criminal cannot speak any language which is spoken in the country of return, this will not normally be considered a very significant obstacle to integration unless he can also show that he would be unable to learn a language of that country, e.g. because of a severe mental or physical disability, or unless he would not be able, after a period of adjustment, to establish a private life in that country, even within a diaspora community.

5.4.12 Lack of employment prospects is very unlikely to be a very significant obstacle to integration. In assessing a claim that an absence of employment prospects would prevent a foreign criminal from integrating into the country of return, his circumstances on return should be compared to the conditions that prevail in that country and to the circumstances of the general population, not to his circumstances in the UK.

5.4.13 Less weight will be given to generalised claims about country conditions that have not been particularised to take account of the foreign criminal's individual circumstances.

5.4.14 It may also be a relevant consideration if the foreign criminal has lived in the UK with permission to work but has not held or sought lawful employment, or if he has only worked sporadically. A foreign criminal cannot claim there are very significant obstacles preventing integration into the country of return on the basis of ways in which he has failed to integrate into the UK.

5.4.15 A further relevant consideration might be whether it is open to the foreign criminal to apply for the facilitated return scheme (FRS) for financial assistance while he seeks employment on return.

6.1 Paragraph 398 of the Immigration Rules sets out that in the case of a foreign criminal who has been sentenced to a period of imprisonment of at least four years, or in the case of a foreign criminal who otherwise does not meet the exceptions to deportation, the public interest requires deportation unless there are very compelling circumstances over and above the circumstances described in paragraphs 399 and 399A.

6.2 A sentence of four years' imprisonment or more means the person is a serious criminal and "very compelling circumstances" is an extremely high threshold. As a general principle, the greater the public interest in deporting the foreign criminal, the more compelling the foreign criminal's circumstances must be in order to outweigh it.

6.4 A foreign criminal sentenced to at least four years' imprisonment must be able to show that there are very compelling circumstances over and above the circumstances described in the

*exceptions to deportation. This is because Parliament has expressly excluded those sentenced to at least four years' imprisonment from the exceptions to deportation. Missing out on the exceptions by a small margin, or a series of near misses taken cumulatively, will not itself be compelling enough to outweigh the public interest in deportation. The best interests of any child in the UK who will be affected by the decision are **a** but not **the** primary consideration and must be not only compelling, but very compelling, to outweigh the public interest.*

*6.6 When considering whether or not there are very compelling circumstances decision-makers must consider **all** relevant factors that the foreign criminal raises. Examples of relevant factors include:*

- *the best interests of any children who will be affected by the foreign criminal's deportation;*
- *the nationalities and immigration status of the foreign criminal and his family members;*
- *the nature and strength of the foreign criminal's relationships with family members;*
- *the seriousness of the difficulties (if any) the foreign criminal's partner and/or child would be likely to face in the country to which the foreign criminal is to be deported;*
- *the European Court of Justice judgment in Ruiz Zambrano (European citizenship) [2011] EUECJ C-34/09;*
- *how long the foreign criminal has lived in the UK, and the strength of his social, cultural and family ties to the UK;*
- *the strength of the foreign criminal's ties to the country to which he will be deported and his ability to integrate into society there;*
- *whether there are any factors which might increase the public interest in deportation – see section 2.3;*
- *cumulative factors, e.g. where the foreign criminal has family members in the UK but his family life does not provide a basis for stay and he has a significant private life in the UK. Although under the rules family life and private life are considered separately, when considering whether there are very compelling circumstances, both private and family life must be taken into account.*

6.8 This guidance takes account of relevant case law on Article 8 in identifying the factors that are relevant to an Article 8 proportionality assessment. These remain the factors to be considered in an Article 8 case. However, the weight to be attached to the public interest in weighing up proportionality is now set out in primary legislation.

69. I also have regard to the case law which provides further information on the manner in which these cases should be assessed. Reliance was placed on SS (Nigeria) [2013] EWCA Civ 550, MF (Nigeria) [2013] EWCA Civ 1192 and YM (Uganda) [2014] EWCA Civ 1292. These cases confirm that the rules for deportation cases constitute a complete code and that the exceptional circumstances to be considered in the balancing exercise involve the application of a proportionality test as required by the Strasbourg jurisprudence.

