



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: DA/01678/2013

THE IMMIGRATION ACTS

Heard at Field House
On 22nd April 2015

Decision & Reasons Promulgated
On 15th May 2015

Before

UPPER TRIBUNAL JUDGE GOLDSTEIN
UPPER TRIBUNAL JUDGE REEDS

Between

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

MR ALUSINE KAMARA
(ANONYMITY DIRECTION NOT MADE)

Respondent

Representation:

For the Appellant: Mr Kandola, Senior Home Office Presenting Officer

For the Respondent: Mr Rendle, Counsel instructed on behalf of Wai Leung Solicitors

DECISION AND REASONS

1. This is a resumed hearing before the Upper Tribunal following an appeal by the Secretary of State against the decision of the First-tier Tribunal (Judge Lobo) who, in a determination promulgated on 7th October 2014, allowed the appeal of the Respondent against the decision of the Secretary of State to make a deportation order against him by virtue of Section 32(5) of the UK Borders Act 2007.

2. Whilst the Secretary of State is the Appellant in this appeal, for the sake of convenience we will refer to the parties as they were before the First-tier Tribunal.

The Background :

3. The Appellant is a national of Sierra Leone who was born on 29th September 1987. His immigration history can be briefly summarised. He arrived in the United Kingdom on 23rd October 1993 at the age of 6, having been brought to the United Kingdom with his 8 year old sister by his half sister Mrs Kamara, who had indefinite leave to remain in the United Kingdom. It was stated that the Appellant's father had died in Sierra Leone. On 30th August 1995 the Appellant and his sister were granted indefinite leave to remain in the United Kingdom as dependants of their half sister, Mrs Kamara.
4. The Appellant is the subject of a deportation order as a result of his conviction on 10th October 2011 at Maidstone Crown Court for possession of a controlled drug with intent to supply, namely Class A crack cocaine and failing to surrender to custody at an appointed time. He was sentenced to a period of three years and six months' imprisonment.
5. The Appellant relies upon the exception to be found in Section 33 of the UK Borders Act 2007 that his removal pursuant to the deportation order will breach his rights under Article 8 of the ECHR.
6. In terms of chronology, the Appellant appealed the decision and it came before the First-tier Tribunal panel (Judge Tipping and Mrs M Padfield JP) on 5th December 2013 who allowed the appeal. The Secretary of State sought permission to appeal that decision and in a determination promulgated on 17th April 2014, Upper Tribunal Judge Eshun found that there were errors of law in the decision of the First-tier Tribunal panel and set aside the decision. The judge remitted the appeal to be re-heard before the First-tier Tribunal which took place on 26th September 2014 before Judge Lobo, whose decision forms the basis of this second appeal by the Secretary of State.
7. In a determination promulgated on 7th October 2014 the judge allowed the appeal.
8. The Secretary of State sought permission to appeal that decision and permission was granted by First-tier Tribunal Judge Page on 22nd October 2014 stating:-

“The Grounds of Appeal identified an arguable error of law in that when the judge considered the provisions of the Immigration Rules no consideration was given to the deportation provisions of the Immigration Rules that had been amended by the Immigration Act 2014. At paragraphs 26-29 the judge set out “the legal framework of this appeal” but nowhere in that section is any reference made to the 2014 Act which applies to all appeals heard on or after 28th July 2014 irrespective of when the application for the immigration decision was made. As the Respondent has raised an arguable error of law permission to appeal is granted.”

9. In a determination promulgated on the 5th February 2015, the Upper Tribunal reached the conclusion that the First-tier Tribunal (Judge Lobo) did err in law and gave its reasons for reaching that decision. The decision of the Upper Tribunal is annexed to this determination marked "Appendix A". We therefore set aside the decision to be re-made by the Upper Tribunal.

The Resumed Hearing Before the Upper Tribunal:

10. At the hearing the Appellant was represented by Mr Rendle, Counsel instructed on his behalf and Mr Kandola, Senior Presenting Officer on behalf of the Secretary of State. Mr Rendle relied upon the documents that had been provided before the First-tier Tribunal which we numbered Bundles "A" and "B." They contained witness statements from the Appellant and his sister, documentation in respect of the Appellant's education and letters from the Probation Service and also from prison officials. The bundles also included within them a copy of the OASys assessment and pre-sentence report and also country materials relating to Sierra Leone. In addition Mr Rendle relied upon a recent document dated 30th March 2015 which was an updated report from the Probation Officer. We provided to the parties the most recent report for Sierra Leone from Amnesty International and an IRIN news report. The Respondent relied upon the Respondent's bundle that was before the First-tier Tribunal.
11. At the hearing, the Appellant gave oral evidence before us. He confirmed and adopted the two witness statements that he had made. In addition he confirmed that he had completed his entire education in the United Kingdom including primary level, secondary level and also culminating in his attendance at the University of the Arts in London. He confirmed that he had attended a church in the United Kingdom and that the congregation was not of any particular background but was diverse. As to his time in foster care, he confirmed that the background and ethnicity of his foster carers were not that of Sierra Leone. As to his present circumstances, he made reference to his wish to make a new life for himself in the north of the country. He made reference to his friends from university who were living there and including his girlfriend. In respect of future plans, he made reference to his partial completion of his BA Degree in Fashion Design and that he was continuing to design and make clothes and referred to the clothes that he was wearing in court. He referred to potential employment in the north of England including screen-printing and that upon completion of his degree would wish to establish himself there.
12. As to his integration in the United Kingdom, he confirmed that he had 740 to 760 friends on Facebook of a diverse background and that he had a Twitter and e-mail account. He confirmed that he had held a bank account for eight years. As to his degree, he confirmed that he had undertaken two years of his three year degree and in essence had six months left of the course. He would wish to complete that course which would then provide him with his degree and in order to do so would stay at his sister's home and then move to Liverpool. Presently he was living in Kent and was taking part in song writing with his collaborative partner, using the experience gained from a course undertaken whilst in custody. He confirmed that he was not

living in the area amongst those with whom he had committed his previous offences. He confirmed that he was not able to work as a result of his bail conditions and he was not claiming any form of state benefits. He said he was planning to vote and was available to register. As to his girlfriend, he confirmed their relationship and gave details of it to us.

13. He was asked about the recorded conversation at page 45 of the bundle (the OASys Report). The Appellant explained that from the time he was born the person he knew was his mother was his stepmother who had previously lived in Sierra Leone. He had lost contact with her but then she had entered the United Kingdom at a later date. His stepmother was Mehmun Yassin. The Appellant stated that he had been asked if he had spoken to his mother and he said that he had by telephone but he was not referring to his natural mother but the person whom he regarded as his mother which is his stepmother. He later clarified in his evidence that he had been asked about this on only one occasion when he was giving evidence via a video link and made reference to this at page 45 of the bundle. He was adamant that he had not been asked any such questions on more than one occasion. The Appellant gave a detailed account as to how he had been asked these questions and in the context of showing scars whilst subject to the video link. He confirmed in his evidence that he had had no contact with his natural mother and had no knowledge of her whereabouts nor did any other member of the family.
14. In cross-examination he was asked about his relationship with his natural mother and he confirmed that he had never lived with his natural mother and had been raised in Sierra Leone by his stepmother. He said that his father had died when he was 4 or 5 and that he was in Sierra Leone when he died and continued to live with his stepmother until he was brought to the United Kingdom. He confirmed that he has never been back to Sierra Leone since residing in the United Kingdom. As to relatives in Sierra Leone, he said that all of his father's relatives including his brothers and sisters lived in the United Kingdom. He said his father had no extended family in Sierra Leone because he was of Lebanese nationality. He confirmed that he had still been in touch with Hawa (his stepsister) and last spoke to her seven months ago. She resides in the United Kingdom. He was asked if there were any reasons why extended family members had not attended court. The Appellant stated the problems that he had and the proceedings for deportation was as a result of his own actions and he did not want to put them in the situation of having to attend court. As to his sister, he said his niece was 1 year old and there were problems in her obtaining childcare to attend. He referred to her written statements.
15. He was asked about his criminal offences and he stated that he borrowed £700 when he was a student and had to repay that money. He said that he was not saying he was forced to deal in drugs and he knew what he was getting into but that he had been loaned money and had to pay that money back. He was asked about a failure to turn up at trial but the Appellant explained that the letter had been sent to the wrong address and when he had found out about the trial date he had handed himself in. As to the offence in 2008 he confirmed that he had been charged with

other offences for which he was found not guilty and he pleaded guilty to fourteen wraps for which he was sentenced to a period of community service. He confirmed that his sister did not live near those associates who lived in a different part of London.

16. In answer to questions that we asked the Appellant, he confirmed that he had undertaken courses in prison and made reference to the certificates within the bundle and also that he had completed a drug awareness (victim awareness) course. The vocational courses including music and technology NCFE Level 2 and that in prison he had had an enhanced category as the letters from the prison officials had attested to. He confirmed that he had completed the custodial part of his sentence and was released but had spent more than a year out of prison on bail and on licence and had had contact with the Probation Officer. He had not committed any offences and regretted having committed the offences for which he had been sentenced to.

The submissions:

17. At the conclusion of the evidence we heard submissions from each of the parties. Mr Kandola on behalf of the Secretary of State made reference to the reasons for refusal letter but observed that it had been superseded by the new Rules. Dealing with paragraph 399A, he accepted that 399A(a) was satisfied in the light of the Appellant's lawful residence and the length of the residence in the United Kingdom.
18. As to paragraph 399A(b) he submitted that he had lived with his stepmother between the ages of 12 and 16 who is of Sierra Leonean origin and therefore was likely to have some links with Sierra Leone. His criminal offending weighed against him when considering whether he was socially integrated in the United Kingdom. He made no further submissions in relation to any other social or cultural links to the United Kingdom.
19. In respect of paragraph 399A(c) and the issue of "very significant obstacles to his integration into the country to which it is proposed he was deported" Mr Kandola invited us to reach the conclusion that he had not demonstrated that he had no family relatives in Sierra Leone which would assist him in his reintegration to that country. He submitted it was a matter of credibility and that whilst the Appellant claimed he was talking about his stepmother she was in the United Kingdom and it did not explain why the author had written what was recorded in the OASys Report. He reminded us that no other family members had given evidence on this issue. He further submitted that the Appellant would be able to reintegrate into Sierra Leonean society if the Tribunal concluded on the facts that his mother still resided there. The letter from 1994 gave some support for the view that the family relatives did know where Ami was. Consequently he had not demonstrated that he had met all limbs of paragraph 399A and therefore could not satisfy the Rules.
20. In those circumstances it was necessary for him to demonstrate compelling circumstances over and above those matters. In this respect, he could not succeed and whilst he sought to establish family life between him and his sister, she had not given evidence before the Tribunal and little weight should be given to her two

witness statements. Applying Section 117, the Appellant was able to speak English but had not demonstrated financial independence. He submitted that each case was fact sensitive and depended on its own individual facts. However in this case deportation was justified and proportionate.

