



**Upper Tribunal  
(Immigration and Asylum Chamber)**

Appeal Number: DA/00722/2014

**THE IMMIGRATION ACTS**

**Heard at Field House  
On 10 November 2014**

**Decision Promulgated  
On 4 December 2014**

**Before**

**UPPER TRIBUNAL JUDGE O'CONNOR**

**Between**

**STEVE MOSES  
(ANONYMITY DIRECTION NOT MADE)**

Appellant

**and**

**THE SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Respondent

**Representation:**

For the Appellant: In person

For the Respondent: Mr I Jarvis, Senior Presenting Officer

**DECISION AND REASONS**

**Introduction**

1. The appellant is a citizen of Malawi born on 2 May 1976. He appealed to the First-tier Tribunal against the respondent's decision of 17 April 2014 to make a deportation order against him.
2. By any stretch of the imagination the appellant is a persistent criminal offender. The First-tier Tribunal set out his convictions in paragraph 40 of its determination - a task that took approximately two and a half pages. I do not recite again herein those convictions but observe that the first recorded conviction was for theft from a dwelling in 1995, for which the appellant received a conditional discharge. The appellant thereafter appears to have been convicted of one or more offences in each of the subsequent years. For the most part these offences were dealt with by sentences that did not involve the appellant being imprisoned, although

he was imprisoned in 1999 for eighteen months<sup>1</sup>, in 2002 for twelve months<sup>2</sup> and in September 2010 for twelve weeks and six weeks to run concurrently<sup>3</sup>.

3. The respondent made the decision to deport the appellant following his conviction on 3 July 2013 for theft (for which sentenced to 6 months imprisonment), assault occasioning actual bodily harm (for which he was sentenced to 6 months imprisonment to run consecutively) and 18 counts of making false representations to make gain for self or another to cause loss to other, with 33 other offences taken into account (for which the appellant was sentenced to 6 months imprisonment, also to run consecutively).
4. The First-tier Tribunal<sup>4</sup> dismissed the appellant's appeal on all grounds in a determination signed on the 15 July 2014.

### **Permission to appeal - Preliminary matter**

5. The appellant made an application for permission to appeal to the Upper Tribunal in grounds drawn in his own hand. First-tier Tribunal Judge J M Holmes granted permission to appeal in a decision of 8 August 2014.
6. It is plain that Judge Holmes made an 'accidental slip' when granting permission to appeal, given that the entirety of his reasoning supports a contrary conclusion i.e. that permission to appeal should be refused. Indeed, in the last paragraph of his reasoning Judge Holmes says as follows:

"I can identify no arguable error of law in the determination likely to lead to Upper Tribunal setting aside the decision on the appeal and remaking it".
7. Nevertheless, Judge Holmes headed the document "Permission to appeal is granted" and thus the administrations of both the First-tier, and Upper, Tribunals, properly, treated this as a grant of permission.
8. At the outset of the hearing before me Mr Jarvis submitted that given that there had plainly been an administrative slip by Judge Holmes, the Upper Tribunal should rectify this by amending the document purporting to grant permission so as to remove the word "grant" and add the word "refuse".
9. Even if I had power to make such an amendment, which would require me sitting as a First-tier Tribunal Judge in order to do so, I do not take such a course of action in this appeal. The appeal is now before the Upper Tribunal, the appellant is not legally represented and he has been given no notice of such application. No satisfactory explanation has been provided as to why the application was made by the Secretary of State at the last

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<sup>1</sup> Five offences of obtaining property by deception; two of attempting to obtain property by deception, one offence of handling stolen goods and breaching of a community service order.

<sup>2</sup> Five offences of obtaining property by deception.

<sup>3</sup> Making false representations to make gain for himself on four occasions.

<sup>4</sup> First-tier Tribunal Judge Colyer and MR GF Sandall (non-legal member)

possible moment, on the day of the hearing. In all the circumstances I conclude that it is in the interests of justice that Mr Moses' appeal be heard by the Upper Tribunal.

### **Decision on Error of Law**

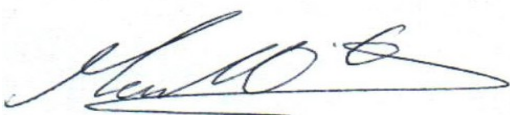
10. I heard lengthy submissions from Mr Moses as to why the determination of the First-tier Tribunal ought to be set aside. It is to be appreciated that Mr Moses has little if any legal knowledge and certainly no knowledge of the jurisdiction of the Upper Tribunal. To this end I provided what assistance I could to him in an attempt to focus the clear concerns he has over the respondent's decision to deport him, and the determination of the First-tier Tribunal upholding such decision.
11. Mr Moses was keen to emphasise that the First-tier Tribunal had reached the wrong conclusion on almost every aspect of its decision making process. He particularly expressed that:
  - (i) He disagreed with the Tribunal's conclusions as to the extent of his relationships with his various family members, and most particularly his children. In this regard he produced additional evidence that had not been placed before the First-tier Tribunal in order to support the assertion that he had good relations with his children;
  - (ii) He has significant ties to the United Kingdom, which were not properly taken into account by the Tribunal;
  - (iii) The Tribunal was wrong not to accept that he had lived in the United Kingdom for 30 years;
  - (iv) He disagreed with the Tribunal's assessment as to the risk of him re-offending - observing when doing so that he has undertaken a significant number of courses during his time in detention;
  - (v) The Tribunal had failed to pay adequate regard to the fact that he had become a police informant, which had resulted in the arrest of a number of corrupt police officers, and;
  - (vi) The Tribunal had been wrong in its consideration of his medical problems, and in particular in its conclusion that medical treatment would be available for him in Malawi.
12. The appellant further set out the circumstances underpinning the numerous convictions he had acquired for breaching a non-molestation order taken out against him by his former wife.
13. Turning then to the First-tier Tribunal's determination. This is a lengthy document running to 33 pages. The Tribunal carefully set out the evidence relied upon by the parties and then addressed the relevant issues sequentially.