Emphasis is placed on the substantial weight to be given to the public interest in deporting foreign criminals particularly those with sentences of four years or more where very compelling circumstances over and above the exceptions listed in the rules must apply.

70. In SS, Laws LJ drew attention to the relevant provisions of the 2007 Act and observed:
- "The pressing nature of the public interest here is vividly informed by the fact that by Parliament's express declaration the public interest is injured if the criminal's deportation is not effect. Such a result could in my judgment only be justified by a very strong claim indeed"* (at paragraph 54).
71. The evidence before me also contains copies of the judgments in Maslov v Austria, Amrollahi v Denmark and Uner v The Netherlands.
72. It would be an error to separate out consideration of "exceptional circumstances" under paragraph 398 from consideration of the claim under Article 8. That would mean a failure to assess the appellant's Article 8 case through the lens of the new rules and to give full and proper weight to the public interest in the deportation of the appellant, as a foreign criminal.
73. My task is therefore to consider whether there are 'very compelling reasons' within the 'exceptional circumstances' rubric in paragraph 398, such as to outweigh the strong public interest in deportation. In addressing that question, I do of course give consideration to the rules, the IDIs, the jurisprudence including the Strasbourg judgments to which reference was made and all the other evidence before me. All are matters which are part of the overall assessment and which I must balance against the strong public interest in deportation to which the UK Borders Act 2007 and the new rules give expression.

Findings and reasons

74. It is common ground that paragraph 398(a) applies to the appellant and that when assessing the question of whether removal is a proportionate interference with his article 8 rights, the scales are heavily weighted in favour of deportation and something very compelling (which will be 'exceptional') is required to outweigh the public interest in removal. For the Secretary of State Mr Melvin submitted there were no such factors whilst for the appellant Mr Mason argued there were. Mr Mason clarified in his submissions that the factors which he would argue to be very compelling were the same factors as relied upon to argue that removal would disproportionately breach the appellant's article 8 rights.
75. Much of the factual basis of this appeal is not in dispute. It is accepted that the appellant was born in the UK in June 1983 to Nigerian parents who were students here at the time. The appellant has two older brothers, both of whom are British; although no evidence of this was before me, it is not a fact challenged by the respondent. It also appears to be accepted that the appellant's father is a naturalised British citizen. It is common ground

that the appellant has never had leave to be in the UK. It is accepted that he was educated here and that he has never left the UK at any time. It is also accepted that his mother died of natural causes when he was a teenager. However, her immigration status and nationality at the time of her death have not been specified in the evidence and there are inconsistencies over when she died. The appellant claimed it to be in 1997 and in 1999 and there is conflicting evidence as to whether he was 14, 15 or 16 at the time. Nothing much turns on these inconsistencies, however.

76. The appellant's history of criminality is also accepted as set out in the evidence from the respondent and in the OASys report. It is summarised in my earlier decision and no objections have been raised to that.
77. It is accepted that the appellant suffers from epilepsy although there is inconsistent evidence over when that commenced. The oral evidence was that it stemmed from the time of his mother's death however the documentary evidence indicates that he was diagnosed in 2007, at least 8 years later (if the 1999 date of death is accepted). It was not argued for the appellant that this constituted a very compelling factor. Nor was it argued that medication for his condition would not be available in Nigeria.
78. It is common ground that the appellant does not have a girl friend or a partner. Although he made reference in his witness statement to an earlier girlfriend who got pregnant and falsely accused him of rape, there is no further reference to the baby and there has been no reliance upon the existence of any child(ren).
79. Whilst it was the appellant's evidence that he was fond of his brother Femi's children, and of the children of his cousin who gave evidence in support of his appeal, it was not his case that his deportation was not in the best interests of any of these children. There was no evidence at all about his other brother, who remains unnamed, and no reference to any private/family life with him and/or any family he might have.
80. It is accepted that the appellant undertook the courses he claimed to have taken whilst in prison and that he obtained the certificates contained in the bundle of evidence. There was no challenge to the claim that he was a member of the New Life Church although Mr Melvin did raise issues about the contents of the claims made by the authors of the letters from the church; I shall address that later.
81. I turn now to the contentious parts of the evidence. These include matters pertaining to the appellant's criminality; the genuineness of his remorse, the extent, if any, of his rehabilitation, the propensity to re-offend and whether his conduct showed a blatant disregard for the laws of this country or whether there were genuine reasons for it. There was also dispute as to the appellant's ties with Nigeria, his ability to live there and whether he had any relatives there. The respondent also rejected the claim of family life and took issue with the appellant's claimed dependency on his father and brother. Finally, there were concerns over the appellant's employment history, limited as it is.