21. Mr Rendle on behalf of the Appellant submitted that he was socially and culturally integrated in the UK and that that was well demonstrated by the evidence and that this Appellant, by reason of his lengthy lawful residence of over 22 years, was inevitably socially and culturally integrated in the United Kingdom. In this regard he made reference to the evidence concerning his education in the United Kingdom, noting his attendance at university, his attendance at church which demonstrated his integration into society which was not limited to a congregation of those from Sierra Leone but was a cosmopolitan and diverse congregation. His integration was demonstrated by his voluntary work with ACAPS and his family links. As to his offending, whilst this might militate against his integration, it had to be viewed in the light of his subsequent engagement with the Probation Service and lack of offending since his release and therefore outweighed any anti-social behaviour demonstrated by his previous offending. This was case where the Appellant has shown great remorse and that this was a young man who had demonstrated maturity and a capacity to change. He has no cultural links with Sierra Leone and when in foster care had been placed in family placements without that type of background. The OASys Report made reference to a low risk of reoffending and the matters highlighted to demonstrate a lessening of any risk to the public related to moving away from past associates and the provision of employment. In this case the Appellant had significantly expressed a desire to move away and had done so and had put forward a credible future plan for finishing his degree and obtaining employment in the north of England. He had a wide network of friends including 700 plus on Facebook, he had a bank account and an e-mail account. Thus the evidence demonstrated that he was socially and culturally integrated.
22. As to paragraph 399A(c) he submitted that the Appellant was deeply entrenched in the UK and that there was no evidence that he had any relatives or familial links that he had retained in Sierra Leone. The main issue in dispute related to the recorded comments in the OASys Report and the letter at A1 of the Respondent's bundle from 1994. Dealing with the 1994 letter, this was a letter of some age and it is plain from reading the letter that shortly after that, the Appellant and his sister were granted indefinite leave to remain which demonstrated that despite the best efforts of the Secretary of State and the British High Commission, his mother could not be located from 1994 and thus indefinite leave to remain was granted. When looking at the evidence recorded in the OASys Report, the Appellant had given a credible account and had gone into detail about when he was asked about this matter referring to the video link. He gave evidence about the scars which are recorded at page 45 and made it plain that he thought the discussion related to his stepmother. There had been confusion as to the family relatives and in the light of the lack of any evidence as to his mother's whereabouts, his explanation should be accepted.

23. As to family life, the only family that he has had of conscious memory is that in the United Kingdom. He has had a strong family life with his sister who had been through a series of life events and had lived with her previously and would intend to live with her when restarting his degree. That was a strong relationship based in part on their past life experiences and therefore exceeded the ties usually that were found between siblings. Consequently each case was fact sensitive and the evidence demonstrated that he had no familial links to Sierra Leone. The evidence set out in the country materials relating to Sierra Leone and the difficulties the country was facing would constitute very significant obstacles for his reintegration. This was a country to which he has no familial support, no knowledge of the language of Krio, the main language in Sierra Leone and having never visited that country since he left as a child. Thus he invited us to allow the appeal.
24. We reserved our determination.

Findings of Fact:

25. We are required to set out our findings of fact on the areas that are in dispute. There is no dispute that the Appellant was born on 29th September 1987 in Freetown, Sierra Leone. There has been some misunderstanding as to the nature of the Appellant's family members and whether the Appellant has had any contact with his natural mother. We have had the opportunity of hearing the evidence of the Appellant and also a family tree helpfully provided by Mr Rendle, Counsel on behalf of the Appellant. From that evidence we have reached the following findings of fact concerning the Appellant's family members and the level of contact that he has had with them since his arrival in the United Kingdom.
26. There is no dispute between the parties that the Appellant arrived in the United Kingdom on 23rd October 1993 when aged 6 along with his older full sister who was then aged 8. The Appellant's father was a Lebanese national who was living in Sierra Leone. He was never married to the Appellant's natural mother (Ami) but during the course of that relationship there were three children born, the Appellant, his sister Memunat and Zanaib whom the Appellant has no real knowledge of. His father had been married to Mrs Yassin (the Appellant's stepmother) who was the mother of Hawa and therefore the half sister of the Appellant and his sister.
27. We accept the Appellant's evidence, which is unchallenged, as to the circumstances of family life in Sierra Leone. He stated that the only person he knew was his stepmother whom his father was married to and who had raised him in Sierra Leone. He had never lived with Ami. In or about 1992 the Appellant's father died in Sierra Leone and on 23rd October 1993 the Appellant was brought to the UK along with his full sister by his much older married half sister who had indefinite leave to remain. On 30th August 1995 he was granted indefinite leave to remain as a dependant of his half sister Hawa. It appears that his sister gave them her own married name rather than their birth name.
28. When in the United Kingdom, the Appellant and his sister lived with Hawa but also there were periods of living with other extended family members including his

father's sister also called Zanaib and his wife (the Appellant's stepmother). It is further not in dispute that the Appellant and his sister were received into foster care and at times in different foster placements. It is not been challenged that this time in foster care was an unhappy one for both the Appellant and his sister for the reasons set out plainly at paragraphs 10-11 of the Appellant's witness statement and also referred to not only in the pre-sentence report but the sentencing remarks of the judge. We accept the evidence from the Appellant that he had not been placed in a family placement with any links to Sierra Leone. The Appellant returned to live with his stepmother after a period in foster care until he left school at 16 where he lived independently.

29. The issue remains as to his links with Sierra Leone and in this context whether he has had any contact with his natural mother or other relatives in Sierra Leone. The Appellant's evidence before us is that since he left Sierra Leone aged 6, he has never returned there and has had no contact with any family members including his mother who resided there at the time he left. Mr Kandola has directed us to evidence contained in the OASys Report (see page 45) and the pre-sentence report (page 30) which is said to contradict this evidence. At page 45 of the OASys Report the following is stated:-

"Mr Kamara has had little contact with his mother since he arrived in the UK, and only speaks on the phone occasionally as she still resides in Sierra Leone."

30. When asked about this evidence the Appellant stated that from the time he was born there had only been one person he knew and regarded as his mother and this was his stepmother who used to live in Sierra Leone. She later moved to the United Kingdom. He explained that when he was asked if he spoke to his mother he said he did so by telephone but he was not referring to his natural mother Ami but to his stepmother who was in the UK, who had previously been living in Sierra Leone. He confirmed that he had not had any contact with Ami nor had any members of his family nor did he have any knowledge of her whereabouts.
31. In reaching our assessment on this issue we have carefully considered the oral evidence of the Appellant and the documentary evidence provided. As we have set out, the account given in the written evidence in the OASys Report and also in the pre-sentence report, seems to be in identical terms and therefore if it was the position that the Appellant had said this to two different people at different times it would have an impact on the credibility of that evidence. However the Appellant was adamant in his evidence that he had been asked about family members on only one occasion and this was whilst taking part in a video link. This in fact is referred to in the OASys Report at page 45. He stated that he had not been asked questions at the time of the pre-sentence report and he gave a description as to how the questions had been asked, the answers he gave and the circumstances in which the conversation had taken place. When we considered the documents further, it became clear to us that the Appellant was in fact right as the source of information at page 38 and made reference to the report being informed by the OASys Report. In those circumstances Mr Kandola did not seek to rely on any submission to the effect that the recording

had been set on two occasions but submitted that the Appellant's explanation was not credible when considering the author's reference to Sierra Leone.

32. Having had the opportunity to hear and see the Appellant give evidence before us, we have reached the conclusion that the Appellant has given evidence in a straightforward and credible manner. Indeed at times he has given evidence which could be seen as contrary to his case (concerning past offending) and we are satisfied that he has not sought to exaggerate or withhold evidence from us but has been frank and forthright in all that he has told us. In this context we are satisfied on the balance of probabilities that his explanation is indeed a truthful one. As we have set out earlier there appear to be a complex set of family relationships with some members of the family retaining the same name and we are satisfied that it is more likely than not that this has caused confusion. We further note that throughout the proceedings, the evidence before us has always been that he had referred to his stepmother as "mum" which is supported by his evidence from his early years in Sierra Leone and being brought up by his father who was married to her. It is further supported by the written evidence in the witness statement provided by his full sister.
33. In reaching our finding we have taken into account evidence provided by the Secretary of State taken from a document from the British High Commission in Freetown dated 11th August 1994 (set out at A1 of the Respondent's bundle). This was a document which made reference to the Appellant's natural mother Ami and efforts to trace her in 1994. At paragraph 3 it makes reference to a conversation with someone who knew her who had last seen her in Freetown two months prior to August 1994 but could provide no further information. The author of the letter concludes that they had exhausted every line of enquiry concerning her whereabouts and whilst it is plain the author did not believe Hanawatu's account, there was no further information concerning the whereabouts of the Appellant's natural mother in 1994. In considering that letter, we observe that it was written a very long time ago in 1994 and the author was not able to trace the whereabouts of the Appellant's mother at that time. Furthermore it makes it plain that if they could have located Ami, the children could have been removed to Sierra Leone. What is significant is that within one year of that letter, indefinite leave to remain was granted to both the Appellant and his sister which in our judgment demonstrates that despite the efforts of the Secretary of State and the British High Commission, the Appellant's natural mother could not be traced and her whereabouts therefore remained unknown post 1994. There has been no credible evidence before us that that position has changed. Consequently, taking the evidence in the round, we are satisfied on the balance of probabilities that the Appellant has not had any contact with his natural mother in Sierra Leone and has no subsisting familial ties to that country.
34. We further find from the evidence before us that he was raised by his stepmother and father in Sierra Leone and has not returned to that country since he left aged 6. His father's close relations (brother and sister) live in the United Kingdom and his father has no relatives in Sierra Leone bearing in mind his Lebanese nationality.