14. The appellant's immigration history is set out in paragraphs 32 to 37 of the determination. Contrary to the appellant's understanding of both the respondent's position and the First-tier Tribunal's conclusions, it is not in dispute that he arrived in the United Kingdom in 1984, when he would have been just under eight years old. This is confirmed in paragraphs 73(ii) and 96 of the First-tier Tribunal's determination. It was accepted by the respondent that the appellant was granted Indefinite Leave to Remain on 27 April 1999 and the First-tier Tribunal did not go behind this concession.
15. As identified above, the First-tier Tribunal thereafter set out the appellant's offending history in some detail. There is no dispute as to the accuracy of such record. This was immediately followed in the determination by the Tribunal setting out of an extract from the criminal judge's sentencing remarks of 3 July 2013.
16. Within paragraphs 42 to 46 of its determination the Tribunal identify circumstances relevant to its assessment of the risk of the appellant re-offending. Contrary to the appellant's assertions, this included his co-operation with the police. The Tribunal were entitled to conclude, on all of the available evidence, that there remains a significant risk of the appellant re-offending. The appellant's submissions on this issue are no more than a disagreement with the Tribunal's conclusions and do not disclose an error of law.
17. The First-tier Tribunal also undertook a careful analysis of the appellant's relationship with his wife [51-52], his current partner [53-58] and his children [59-68]. It cannot be said that the Tribunal failed to take into account any relevant evidence when coming to its conclusions as to the extent of these relationships.
18. The evidence that the appellant provided to the Upper Tribunal regarding such relationships was not before the First-tier Tribunal and, consequently, the First-tier Tribunal cannot be said to have erred in not taking it in to account. In addition, it is not evidence of a type that could be said to demonstrate that the First-tier Tribunal made mistakes of fact amounting to an error of law. The First-tier Tribunal accepted that the appellant had postal contact with his eldest daughter [63] and it was to this fact that the additional evidence provided to the Upper Tribunal primarily went.
19. Although the Tribunal made no mention of Section 55 of the 2009 Act and the best interests of the children, it did conclude that "*on the information before [it] it would appear that there is little prospect of the appellant having significant access and care of any of the children*". In my conclusion given this finding it cannot be said that the failure of the Tribunal to make specific mention of the best interests of the children is a matter capable of affecting the outcome of the appeal.
20. Looking for myself at the all the evidence that was before the First-tier Tribunal I find that its conclusions as to the extent of the appellant's

various relationships with his children were rational and I would have come to exactly the same conclusions on such evidence.

21. The First-tier Tribunal also carefully and cogently considered the relevance of the appellant's medical issues [paragraphs 78-85], his private life in the United Kingdom [paragraphs 86-102] and the circumstances that he might be faced with upon return to Malawi [paragraphs 103-104]. There is nothing in its consideration of any of these matters that can be said to amount to an error of law capable of affecting the outcome of the appeal. In particular, it was open for the Tribunal on the evidence before it to conclude that appropriate medical treatment would be available to the appellant in Malawi. Although the appellant put additional evidence in relation to this issue before the Upper Tribunal, such evidence does not lead me to conclude that the First-tier Tribunal's determination contains an error of law requiring it to be set aside.
22. Given that the appellant was not legally represented I considered for myself whether there are any obvious errors in the First-tier Tribunal's determination that ought to lead to me setting it aside. Although I was initially troubled by the Tribunal's misdirection in relation to the ECtHR's decision in Maslov v Austria (1638/03)<sup>5</sup> I, nevertheless, find on the facts of this case that such misdirection is not one capable of affecting the outcome of the appeal. In coming to this conclusion I observe that the Tribunal immediately thereafter properly directed itself to, and applied, the "Uner criteria".
23. In summary, it is clear that the First-tier Tribunal took great care over this decision. It came to conclusions which were open to it on all of the available evidence, taking into account all material matters and not failing to take into account any matter that could have been material to the outcome of the appeal. The reasons it gives are clear and cogent and the appellant is perfectly capable of understanding from those reasons why it is that the First-tier Tribunal dismissed his appeal. The new evidence that has been placed before me does not lead me to conclude that the First-tier Tribunal erred in law. If the appellant wishes to rely further upon this additional material the most appropriate course would be for him to make an application to the Secretary of State to revoke the deportation order.
24. For all these reasons I find that the First-tier Tribunal's determination is to stand.

Signed:



Upper Tribunal Judge O'Connor  
Date: 21 November 2014

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<sup>5</sup> Paragraph 72 of the First-tier Tribunal's determination.