82. Section 117 A requires me to consider the considerations in 117B, which apply to all cases, and to 117C which apply specifically in cases involving deportation. I now apply the factors listed above to those considerations.
83. Plainly, the maintenance of effective immigration control requires the appellant's deportation. He has never had leave to be here and no steps have been taken to regularise his stay. It is maintained that his parents assumed he would be British by birth however no legal advice appears to have been taken in this respect. The rules do not seek to make any distinction between those who knowingly remain without leave and those who do so without realising they have no lawful basis to remain.
84. With regard to the ability to speak English, the appellant is of course fluent having lived here all his life. The significance of that factor is that it is expected that those fluent in English are better able to integrate and are less of a burden on the tax payer. There are mixed signals over the appellant's integration. He has an involvement in the New Life Church but that is a recent development and there is limited evidence of his involvement in the church community. There is no evidence of friendships established here; indeed the appellant gave evidence that he had stopped socialising as he did not want to mix with those who might have an adverse influence over him. He has family here but appears to have lived apart from them for most of his adult life. There is no other evidence of his ties to the community either in Milton Keynes or London. Further, the nine accumulated years he has spent in prison (according to the OASys report) would have distanced him from integrating into the community. His knowledge of English does not appear to have relieved the tax payer of the burden of supporting him. For most of his adult life, the appellant has been out of work. No documentary evidence of any employment he has undertaken has been adduced but even from his oral evidence it appears that at best he has had short periods of random employment and has mainly lived off the state, receiving housing benefit and jobseeker's allowance. At other times he has relied on the proceeds of crime. Of course there has also been the cost of his upkeep whilst in prison and of education and health care to which he was not legally entitled. The evidence also shows he had housing arrears despite having council housing. All this evidence does not support a finding that he has been financially independent.
85. The appellant gave evidence that he had been offered several jobs since his release from prison but no evidence of any of these was adduced. A contract from an agency was submitted during the course of the hearing but at its highest that is simply an agreement to take him on the agency's books. The contract also includes a requirement that the appellant is legally entitled to take employment here. As he is not, it is therefore of little value.
86. The appellant maintains that he now wishes to turn his life around and is motivated to find employment. His criminal record however appears to have resulted in some job offers being withdrawn and in the loss of previous work such as in the care home. His past history is undoubtedly an obstacle to finding employment particularly when he has

no specific skills or qualifications. His desire to work with elderly people in a care home is perhaps unrealistic given his record and the fact that he was already let go from such employment after a CRB check.

87. The appellant argues that he has family and private life in the UK. I accept that he has a private life here based on the fact that this has always been his home however I do not accept that he has established a family life. He has mostly lived on his own since leaving school and the evidence suggests that his relationship with his father since his mother's death has been strained until his recent release from prison. As stated earlier, there is no reference at all to the kind of relationship, if any, he was with his second brother and although he has been living with his other brother, Femi, since his release in October, that is a condition of his bail and they did not previously live together. I note that there is reference in Mr Kendall's letter to the appellant looking to move out and into a YMCA hostel in Milton Keynes. It is said that they are very close but the evidence does not support that. Femi did not know about all the appellant's offences, he did not know his circle of friends, he did not know of the appellant's drug habit until quite recently and the contact between them was limited until a few months ago. Although the appellant maintained that he saw his father five days a week when he went to Milton Keynes, his father's evidence was that he saw him about twice weekly. Apart from 'talking' there is little information about what else the family is doing to assist or what the nature of any inter dependency between them is. The impression I formed after hearing evidence was of a disjointed family now trying to present a picture of unity so as to prevent the appellant's deportation.
88. I accept of course that the appellant has a private life here and that removal would interfere with it. However there is very little information before me as to the nature of that private life. I must also bear in mind that little weight is to be given to a private life that is established during unlawful residence.
89. Turning to the specific considerations in cases involving foreign criminals, it is the case that their deportation is in the public interest and that the more serious the offence committed, the greater the public interest in removal. The appellant has a long history of offending. His first brush with the police was at the age of 15, before his mother's death. He has shown himself to be a persistent offender with no regard for the law as is shown by his repeated driving offences, continued even after his conviction and lengthy sentence for the killing of a cyclist in 2007. That offence, albeit committed as a result of an epileptic seizure, took place at a time when he should not have been driving at all and after a string of convictions for driving without insurance and whilst disqualified. Even after that offence, his misbehaviour continued. He was convicted of a Class A drugs offence in 2010 and in February 2011 he again took to the wheel when disqualified and received a further prison sentence. Despite these events, he earned himself yet another conviction in 2013 for the supply of Class A drugs. The appellant not only has a history of at least two very serious offences, but one of persistent re-offending. In these circumstances the public interest in his deportation is indeed higher.