Consequently the close relations that he has are those in the United Kingdom including his sister, her husband and children, all of whom are British citizens.

35. There is no dispute concerning his education which is evidenced in the documents in the bundle and attested to in the various witness statements before us. He has undertaken all of his education in the United Kingdom including that at degree level between 2009 and 2011. We understand his evidence to be that he has completed two of his three years in the subject, a BA in Fashion, and has yet to complete his final year.

The Legal Framework:

36. Section 19 of the 2014 Act introduced into the Nationality, Immigration and Asylum Act 2002 a new Part 5A containing new Sections 117A-D. The new part is headed "Article 8 of the ECHR: Public Interest Considerations". Sections 117A-D set out statutory guidelines that must be applied when a court or tribunal has to decide whether an immigration decision to remove someone from the UK would be in breach of his Article 8 rights. Section 117A is headed "Application of this Part"; Section 117B is headed "Article 8 public interest considerations in all cases" and 117C is headed "Article 8 additional considerations in cases involving foreign criminals".

37. They provide as follows:-

"117A Application of this Part

- (1) This Part applies where a court or tribunal is required to determine whether a decision made under the Immigration Acts –
 - (a) breaches a person's right to respect for private and family life under Article 8, and
 - (b) as a result would be unlawful under section 6 of the Human Rights Act 1998.
- (2) In considering the public interest question, the court or tribunal must (in particular) have regard –
 - (a) in all cases, to the considerations listed in section 117B, and
 - (b) in cases concerning the deportation of foreign criminals, to the considerations listed in section 117C.
- (3) In subsection (2), "the public interest question" means the question of whether an interference with a person's right to respect for private and family life is justified under Article 8(2).

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

- (1) The maintenance of effective immigration controls is in the public interest.
- (2) It is in the public interest, and in particular in the interests of the economic well-being of the United Kingdom, that persons who seek to enter or

remain in the United Kingdom are able to speak English, because persons who can speak English –

- (a) are less of a burden on taxpayers, and
 - (b) are better able to integrate into society.
- (3) It is in the public interest, and in particular in the interests of the economic well-being of the United Kingdom, that persons who seek to enter or remain in the United Kingdom are financially independent, because such persons –
- (a) are not a burden on taxpayers, and
 - (b) are better able to integrate into society.
- (4) Little weight should be given to –
- (a) a private life, or
 - (b) a relationship formed with a qualifying partner, that is established by a person at a time when the person is in the United Kingdom unlawfully.
- (5) Little weight should be given to a private life established by a person at a time when the person's immigration status is precarious.
- (6) In the case of a person who is not liable to deportation, the public interest does not require the person's removal where –
- (a) the person has a genuine and subsisting parental relationship with a qualifying child, and
 - (b) it would not be reasonable to expect the child to leave the United Kingdom.

117C *Article 8 additional considerations in cases involving foreign criminals.*

- (1) The deportation of foreign criminals is in the public interest.
- (2) The more serious the offence committed by a foreign criminal, the greater is the public interest in deportation of the criminal.
- (3) In the case of a foreign criminal ("C") who has not been sentenced to a period of imprisonment of four years or more, the public interest requires C's deportation unless Exception 1 or Exception 2 applies.
- (4) Exception 1 applies where –
 - (a) C has been lawfully resident in the United Kingdom for most of C's life,
 - (b) C is socially and culturally integrated in the United Kingdom, and
 - (c) there would be very significant obstacles to C's integration into the country to which C is proposed to be deported.

- (5) Exception 2 applies where C has a genuine and subsisting relationship with a qualifying partner, or a genuine and subsisting parental relationship with a qualifying child, and the effect of C's deportation on the partner or child would be unduly harsh.
- (6) In the case of a foreign criminal who has been sentenced to a period of imprisonment of at least four years, the public interest requires deportation unless there are very compelling circumstances, over and above those described in Exceptions 1 and 2.
- (7) The considerations in subsections (1) to (6) are to be taken into account where a court or tribunal is considering a decision to deport a foreign criminal only to the extent that the reason for the decision was the offence or offences for which the criminal has been convicted.

117D Interpretation of this Part

- (1) In this Part –

"Article 8" means Article 8 of the European Convention on Human Rights;

"qualifying child" means a person who is under the age of 18 and who –

- (a) is a British citizen, or
- (b) has lived in the United Kingdom for a continuous period of seven years or more;

"qualifying partner" means a partner who –

- (a) is a British citizen, or
- (b) who is settled in the United Kingdom (within the meaning of the Immigration Act 1971 – see section 33(2A) of that Act).

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

- (a) who is not a British citizen,
- (b) who has been convicted in the United Kingdom of an offence, and
- (c) who –
 - (i) has been sentenced to a period of imprisonment of at least 12 months,
 - (ii) has been convicted of an offence that has caused serious harm, or
 - (iii) is a persistent offender.

- (3) For the purposes of subsection (2)(b), a person subject to an order under –

- (a) section 5 of the Criminal Procedure (Insanity) Act 1964 (insanity etc),
- (b) section 57 of the Criminal Procedure (Scotland) Act 1995 (insanity etc), or (c) Article 50A of the Mental Health (Northern Ireland) Order 1986 (insanity etc), has not been convicted of an offence.

- (4) In this Part, references to a person who has been sentenced to a period of imprisonment of a certain length of time –
- (a) do not include a person who has received a suspended sentence (unless a court subsequently orders that the sentence or any part of it (of whatever length) is to take effect);
 - (b) do not include a person who has been sentenced to a period of imprisonment of that length of time only by virtue of being sentenced to consecutive sentences amounting in aggregate to that length of time;
 - (c) include a person who is sentenced to detention, or ordered or directed to be detained, in an institution other than a prison (including, in particular, a hospital or an institution for young offenders) for that length of time; and
 - (d) include a person who is sentenced to imprisonment or detention, or ordered or directed to be detained, for an indeterminate period, provided that it may last for at least that length of time.
- (5) If any question arises for the purposes of this Part as to whether a person is a British citizen, it is for the person asserting that fact to prove it."

38. The Immigration Rules were amended at the same time as s117A to s117D came into effect and read, in so far as relevant to this appeal, as follows:

"A362. Where Article 8 is raised in the context of deportation under Part 13 of these Rules, the claim under Article 8 will only succeed where the requirements of these rules as at 28 July 2014 are met, regardless of when the notice of intention to deport or the deportation order, as appropriate, was served.

...

396. Where a person is liable to deportation the presumption shall be that the public interest requires deportation. It is in the public interest to deport where the Secretary of State must make a deportation order in accordance with section 32 of the UK Borders Act 2007.

397. A deportation order will not be made if the person's removal pursuant to the order would be contrary to the UK's obligations under the Refugee Convention or the Human Rights Convention. Where deportation would not be contrary to these obligations, it will only be in exceptional circumstances that the public interest in deportation is outweighed.

Deportation and Article 8

A398. These rules apply where:

- (a) a foreign criminal liable to deportation claims that his deportation would be contrary to the United Kingdom's obligations under Article 8 of the Human Rights Convention;

- (b) a foreign criminal applies for a deportation order made against him to be revoked.

398. Where a person claims that their deportation would be contrary to the UK's obligations under Article 8 of the Human Rights Convention, and

- (a) the deportation of the person from the UK is conducive to the public good and in the public interest because they have been convicted of an offence for which they have been sentenced to a period of imprisonment of at least 4 years;
- (b) the deportation of the person from the UK is conducive to the public good and in the public interest because they have been convicted of an offence for which they have been sentenced to a period of imprisonment of less than 4 years but at least 12 months;
- (c) the deportation of the person from the UK is conducive to the public good and in the public interest because, in the view of the Secretary of State, their offending has caused serious harm or they are a persistent offender who shows a particular disregard for the law,

the Secretary of State in assessing that claim will consider whether paragraph 399 or 399A applies and, if it does not, the public interest in deportation will only be outweighed by other factors where there are very compelling circumstances over and above those described in paragraphs 399 and 399A.

399. This paragraph applies where paragraph 398 (b) or (c) applies if -

- (a) the person has a genuine and subsisting parental relationship with a child under the age of 18 years who is in the UK, and
 - (i) the child is a British Citizen; or
 - (ii) the child has lived in the UK continuously for at least the 7 years immediately preceding the date of the immigration decision; and in either case
 - (a) it would be unduly harsh for the child to live in the country to which the person is to be deported; and
 - (b) it would be unduly harsh for the child to remain in the UK without the person who is to be deported; or
- (b) the person has a genuine and subsisting relationship with a partner who is in the UK and is a British Citizen or settled in the UK, and
 - (i) the relationship was formed at a time when the person (deportee) was in the UK lawfully and their immigration status was not precarious; and
 - (ii) it would be unduly harsh for that partner to live in the country to which the person is to be deported, because of

compelling circumstances over and above those described in paragraph EX.2. of Appendix FM; and

(iii) it would be unduly harsh for that partner to remain in the UK without the person who is to be deported.

399A. This paragraph applies where paragraph 398(b) or (c) applies if –

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

399B. Where an Article 8 claim from a foreign criminal is successful:

- (a) in the case of a person who is in the UK unlawfully or whose leave to enter or remain has been cancelled by a deportation order, limited leave may be granted for periods not exceeding 30 months and subject to such conditions as the Secretary of State considers appropriate;
- (b) in the case of a person who has not been served with a deportation order, any limited leave to enter or remain may be curtailed to a period not exceeding 30 months and conditions may be varied to such conditions as the Secretary of State considers appropriate;
- (c) indefinite leave to enter or remain may be revoked under section 76 of the 2002 Act and limited leave to enter or remain granted for a period not exceeding 30 months subject to such conditions as the Secretary of State considers appropriate;
- (d) revocation of a deportation order does not confer entry clearance or leave to enter or remain or re-instate any previous leave.”

39. It is common ground between the parties that HC 532 provides that “the changes take effect on 28 July 2014 and apply to all ECHR Article 8 claims from foreign criminals which are decided on or after that date” and that paragraph A362 refers to the Rules having effect *regardless of when the notice of intention or the deportation order ...was served*; the explanatory memorandum at 3.4 and 3.5 talks of harmonisation of the Rules with Immigration Act 2014 and [38] and [39] of **YM (Uganda) [2014] EWCA Civ 1292** make clear that irrespective of when the deportation order was signed or a decision to deport made, if the appeal is determined after 28th July 2014, then the Rules in force on that date are the relevant Rules.

40. Paragraph 398 guides the decision-maker's approach to the weight to be given to the public interest in the Article 8 assessment. If the offender has been sentenced to a term of imprisonment of 4 years or more "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". Where the offender has been sentenced to a term of imprisonment of more than twelve months but less than four

years or, in the view of the Secretary of State, the offending has caused serious harm or the offender is a persistent offender with a disregard for the law, paragraphs 399 and 399A will apply to him as appropriate.

41. Paragraph 399 deals with circumstances relevant to family life. Paragraph 399(a) relates to the offender's subsisting relationship with his child. If the child is British and has lived in the UK for at least 7 years preceding the immigration decision and (a) it would be unduly harsh for the child to live in the country to which his parent will be deported and (b) it would be unduly harsh for the child to remain in the UK without the offender, the Secretary of State will not make the deportation order.
42. Paragraph 399A applies to the offender's private life. If the offender has been 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 he would be deported, the Secretary of State will not make the order for deportation.
43. In this appeal, it is agreed that Mr Kamara falls within paragraph 398(b) and thus, the first issue is whether he falls within paragraph 399 or 399A. If not, then the public interest in his deportation would only be outweighed in Article 8 terms "by other factors where there are very compelling circumstances over and above those described in paragraphs 399 and 399A".
44. Although there has been a rule change since **MF (Nigeria) [2013] EWCA Civ 1192**, it remains plain that the Rules, in so far as deportation is concerned, remain a complete code for the consideration of whether removal would result in a breach of the UK's obligations under Article 8.
45. As was said in [39] of **MF** "... the rules expressly contemplate a weighing of the public interest in deportation against 'other factors'...this must be a reference to all other factors which are relevant to proportionality and entails an implicit requirement that they are to be taken into account". The Court of Appeal went on to say:
 - "42 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. In our view, it is no coincidence that the phrase "exceptional circumstances" is used in the new rules in the context of weighing the competing factors for and against deportation of foreign criminals.
 43. The word "exceptional" is often used to denote a departure from a general rule. The general rule in the present context is that, in the case of a foreign prisoner to whom paragraphs 399 and 399A do not apply, very compelling reasons will be required to outweigh the public interest in deportation. These compelling reasons are the "exceptional circumstances".
46. This approach was approved in **AJ (Angola) [2014] EWCA Civ 1636** per Sales LJ at [40]:

“The requirement that claims by appellants who are foreign criminals for leave to remain, based on the Convention rights of themselves or their partners, relations or children, should be assessed under the new rules and through their lens is important, as the Court of Appeal in MF (Nigeria) has emphasised. It seeks to ensure uniformity of approach between different officials, tribunals and courts who have to assess such claims, in the interests of fair and equal treatment of different appellants with similar cases on the facts. In this regard, the new rules also serve as a safeguard in relation to rights of appellants under Article 14 to equal treatment within the scope of Article 8. The requirement of assessment through the lens of the new rules also seeks to ensure that decisions are made in a way that is properly informed by the considerable weight to be given to the public interest in deportation of foreign criminals, as declared by Parliament in the 2007 Act and reinforced by the Secretary of State (as the relevant Minister with responsibility for operation of the immigration system), so as to promote public confidence in that system in this sensitive area.”

47. We have set out in the preceding paragraphs the legislative regime applicable to this appeal and observe that the new provisions of the Immigration Rules were introduced in tandem with the new foreign national offender deportation regime in the 2002 Act. We have heard no argument or submissions from the parties as to whether we should proceed to consider the matters set out in Section 117 first of all, based on the primacy of primary legislation or the Immigration Rules designed to deal with the deportation of foreign criminals. As can be seen the requirements of the Immigration Rules applicable to deportation under paragraph 399A are effectively the same as those set out in s.117C(4).
48. The first provision in the new Part 5A of the 2002 Act is Section 117A. It is relevant for this appeal as we are required to decide whether the deportation order would breach the right to respect for private and/or family life under Article 8 ECHR of this particular Appellant, thereby contravening section 6 of the Human Rights Act 1998. Under the new statutory provisions, the “*public interest question*” is defined as “*the question of whether an interference with a person’s right to respect for private and family life is justified under Article 8(2)*”. In determining this question, we are required to have regard to the considerations specified in section 117B and section 117C.
49. With reference to section 117B, we place weight on the statement of the legislature that the maintenance of effective immigration control is in the public interest, as the section makes plain, it is in the public interest that those who wish to enter or remain in the UK (or seek to demonstrate their integration in UK society) must be able to speak English. There is no dispute that this Appellant has demonstrated that ability. It is further not in dispute that the requirement in section 117B(4) to attribute little weight to a private life established at a time when the person is in the United Kingdom unlawfully does not arise, since the Appellant was at all material times lawfully present in the United Kingdom, having been granted indefinite leave to remain on the 30th August 1995. The same assessment applies to the requirement to give little weight to a private life established when a person’s immigration status was precarious. The relevant deportation order was not made until 18 years after the Appellant had been granted indefinite leave to remain.

50. As to financial independence, the Appellant has not been in employment as during his later years he has been a full-time student. As we understand the evidence the offences were committed during his second year at university. He has not been reliant on public funds and has not had access to benefits since his release. We observe that since he has served his sentence and been released on bail, those conditions have not permitted him to be in employment. His future plans we find are of some relevance. We accept the Appellant's evidence as to the future plans that he has which we consider to be both reasonable, realistic and credible. In his evidence he expressed a wish to move to the north where he has friends and links to the fashion world which would provide future employment in this field. He has further links of stability within that area including a girl friend who resides there. He stated that he had six months left of his degree course to complete and would like to undertake this and would wish to do so before moving to the north to establish himself there. We therefore consider that he has not had an opportunity to demonstrate financial independence given his educational history and more recently in the light of his bail conditions but nonetheless we find that he has a future plan which is realistic, credible and reasonable which would provide for his own financial independence.
51. As regards Section 117C we acknowledge Parliament's statement that the deportation of foreign criminals is in the public interest, the more so according to the seriousness of the offence committed. In this respect, we consider this was a serious offence involving the supply of class A drugs and as recognised in the sentencing remarks of the judge and ultimately by the length of the sentence of imprisonment imposed upon him. He has a previous similar offence recorded against him which is an aggravating factor. In the case of a foreign criminal who has not been sentenced to a period of imprisonment of four years or more, the public interest requires his deportation unless Exception 1 or Exception 2 applies. 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.
52. These provisions mirror those set out in Paragraph 399A of the Immigration Rules. We have therefore considered whether he can meet the requirements of Exception 1 or those of Paragraph 399A.

Our consideration of Exception 1 /Paragraph 399A of the Immigration Rules :

53. As set out in the preceding paragraphs, the exception to deportation on the basis of private life as advanced by the Appellant is set out in the Rules at paragraph 399A and Exception set out in Section 117. The requirements are cumulative and must all be met. We therefore turn to each of those sub-paragraphs in turn.

Paragraph 399A(a)/ Exception1 (a)

54. “The person has been lawfully resident in the UK for most of his life; and “

There is no dispute between the parties that paragraph 399A(a) or Exception 1 (a) is met on the particular facts of this case. The Appellant came to the UK aged 6 and his resided lawfully in the United Kingdom since he was granted indefinite leave to remain in 1995. It is conceded by Mr Kandola on behalf of the Secretary of State that he satisfies paragraph 399A(a).

Paragraph 399A(b)/ Exception 1 (b)

55. “He is socially and culturally integrated in the UK; and “

We have not been provided with any guidance by the parties (either produced by the Secretary of State or otherwise) as to what factors we should take into account in making our assessment under this limb of paragraph 399A. We consider as a starting point the factors set out in Section 117B which are specifically directed to matters of integration which are relevant factors. The provisions stress the importance of language and the ability to speak English and that a failure to do so will be indicative of a lack of integrating in UK society. There is no dispute on the facts of this case that the Appellant has demonstrated his ability to speak and understand English and that he is socially and culturally integrated in this respect. His educational history is well documented in the papers demonstrating that he has been educated in English since the age of 6 from primary school level and up until degree level between 2009 and 2011 when he was undertaking a BA Degree. During his educational career he has been able to pass qualifications, and has undertaken internships during his degree course. It is significant that his education took place at the time of his lawful residence which is further indicative we find of his social integration in the United Kingdom.

56. As to financial independence, we have set out our findings in this regard in the preceding paragraphs (at paragraph 50) and they are equally applicable here. Thus we are satisfied that the Appellant has not been in employment as during his later years he has been a full-time student. We therefore consider that he has not had an opportunity to demonstrate financial independence given his educational history and more recently in the light of his bail conditions but nonetheless we have found that he has a future plan which is realistic, credible and reasonable which would provide for his own financial independence.