90. The appellant claims to have reformed however one must be forgiven for viewing that claim with scepticism. The sentencing judge in 2013 noted the appellant's claims of remorse. He made this comment:

"You have 42 previous convictions⁸ and I am told that you regret what you have done; I am doubtful about that, I make no bones about that and the reason for that doubt is your record. I have no doubt that every court you have appeared in front of has been told that you are regretful of what you have done".

91. The deportation decision has plainly been a wake up call and in my view it is the reality of his precarious situation which has brought about his alleged reformation. The evidence of the appellant and his witnesses, both orally and in the written statements, support that finding. Whether the appellant would have made any effort to change his ways had he not been the subject of a deportation order is another matter. My view is that he would not have done so. Even taking account of the claims made both by him and those on his behalf, I have concerns over their reliability. As stated by the sentencing judge, the appellant's record does not inspire confidence in him. He has had ample opportunities to learn from his mistakes and to seek rehabilitation. He did not avail himself of any, even after the death of the cyclist. He seeks to blame his behaviour upon the death of his mother and the false allegations of rape made by an ex-girlfriend however these are events which occurred many years ago and cannot be used to excuse his persistent offending. He is a mature adult in his 30s and cannot seek to explain away his appalling record by reliance on these events, difficult though they must have been. I also note that the excuses given to the officer who prepared the OASys report for the 2012 were somewhat different. The explanation for the driving offence was that his family had forgotten his birthday some days earlier and he claimed to have been motivated to deal drugs because he had lost his job. His family were unable to exert any influence on him before; I see no reason why they would do so now. He has never managed to keep a job going for more than a few months in the past; I see no reason to accept his attitude to work would be different now. I accept that there are certificates showing he has followed some courses in prison with a view to addressing his behaviour but I consider much of the appellant's attempts to show he has turned over a new leaf are designed to assist his appeal.
92. The more serious the offence(s) committed, the stronger is the public interest in deportation. The appellant has a long history of offending. It appears to have begun when he was 15 and if I accept his evidence that he was 16-17 when his mother died, then his offending had already commenced. His record shows an utter disregard for the law and the more recent offences - the killing of a cyclist and dealing in Class A drugs - are indeed extremely serious.
93. The respondent considered deporting the appellant in June 2011. He was however given a second chance. I do not accept that the appellant knew nothing about this as is now claimed; I note that he refers to a warning from the UKBA in his evidence and I also

⁸ It would appear that the judge meant to say there were 42 offences committed.

note that this warning letter was mentioned several times in the evidence from the respondent and that had it never been received the appellant's representatives would have made this clear long before the hearing before me. Mr Mason argued that the appellant's disregard for the warning had to be viewed in the context of him being a troubled person on account of his failure to address his issues. I am afraid I do not accept that. If the appellant needed a wake up call, that was it. I can see no reason why he would have done nothing then, when he knew could have been deported, and yet acted now when deportation reared its head again.