57. We further consider that a matter weighing in the balance against integration in the UK is the Appellant’s offending. The Appellant was convicted of offences of possession with intent to supply Class A drugs which resulted in a sentence of imprisonment of three and a half years. The circumstances of the offence and the sentencing remarks indicate that he had 38 packages weighing 11.4 grams with a street value of £570 which was described by the judge as “relatively small”. The relevant parts of the sentencing remarks of His Honour Judge Carey in which he described the drug related offence as “very serious” stated:

“... I sentence you on the basis you are in possession of these drugs voluntarily: that you had them in order to make money from them: and that the telephone was in your possession, which is plainly one which was being used by somebody dealing in drugs, was the telephone which you were in possession of not as a carrier, but as a user of the phone. The calls recorded or rather taken by the police are entirely consistent with you supplying Class A drugs to others ... I trust you that were simply concerned to make money ... This is Class A drug supply. The court regard it as very serious Moreover your position is made the more serious because you already have a conviction for possession of crack cocaine with intention to supply.”

58. The Appellant had a previous conviction relating to drugs in 2008 for which he received a community order of 30 hours.
59. This was a serious offence recognised in the sentencing remarks of the judge and ultimately by the length of the sentence of imprisonment imposed upon him. The Appellant has a previous similar offence recorded against him which is an aggravating factor. The trade in illicit drug has a negative impact upon society and those involved in the supply of drugs are involved in a process that has harmful consequences for society as a whole. This is therefore evidence of anti social and damaging behaviour for society as a whole. There is a strong public interest in the deportation of those who commit such serious crimes; this is because the public interest in the deportation of those who commit serious crimes goes well beyond the need to deprive the individual of the opportunity to re-offend but extends to the need to deter others and to uphold the public abhorrence of such crimes. That is recognized in section 117(C) (1) and (2) which we pay weight and have had regard to and by doing so we acknowledge Parliament’s declaration that the deportation of foreign criminals is in the public interest, the more so according to the seriousness of the offence committed. In this respect, as we have set out this was a serious offence involving the supply of class A drugs. It cannot be the case that because a person subject to the deportation regime has committed an offence, that automatically requires the court to treat him as having a lack of integration when considering whether the requirements of paragraph 399A(b) are met (or Exception 1). If that were so, no person subject to deportation could succeed under paragraph 399A(b). Thus we have considered whether there is any evidence of a positive nature of such strength and weight to outweigh that evidence. In this regard we have taken into account part of the sentencing remarks of the judge who made reference to the Appellant’s earlier life in the United Kingdom. The judge said this:

“Your barrister is absolutely right to begin his mitigation on your behalf by pointing to the fact that you are a talented young man who has, in many respects, used your time and your talents constructively. It is most important that you are now not able to take a course which would be a constructive one for you and for society. But that is your choice ... Your letter is a thoughtful and well constructed one. I have read it with care. I acknowledge that there have been aspects of your early life which were difficult ... and difficult through no fault of your own. But you have had other opportunities. You have, to a degree taken them, which makes your scoundrelling of your talents your opportunities the more regrettable. You are still young. ...”

The judge went on to say later on in his judgment:

“During that time there will be opportunities for you to take courses and occupy yourself in a constructive way. Whether you choose to do that is for you to decide. There is, therefore some light at the end of the tunnel, albeit that this is a substantial sentence for a person of your age.”

The judge in his sentencing remarks was making reference to the earlier part of the Appellant’s life in the United Kingdom when he was in foster care. Mr Rendle has pointed out to us that prior to the offence, the Appellant did make a positive contribution to society by undertaking voluntary youth work with ACAPS (we refer to his witness statement in this respect).

60. The OASys Report and the pre-sentence report assessed the Appellant as someone after release who would not be prohibited from leading a full and positive life in the community. The reports made reference to his qualifications and being in the fortunate position of having a degree and that he had spoken of his plans to utilize his skills and qualifications to good use. The report at page 31 makes reference to his conduct in prison as being actively engaged by completing courses in music, technology and IT and someone who was prepared to accept the consequences of his actions and remaining positive regarding his future prospects. The OASys Report concludes that the Appellant represents a medium risk to the public on the basis of his offence as drug related and as such the provision of drugs to members of the public representing such a risk. The report also reaches a conclusion that he has a low risk of reoffending (see page 30 of the Appellant’s bundle). The risk to the public would likely to be reduced if the Appellant distanced himself from his former associates and who were involved in drugs and engaging in gainful employment. It is stated in the report that those factors would lessen the risks of any reoffending as would a concerted effort to learn from his past mistakes and be mindful of the public consequences of such behaviour.
61. In our judgment that has been demonstrated in the evidence by his conduct in prison and that upon release. As we had set out, the Appellant has made good use of the time in custody undertaking vocational courses which reflect an interest he has in music and information technology (see page 24 NCFE Level 2) and has also undertaken a drugs awareness (victim) awareness course. There is no evidence that he has a drug habit nor is there any evidence before us from the prison officials that that manifested itself whilst in custody. Furthermore there is positive evidence before us concerning his behaviour. The evidence demonstrated his conduct whilst in custody has been exemplary. This is attested to by evidence from the prison officers set out in letters contained in the Appellant’s bundle contained at pages 22 onwards. The evidence makes reference to the Appellant’s role as a “violence reduction” person who diffuses conflict within the prison and as such has received positive entries in the ledger. He has been upgraded to an enhanced status as a result of that conduct.
62. Furthermore there is evidence from the Probation Service (see letter dated 23rd/9/2014) which makes reference to the Appellant having complied with all his licence conditions and supervision since 7th June 2013, his lack of reoffending and

the work that he is undertaking during the period of supervision has demonstrated “a good insight into his offending behaviour, is remorseful and intends to lead a law abiding lifestyle in the future”. An updated letter from the same Probation Officer dated 30th March 2015 confirms his continued compliance with his licence conditions.

63. The evidence we have made reference to above serves to confirm our own assessment of the Appellant. He has continued to express his remorse over the offences committed and we observe that those offences in effect halted what could have been described as a promising career in fashion in which his expertise and interests has been recognised. We do not simply accept what he says himself about being remorseful but have viewed it in the light of his conduct both in custody and whilst on release from the community which significantly supports that remorse and does indicate a level of maturity.
64. We have therefore conducted a careful balance of the relevant factors that we have identified and having done so, we have reached the conclusion that whilst the criminal offending of this nature and seriousness can be evidence of a lack of integration, it is outweighed by the other factors that we had indicated which demonstrates his social and cultural integration in the UK demonstrated by his language, that he has spent all but six years in the UK (including his childhood and informative years) which we find to be a significant length of time. He has been educated from primary level to degree level within the educational system in the United Kingdom and his upbringing is equivalent to that of some who is British and we are satisfied that this is not a case where it can be said that he has been brought up within the Sierra Leonean community or diaspora in the United Kingdom. The evidence before us is that he has spent some of his formative years in foster care in placements which were not with carers from the Sierra Leone community and has lived with family members who are British citizens. There has been some dispute as to the relationship between the Appellant and his family members in the UK. Whilst his sister has not given evidence before us we have attached some weight to her written evidence and the chronology of the Appellant’s life events. Whilst they are both adults we are satisfied that their relationship should be viewed on the basis of their past history. Their life experience includes coming to the United Kingdom together as young children, they have experienced life in foster care and in that sense we find have extended their ties beyond that of normal siblings. On the evidence of the Appellant, which we accept, they have remained in close contact and we are satisfied that the relationship between him and his sister, husband and children remain a social and familial link relevant to integration in the United Kingdom.
65. There is no evidence that he has ever returned to Sierra Leone or that he has retained any cultural or social links with that country. His friendships and relatives are all in the United Kingdom. Such questions are fact sensitive and as such necessarily form part of the balancing exercise. We are therefore satisfied on balance that the Appellant is socially and culturally integrated in the United Kingdom.

Paragraph 399A(c)/ Exception 1(c):

“And that there would be very significant obstacles to his integration into the country to which it is proposed he is deported.”

66. In dealing with this issue we observe that we have not been provided with any guidance by either party as to what constitutes “very significant obstacles to his integration”. However we consider that by its nature the burden must be on the Appellant to demonstrate that there would be “very significant obstacles to his integration” and the use of the word “very” must require a high threshold.
67. We begin our assessment by considering the findings of fact made earlier in this decision. For the reasons given we have reached the conclusion on the evidence before us that the Appellant has no family, no familial links or friends in Sierra Leone. Mr Kandola in his submission accepted that were we to find that he had no such family in Sierra Leone, then that would be evidence to show that there were very significant obstacles to his integration. He did not advance any further submissions as to the evidence or any other factors relevant to this requirement.
68. It seems to us that notwithstanding a lack of family or relatives in the proposed country of integration, there may be other relevant factors which would or may outweigh this, for example, where the Appellant has social or cultural ties of a nature which would provide him with the basis of establishing a private life and thus integration in that country. We remind ourselves that there are many migrants who seek a new life in countries other than their own. In this context we weigh in the balance that the Appellant does not speak the language of Sierra Leone which is Krio. At page 37 of the Appellant’s bundle (Bundle B) it is stated that whilst the nationally recognised official language of Sierra Leone is English, it is primarily used only for business, government and media purposes. Krio is the language of the majority of people in Sierra Leone speak which is a form of pidgin English spoken with African words as well as Mende, Tamne and other local languages. All together there exist 23 active languages that are spoken in Sierra Leone. Sierra Leone has many different tribes who have their native languages or versions of languages which they primarily speak. Within the urban areas English is most widely used and recognised but because Sierra Leone is a highly contextualised society, many things in the language are not expressed, instead interpreted through non-verbal cues or cultural norms. Thus the Appellant, whilst having the advantage of speaking and understanding English, would not be able to understand the language of Krio. Whilst there may not be a linguistic obstacle “that is very significant” the evidence before us is that the Appellant has no cultural or social links with Sierra Leone in the light of his residence in the United Kingdom and given the age he left Sierra Leone. In this context we have considered the decision of Bossadi (Paragraph 276ADE; suitability: Ties) [2015] UKUT 0042 (IAC) which in turn made reference to the decision of YM (Uganda) v SSHD [2014] EWCA Civ 1292. In doing so we recognise that the authority the Upper Tribunal was dealing with was a different Immigration Rule namely 276ADE but the Tribunal gave consideration to what encompasses the issue of ties. The Tribunal cited Ogundimu (Article 8 – New Rules) (Nigeria) v SSHD. The

Tribunal concluded that the exercise should be a “rounded assessment of all the relevant circumstances” which are not confined to “social, cultural and family” issues.

69. There is no evidence before us that any family members in the UK have retained any links to Sierra Leone that would be able to assist or support the Appellant in any integration to that country. Importantly, as the country materials make reference to, there are 23 active languages spoken in Sierra Leone and that there are a number of different tribes within that country all of whom have their own native language or version of languages and that as Sierra Leone is a “highly contextualised society” and as such many things in language are not expressed but are interpreted through non-verbal cues or cultural norms. Thus it is not simply a matter of linguistic ability but the understanding of cultural norms that is important. There is no evidence before us that he would be able to integrate in Sierra Leone within that kind of cultural context.
70. We have also taken into account the country materials as to the circumstances in Sierra Leone. The country was severely affected by the Ebola epidemic which spread across West Africa. In July 2014 the President declared a state of emergency and passed the Public Emergency Regulations 2014 and other byelaws which were passed including a ban on public gatherings and restrictions on freedom of movement (see page 16 of Appellant’s bundle and the Amnesty International report 2014/15 for Sierra Leone). The information in the Appellant’s bundle does not go beyond that of 2014 and the Respondent has produced no country evidence concerning the circumstances in Sierra Leone currently and we understand from Mr Kandola that there is no Operational Guidance Note available for that country. The most recent information from IRIN demonstrates that the government in Sierra Leone continue to operate lock downs in a bid to combat Ebola and its spread whereby the population in Sierra Leone are required to remain in their homes for periods of up to three days; one took place in September 2014 and recently in March 2015. It is recorded that those lock downs have affected people’s livelihood and also the supply of food and water to those without homes. The evidence therefore points to continuing hardships in Sierra Leone and whilst we do not place significant weight on this, we find it has some relevance to the ability of this particular Appellant being able to integrate into Sierra Leone where he would be someone with no social, cultural or familial links with the country. Those are the kind of links that would enable a person to reintegrate and without them, based on the particular circumstances of this Appellant which we have set out at length, demonstrate in our judgment that when taken together are very significant obstacles. As we have observed such cases are highly fact sensitive and in carrying out a balancing exercise we have reached the conclusion on the balance that this particular Appellant has demonstrated that there are very significant obstacles to his reintegration into Sierra Leone for the reasons that we have given.
71. Parliament has set out in the legislation the exceptions to deportation on the basis of private life in paragraph 399A of the Immigration Rules (and S117C (4))which can only apply to those who have been sentenced to a period of imprisonment of less

than four years, as has this Appellant. Consequently all three requirements of paragraph 399A(a) – (c) or Exception 1 (a)-(c) must be met and if so, Parliament has stated that the public interest in deportation is outweighed as Paragraph A362 makes it clear that in criminal deportation cases a claim under Article 8 ECHR “*will only succeed*” where the provisions of the new Rules are satisfied. We have therefore carried out a careful balance of those considerations taking account of the public interest in deportation. Under the new statutory regime, Parliament has recognised that the public interest does not require the deportation of certain foreign criminals. Consequently for the reasons that we have given, we have reached the conclusion that Exception 1 (a)-(c) and paragraph 399A(a)-(c) have been satisfied and that his deportation is disproportionate. In terms of the Immigration Rules, and giving effect to paragraph A362 of the Rules, we conclude that the case made under Article 8 ECHR succeeds under this regime for the reasons we have given.

Decision:

72. The decision is re-made as follows; the appeal is allowed.

73. Anonymity direction not made.

Signed

Date **22nd April 2015**

Upper Tribunal Judge Reeds

“APPENDIX A”



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: DA/01678/2013

THE IMMIGRATION ACTS

Heard at Field House
On 21st January 2015

Decision & Reasons Promulgated

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Before

UPPER TRIBUNAL JUDGE GOLDSTEIN
UPPER TRIBUNAL JUDGE REEDS

Between

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

MR ALUSINE KAMARA
(ANONYMITY DIRECTION NOT MADE)

Respondent

Representation:

For the Appellant: Mr Tarlow, Home Office Presenting Officer
For the Respondent: Mrs Mustapha

DECISION AND DIRECTIONS

74. This is an appeal by the Secretary of State against the decision of the First-tier Tribunal (Judge Lobo) who, in a determination promulgated on 7th October 2014, allowed the appeal of the Respondent against the decision of the Secretary of State to

make a deportation order against him by virtue of Section 32(5) of the UK Borders Act 2007.

75. Whilst the Secretary of State is the Appellant in this appeal, for the sake of convenience we will refer to the parties as they were before the First-tier Tribunal.
76. The Appellant is a national of Sierra Leone and was born on 29th September 1987. His immigration history can be briefly summarised. He arrived in the United Kingdom on 23rd October 1993 at the age of 6 having been brought to the United Kingdom with his 8 year old sister by his half sister Mrs Kamara, who had indefinite leave to remain in the United Kingdom. It was claimed that the Appellant's father had died in Sierra Leone. On 30th August 1995 the Appellant and his sister were granted indefinite leave to remain in the United Kingdom as dependants of their half sister, Mrs Kamara.
77. The Appellant is the subject of a deportation order as a result of his conviction on 10th October 2011 at Maidstone Crown Court for possession of a controlled drug with intent to supply, namely Class A crack cocaine and failing to surrender to custody at an appointed time. He was sentenced to a period of three years and six months' imprisonment.
78. The relevant parts of the sentencing remarks of His Honour Judge Carey, in which he described the drug related offence as "very serious" stated:-

"... I sentence you on the basis that you were in possession of these drugs voluntarily; that you had them in order to make money from them; and that the telephone was in your possession, which was plainly one which was being used by somebody dealing in drugs, was the telephone which you were in possession of not as a carrier, but as a user of the phone. The calls recorded or rather taken by the police ... are entirely consistent with you supplying Class A drugs to others I judge that you were simply concerned to make money ... This is Class A drugs supply. The courts regard it as very serious ... Moreover, your position is made the more serious because you already have a conviction for possession of crack cocaine with intent to supply."
79. This is not the first time that the Appellant had been convicted of criminal offences relating to supply of Class A drugs as in 2008 he had been convicted at Southwark Crown Court of possession with intent to supply Class A crack cocaine and Class A heroin and had received a community order on both counts requiring 30 hours of unpaid work. On 23rd July 2010 he was convicted at the same court for failing to comply with the requirement of a community order and was given an additional seven hours unpaid work requirement.
80. The Appellant relies upon the exception to be found in Section 33 of the UK Borders Act 2007 that his removal pursuant to the deportation order will breach his rights under Article 8 of the ECHR.
81. In terms of chronology, the Appellant appealed the decision and it came before the First-tier Tribunal panel (Judge Tipping and Mrs M Padfield JP) on 5th December 2013 who allowed the appeal. The Secretary of State sought permission to appeal

that decision and in a determination promulgated on 17th April 2014, Upper Tribunal Judge Eshun found that there were errors of law in the decision of the First-tier Tribunal panel and set aside the decision. The judge remitted the appeal to be re-heard before the First-tier Tribunal which took place on 26th September 2014 before Judge Lobo, whose decision forms the basis of this second appeal by the Secretary of State.

82. In a determination promulgated on 7th October 2014 the judge allowed the appeal. For reasons that we shall explain, it was not clear from the determination of the judge upon what basis he allowed the appeal having found that paragraphs 399 and 399A did not apply but then went on to find that Exception 1 as set out in Section 117 did apply. The judge found that Exception 1 applied because the Appellant had been lawfully resident in the United Kingdom for most of his life, that he was socially and culturally integrated into the United Kingdom and because there were “very significant obstacles to his integration into the life of Sierra Leone”. He reached that conclusion at [63] having found that he arrived in the UK at the age of 6 and was now 27, he had been educated in the United Kingdom and that the way he spoke and carried himself was as a “south Londoner” and that he had no friends or family in Sierra Leone, he did not speak the Patwa and his culture was that of a British person and that he has not been in Sierra Leone since he was 6. The judge went on to consider the crime that had been committed but reached the conclusion that the danger to society by the Appellant committing his crime could be gauged by looking at the sentence he received in relation to the sentences that were possible and contrasted the range of sentences being between a community order and sixteen years in custody to the sentence he received of three and a half years. He considered that he had lived in the United Kingdom for 21 years and only began his offending when he had lived in the UK for a considerable period of time. He took into account his co-operation with the Probation Service and his behaviour in prison and that he had not re-offended.
83. The Secretary of State sought permission to appeal that decision and permission was granted by First-tier Tribunal Judge Page on 22nd October 2014 stating:-

“The Grounds of Appeal identified an arguable error of law in that when the judge considered the provisions of the Immigration Rules no consideration was given to the deportation provisions of the Immigration Rules that had been amended by the Immigration Act 2014. At paragraphs 26-29 the judge set out “the legal framework of this appeal” but nowhere in that section is any reference made to the 2014 Act which applies to all appeals heard on or after 28th July 2014 irrespective of when the application for the immigration decision was made. As the Respondent has raised an arguable error of law permission to appeal is granted.”
84. The appeal came before the Upper Tribunal for us to decide whether or not the determination of the First-tier Tribunal contained an error or errors on a point of law such as may have materially affected the outcome of the appeal.
85. Mr Tarlow, who appeared on behalf of the Secretary of State relied upon the grounds as drafted and in his oral submissions directed us to the determination to

demonstrate that the judge had not considered the correct legislative framework and the statutory regime that he should apply. He submitted that there was a contradiction in the determination at paragraph 52 and at 54 where he found that paragraphs 399 and 399A did not apply but then went on to find that Exception 1 applied. He submitted that looking at the determination the First-tier Tribunal judge had misdirected himself in law as to the provisions he should apply and thus reached the conclusion that he may not have come to had he not made that error. In relation to Exception 1 at paragraph 63 of the determination, he submitted that as he did not give adequate reasons for finding that Exception 1 applied, and even if he had properly considered the Appellant's lawful residence there was no proper consideration of the issue of whether there were "very significant obstacles to his integration into the life of Sierra Leone".