94. The only possibility of succeeding in his appeal is if the appellant can show very compelling circumstances over and above matters such as lawful residence, social and cultural integration in the UK and obstacles in integrating into the country of deportation. The circumstances put forward are his long residence and his birth in the UK. I cannot see how unlawful residence, albeit for all his life, can be seen as a factor which would trump lawful residence for most of one's stay here. Of course the fact that he has only know Britain as his home is an important factor to consider but apart from that there are no other matters which I find can be said to be very compelling.
95. I balance that against the factors against him; the absence of any lawful leave, the absence of a genuine and subsisting relationship with a partner or child, the lack of a family life, the lack of a reasonable history of employment and financial independence, the long and persistent history of criminality, the assessment that he poses a medium risk to the community and the 78% chance of re-offending within two years of his release. I give weight to the fact that the OASys assessment was prepared after consideration of a number of sources including meetings with the appellant, the pre sentence report, prison records and interventions assessment. I must also consider whether despite any positive matters, the appellant's conduct is such that deportation is the only right option. Deportation as a deterrent to other non citizens and as an expression of society's revulsion at the crimes committed are also matters which factor into my assessment.
96. I have had regard to the evidence presented as to integration into Nigerian society upon removal and the claimed difficulties the appellant would have. First, I accept the appellant has never been to Nigeria. Nevertheless he is of Nigerian ethnicity. The UKBA guidance takes account of claims that a foreign criminal has never lived in the country of deportation but states that this would not necessarily mean that very significant obstacles prevented him from returning particularly if he could speak a language of that country (5.4.10). It was argued that he does not speak the language however English is widely spoken there. It is maintained that he would have no home or employment. He has no employment here either, other than helping out his father, and there were no reasons offered as to why he would be unable to find work there. The guidance states that lack of employment prospects is very unlikely to be a significant obstacle to integration (5.4.12) and that sporadic work in the UK would further undermine such a claim (5.4.14). His family would be able to assist him financially as they claim to be

doing here. Certainly their money would stretch much further there. He may also be eligible to apply for the facilitated return scheme (5.4.15).

97. I do not accept that no members of the family remain there. Although the appellant maintained in his statement that his father had never returned to Nigeria, that was contradicted by the oral evidence. Clearly there must be people whom he visited. The appellant's cousin gave oral evidence that he had "relatives on the appellant's side" although he was not close to them. I consider that the appellant and his witnesses have attempted to conceal extended family members in Nigeria. However even without friends or relatives, the guidance states that this would not in itself be a significant obstacle to integration and points out that many people migrate to countries where they have no ties (5.4.9). I accept of course that relocating to Nigeria would be difficult for the appellant. It would be a substantial change to life in the UK. However there has been no specific evidence relating to the contention that there would be very serious obstacles to integration and having had regard to the guidance, I do not consider that this claim has been made out. I accept that the appellant has epilepsy however it was not argued that he would be unable to receive the appropriate medication for the management of his condition in Nigeria.
98. I have had full regard to the letters written on the appellant's behalf from his church and others who have interacted with him during his last period of imprisonment and thereafter. I accept that these individuals are all well meaning and would like the appellant to succeed. I also accept they consider that he has shown a desire to progress. Many of these individuals have known the appellant for a short time and they have not attended the hearing and been subjected to examination. I accept that Mr Kendall is unwell and has a good reason not to attend but no reasons were put forward for the others. I have no reason to doubt what is said in their letters, however, but I do not consider that their statements are strong enough to support the claim that the appellant is now a changed man. They do not take account of the OASys assessment and in any event, as stated earlier, the propensity to re-offend is not the only factor to consider.
99. The fact remains that the public interest in deportation is now substantial and that very compelling circumstances are required to override that interest where there is a sentence of four years or more. I have considered all the evidence very carefully and at length, hence the delay in the preparation of this determination and its length. I cannot, however, find in the appellant's favour despite the fact that he has only known life in the UK. All the matters I have set aside lead me to conclude that deportation is the appropriate course in this case and that such action would be proportionate. I appreciate that this decision will come as a blow to the appellant and his relatives but the appellant has brought this upon himself by his unacceptable behaviour.

Decision

100. The appeal is dismissed.

Anonymity

101. There has been no request for an order of anonymity and I do not consider one is necessary.

Signed:

A handwritten signature in black ink, appearing to read "R. Kekić". The signature is written in a cursive style with a period at the end.

**Dr R Kekić
Judge of the Upper Tribunal**

13 February 2015