86. Mrs Mustapha relied upon a Rule 24 response that she had provided, on the basis that the First-tier Tribunal did not make any error of law and that the Tribunal had properly considered the provisions of the Immigration Rules relevant to deportation including Section 117 at paragraphs 19 to 21 of the determination and thus properly considered and applied the facts of the case to the applicable law. It was submitted that the judge did consider the 2014 Act and that this was a determination that was clear and well reasoned.
87. When beginning her oral submissions she stated that she agreed with Judge Lobo that paragraph 399A did not apply because at the time of the hearing he had not spent in excess of twenty years in the United Kingdom. However when we queried this having referred to the Rules that were in force at the date of the hearing which had changed the requirements of paragraph 399A, she conceded that the judge in fact was in error and that he had applied the old 2012 version of the Rules rather than the new Rules that were in force on 28th July 2014. Nonetheless she submitted that even if that was an error of law the conclusion that he came to in relation to Exception 1 was sustainable in that the judge had given sufficient reasons to demonstrate that Exception 1 applied. It was submitted that the decision was a safe and sustainable one. She submitted that the judge had given adequate reasons.
88. In answer to a question from the panel and the evident conflict in the evidence concerning whether or not the appellant had a family in Sierra Leone, she referred us to paragraph 63 but could not refer us to anywhere in the decision where the judge made a finding on this conflict in the evidence. She accepted that a finding on this issue would be very important, but submitted that the decision was nonetheless safe and sustainable and that the error on the face of the determination was insufficient to vitiate the determination when looked at as a whole.

Our Assessment

89. We have given careful consideration to the grounds advanced by the Secretary of State and the submissions made by way of response by Mrs Mustapha. We have concluded that the determination of the First-tier Tribunal does disclose material

errors of law and the correct application of the legal principles that should have been applied to this appeal following the changes that came into effect on 28th July 2014.

90. The appeal was heard by the First-tier Tribunal on 26th September 2014 by which time Section 19 of the 2014 Act introduced into the Nationality, Immigration and Asylum Act 2002 a new Part 5A containing new Sections 117A-D. The new part is headed "Article 8 of the ECHR: Public Interest Considerations". Sections 117A-D set out statutory guidelines that must be applied when a court or tribunal has to decide whether an immigration decision to remove someone from the UK would be in breach of his Article 8 rights. Section 117A is headed "Application of this Part"; Section 117B is headed "Article 8 public interest considerations in all cases" and 117C is headed "Article 8 additional considerations in cases involving foreign criminals".

91. They provide as follows:-

117A *Application of this Part*

- (1) This Part applies where a court or tribunal is required to determine whether a decision made under the Immigration Acts –
 - (a) breaches a person's right to respect for private and family life under Article 8, and
 - (b) as a result would be unlawful under section 6 of the Human Rights Act 1998.
- (2) In considering the public interest question, the court or tribunal must (in particular) have regard –
 - (a) in all cases, to the considerations listed in section 117B, and
 - (b) in cases concerning the deportation of foreign criminals, to the considerations listed in section 117C.
- (3) In subsection (2), "the public interest question" means the question of whether an interference with a person's right to respect for private and family life is justified under Article 8(2).

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

- (1) The maintenance of effective immigration controls is in the public interest.
- (2) It is in the public interest, and in particular in the interests of the economic well-being of the United Kingdom, that persons who seek to enter or remain in the United Kingdom are able to speak English, because persons who can speak English –
 - (a) are less of a burden on taxpayers, and
 - (b) are better able to integrate into society.

- (3) It is in the public interest, and in particular in the interests of the economic well-being of the United Kingdom, that persons who seek to enter or remain in the United Kingdom are financially independent, because such persons –
 - (a) are not a burden on taxpayers, and
 - (b) are better able to integrate into society.
- (4) Little weight should be given to –
 - (a) a private life, or
 - (b) a relationship formed with a qualifying partner, that is established by a person at a time when the person is in the United Kingdom unlawfully.
- (5) Little weight should be given to a private life established by a person at a time when the person's immigration status is precarious.
- (6) In the case of a person who is not liable to deportation, the public interest does not require the person's removal where –
 - (a) the person has a genuine and subsisting parental relationship with a qualifying child, and
 - (b) it would not be reasonable to expect the child to leave the United Kingdom.

117C *Article 8 additional considerations in cases involving foreign criminals.*

- (1) The deportation of foreign criminals is in the public interest.
- (2) The more serious the offence committed by a foreign criminal, the greater is the public interest in deportation of the criminal.
- (3) In the case of a foreign criminal ("C") who has not been sentenced to a period of imprisonment of four years or more, the public interest requires C's deportation unless Exception 1 or Exception 2 applies.
- (4) Exception 1 applies where –
 - (a) C has been lawfully resident in the United Kingdom for most of C's life,
 - (b) C is socially and culturally integrated in the United Kingdom, and
 - (c) there would be very significant obstacles to C's integration into the country to which C is proposed to be deported.
- (5) Exception 2 applies where C has a genuine and subsisting relationship with a qualifying partner, or a genuine and subsisting parental relationship with a qualifying child, and the effect of C's deportation on the partner or child would be unduly harsh.
- (6) In the case of a foreign criminal who has been sentenced to a period of imprisonment of at least four years, the public interest requires deportation

unless there are very compelling circumstances, over and above those described in Exceptions 1 and 2.

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

117D Interpretation of this Part

- (1) In this Part –

"Article 8" means Article 8 of the European Convention on Human Rights;

"qualifying child" means a person who is under the age of 18 and who –

- (a) is a British citizen, or
- (b) has lived in the United Kingdom for a continuous period of seven years or more;

"qualifying partner" means a partner who –

- (a) is a British citizen, or
- (b) who is settled in the United Kingdom (within the meaning of the Immigration Act 1971 – see section 33(2A) of that Act).

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

- (a) who is not a British citizen,
- (b) who has been convicted in the United Kingdom of an offence, and
- (c) who –
 - (i) has been sentenced to a period of imprisonment of at least 12 months,
 - (ii) has been convicted of an offence that has caused serious harm, or
 - (iii) is a persistent offender.

- (3) For the purposes of subsection (2)(b), a person subject to an order under –

- (a) section 5 of the Criminal Procedure (Insanity) Act 1964 (insanity etc),
- (b) section 57 of the Criminal Procedure (Scotland) Act 1995 (insanity etc), or
- (c) Article 50A of the Mental Health (Northern Ireland) Order 1986 (insanity etc), has not been convicted of an offence.

- (4) In this Part, references to a person who has been sentenced to a period of imprisonment of a certain length of time –

- (a) do not include a person who has received a suspended sentence (unless a court subsequently orders that the sentence or any part of it (of whatever length) is to take effect);
 - (b) do not include a person who has been sentenced to a period of imprisonment of that length of time only by virtue of being sentenced to consecutive sentences amounting in aggregate to that length of time;
 - (c) include a person who is sentenced to detention, or ordered or directed to be detained, in an institution other than a prison (including, in particular, a hospital or an institution for young offenders) for that length of time; and
 - (d) include a person who is sentenced to imprisonment or detention, or ordered or directed to be detained, for an indeterminate period, provided that it may last for at least that length of time.
- (5) If any question arises for the purposes of this Part as to whether a person is a British citizen, it is for the person asserting that fact to prove it."

19. The 2012 Rules were modified by *Statement of Changes to the Immigration Rules of 10 July 2014 (HC 532)* which were laid before Parliament on 10 July 2014. We have set out below the relevant 2012 Rules, as amended by the 2014 Rules. We have put the new 2014 provisions in square brackets and we have crossed through the provisions of the 2012 Rules which are deleted by the 2014 Rules, in the hope that both the 2012 Rules and the 2014 Rules modifications can be plainly seen:

A362. Where Article 8 is raised in the context of deportation under Part 13 of these Rules, the claim under Article 8 will only succeed where the requirements of these rules as at [28 July 2014] are met, regardless of when the notice of intention to deport or the deportation order, as appropriate, was served.

...

397. A deportation order will not be made if the person's removal pursuant to the order would be contrary to the UK's obligations under the Refugee Convention or the Human Rights Convention. Where deportation would not be contrary to these obligations, it will only be in exceptional circumstances that the public interest in deportation is outweighed.

[A.398. These rules apply where:

- (a) a foreign criminal liable to deportation claims that his deportation would be contrary to the United Kingdom's obligations under *Article 8* of the Human Rights Convention;
- (b) a foreign criminal applies for a deportation order made against him to be revoked.]

398. Where a person claims that their deportation would be contrary to the UK's obligations under Article 8 of the Human Rights Convention, and

- (a) the deportation of the person from the UK is conducive to the public good [and in the public interest] because they have been convicted of an offence for which they have been sentenced to a period of imprisonment of at least four 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, ~~it will only be in exceptional circumstances that the public interest in deportation will be outweighed by other factors~~ [the public interest in deportation will only be outweighed by other factors where there are very compelling circumstances over and above those described in paragraphs 399 and 399A.]

399. This paragraph applies where paragraph 398(b) or (c) applies if -

- (a) the person has a genuine and subsisting parental relationship with a child under the age of 18 years who is in the UK and
 - (i) the child is a British citizen; or
 - (ii) the child has lived in the UK continuously for at least the seven years immediately preceding the date of the immigration decision; and in either case
 - (a) ~~it would not be reasonable to expect the child to leave the UK~~ [it would be unduly harsh for the child to live in the country to which the person is to be deported]; and
 - (b) ~~there is no other family member who is able to care for the child in the UK~~ [it would be unduly harsh for the child to remain in the UK without the person who is to be deported]; or
- (b) the person has a genuine and subsisting relationship with a partner who is in the UK and is a British citizen, [or] settled in the UK, ~~or in the UK with refugee leave or humanitarian protection~~, and
 - (i) ~~the person has lived in the UK with valid leave continuously for at least the 15 years immediately preceding the date of the immigration decision (discounting any period of imprisonment) and~~
 - (ii) ~~there are insurmountable obstacles to family life with that partner continuing outside the UK~~

- [(i) the relationship was formed at a time when the person (deportee) was in the UK lawfully and their immigration status was not precarious; and
- (ii) it would be unduly harsh for that partner to live in the country to which the person is to be deported because of compelling circumstances over and above those described in paragraph EX.2 of Appendix FM; and
- (iii) it would be unduly harsh for that partner to remain in the UK without the person who is to be deported].

399A. This paragraph applies where paragraph 398(b) or (c) applies if -

- ~~(a) the person has lived continuously in the UK for at least 20 years immediately preceding the date of the immigration decision (discounting any period of imprisonment) and he has no ties (including social, cultural or family) with the country to which he would have to go if required to leave the UK; or~~
- ~~(b) the person is aged under 25 years, he has spent at least half of his life living continuously in the UK immediately preceding the date of the immigration decision (discounting any period of imprisonment) and he has no ties (including social, cultural or family) with the country to which he would have to go if required to leave the UK.~~

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

399B. ~~Where paragraph 399 or 399A applies limited leave may be granted for periods not exceeding 30 months. Such leave shall be given subject to such conditions as the Secretary of State deems appropriate. Where a person who has previously been granted a period of leave under paragraph 399B would not fall for refusal under paragraph 322(1C), indefinite leave to remain may be granted.~~

20. Paragraph 7.2 stated, in part:

"...The rules will set proportionate requirements that reflect the Government and Parliament's view on how individuals' *article 8* rights should be qualified in the public interest to safeguard the economic well-being of the UK by controlling immigration and to protect the public against foreign criminals. This will mean that failure to meet the requirements of the rules will normally mean failure to establish an *article 8* claim to enter or remain in the UK and no grant of leave on that basis. Outside exceptional cases, it will be proportionate under *article 8* for an applicant who fails to meet the requirements of the rules to be removed from the UK".

21. An explanatory memorandum was also attached to the Statement of Changes made to create the 2014 Rules. Paragraphs 3.4 , 3.5 and 4.7 provide:

"3.4. The changes relating to family and private life will come into force on 28 July 2014, in line with the commencement of section 19 of the Immigration Act 2014. The Home Office regrets that it was not possible to finalise this Statement of Changes on a basis that, consistent with normal practice, would have allowed the changes to be laid at least 21 days prior to their coming into force. This is because many of the changes to the Immigration Rules need to coincide with the coming into force of sections 17(3) and 19 of the Immigration Act 2014 on 28 July 2014.

3.5. However, the substance of those changes which concern the alignment of the Immigration Rules relating to family and private life with sections 117B, 117C and 117D of the Nationality, Immigration and Asylum Act 2002, inserted by section 19 of the 2014 Act, along with section 94B of the Nationality, Immigration and Asylum Act 2002, were extensively debated by both Houses of Parliament during the passage of the Immigration Act.

4.7. The changes set out in paragraphs 14 to 30 of this statement take effect on 28 July 2014 and apply to all ECHR Article 8 claims from foreign criminals which are decided on or after that date."

22. So far as the new Part 5A in the 2002 Act is concerned, Section 117A-D was in force on 28th July 2014. The decision of the Court of Appeal in **YM (Uganda) vs SSHD [2014] EWCA Civ 1292** clarified the statutory framework to be applied and concluded that both the 2014 Act and the new Rules which the Act underpins must be considered in all cases after 28th July 2014 (see paragraph 38 of that decision).

23. The judge set out what he considered to be the correct legal principles at various points in the determination. He began with a side heading "Law, Burden of Proof, Standard of Proof" at [5-17] of the determination and set out a number of matters. Whilst he made a reference at [16] that it was necessary to keep in mind the provisions of Section 117B of the 2002 Act and in appeals about deportation Section 117C, earlier in the section, he erroneously referred to the Rules as they were before the changes made in July 2014 and directed himself at [9]:

"9. The Secretary of State in assessing whether deportation would be contrary to the UK's obligations under Article 8, will consider whether paragraphs 399 or 399A apply, and if they do not, it will only be in exceptional circumstances that the public interest in deportation will be outweighed by other factors."

We observed that he went on to consider what constituted "exceptional circumstances" applying the decision in **Kabia**. It is therefore plain from the determination that he erred in law in that he sought to apply the Rules as they were before the changes made in July 2014.

24. The judge returned to the law at [26] and whilst he made reference to automatic deportation, no reference was made to the legislative framework that should apply to the circumstances of the Appellant.
25. This erroneous approach can be further exemplified by his conclusions on the Rules at [52] and [54]. At [52] under the heading "Paragraphs 399 and 399A" he recorded "The appellant has no children, is not married and is not in a relationship". The obvious error here is that whilst this may be true of paragraph 399, paragraph 399A which deals with private life, was at the heart of this Appellant's claim. He went on to state under the heading "Part 3: Applying the facts to the law" at [54] "As paragraphs 399 and 399A do not apply, it is only in exceptional circumstances that the presumption in favour of deportation will be outweighed by other factors" and at [56] he made further reference to exceptional circumstances. And at [58] considered that the "evidence showed that the appellant enjoyed a private life in the United Kingdom". He went on to set out the public interest considerations at Section 117C(iii) and then went on to make a finding that Exception 1 applied at [63].
26. It is plain that the judge did not properly approach the decision that he was making within the correct legal framework and appeared to be deciding the appeal by reference to the wrong Rules and the wrong test (that is the old 2002 Rules and exceptional circumstances) and had misunderstood that paragraph 399A (which he said did not apply) was in effect reflected in Section 117C(4) dealing with the issues of private life.
27. Mrs Mustapha began her submissions by stating that the judge was right that paragraph 399A did not apply because he had not accrued twenty years in the United Kingdom and discounted the time spent in prison. However after we questioned that in the light of the changes of the Rules, she conceded that the judge should have applied the 2014 Rules and that was an error but in effect, it was not material, because he then went on to consider whether the Appellant met Exception 1. In this regard she submitted that he gave adequate reasons and made no legal error on the facts before him and gave sufficient reasons to reach that conclusion.
28. We do not agree with that submission and prefer that of Mr Tarlow, who submitted that the misdirection in law was further compounded by his failure to properly apply the matters identified in Exception 1 and provide adequate and sustainable reasons for reaching such a conclusion.
29. Exception 1 sets out three criteria (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 his integration into the country to which C is proposed to be deported. All three are cumulative and if one of the three considerations is not met, Exception 1 cannot apply.
30. The judge considered Exception 1 at [63]. Whilst there was a consideration of his length of residence the Appellant having arrived in the UK at the age of 6 and now at the age of 27 have been in the UK for 21 years, it cannot be said that the judge did not consider (a). However we find that he did not give any or any adequate

reasons as to why the Appellant was socially and culturally integrated into the UK. The judge identified that he spoke English and had been educated in the UK and spoke and carried himself as a “south Londoner” but there do not appear to be any considerations of his social integration in the UK beyond those matters. Whilst neither party either before us or before the First-tier Tribunal provided any guidance as to what this might encompass, we consider that as a starting point the factors highlighted in Section 117B are directly relevant to integration including language and financial self-sufficiency. His ability to speak English does not by itself point to integration as English is the language of Sierra Leone (see COI Report paragraph 40 of the refusal letter). When considering that issue a relevant consideration absent from the judge’s findings would be the course of criminal conduct that the appellant had embarked upon for which he had had two convictions of possession with intent to supply Class A drugs, to make money from them and supply them to the community. Such conduct points to a significant degree of anti-social behaviour which cannot be seen as a measure of integration in terms of the application of Section 117(4)(b) to the appellant’s particular circumstances.

31. As to the third consideration there will be “very significant obstacles to his integration into the country to which he is proposed to be deported” at [63], the judge concluded that the appellant had no friends or family in Sierra Leone, had been in the UK since he was 6 and his culture was that of a British person. We have referred to language previously and that English is the main language in Sierra Leone. Therefore that could not by itself constitute a “very significant obstacle”. The appellant’s cultural connections via his family relationships in the UK were not considered and the judge appeared to proceed on the basis that he had no family in Sierra Leone. We asked Mrs Mustapha if she could identify for us where in the determination the judge made a finding on the disputed evidence concerning whether or not he had family members. The OASys Report at AB45 stated that his mother lived in Sierra Leone. She directed us to paragraph 63 but that was the judge simply reciting that he had no family but there was no finding upon the issue. This was an issue identified by Upper Tribunal Judge Eshun at paragraph 7 when she set aside the decision of the panel in April 2014 and thus it was incumbent on the judge to make a reasoned finding on this issue. Mrs Mustapha agreed that this was an important issue in re-integration. Thus we conclude that the judge did not properly consider or apply the considerations applicable to Exception 1.
32. We also observe that where the judge purportedly considered the offence committed when considering the public interest considerations at [66] he sought to consider the dangers to community by contrasting the sentence he received that being one of three and a half years’ imprisonment against the range of sentences for those offences rather than considering the sentencing remarks of the judge and his antecedent history which gave the circumstances of the offence, its seriousness and the fact that it was a second offence for the supply of Class A drugs.

33. In the circumstances we consider that the determination does contain errors of law as identified above which are material to the outcome of the appeal.
34. We take into account the observations made by Mrs Mustapha that this is the second appeal by the First-tier Tribunal and in those circumstances we consider that having regard to its history and the nature of the errors found, that the appeal should not be remitted to the First-tier Tribunal but should remain with the Upper Tribunal to be re-made. By reason of the nature of the error which went to the findings of fact alongside the wrong application of the legal principles, we consider that the Appellant would be required to give oral evidence and the hearing to take place before the Upper Tribunal in accordance with the directions accompanying this decision. We therefore set aside the decision with none of the findings of the First-tier Tribunal preserved to be re-made afresh on a date to be fixed.
35. Anonymity direction not made.

Signed

Date 4/2/2015

Upper Tribunal Judge Reeds