



Upper Tribunal  
(Immigration and Asylum Chamber)

Appeal Number: HU/02036/2016

**THE IMMIGRATION ACTS**

Heard at Manchester  
On 11<sup>th</sup> May 2018

Decision & Reasons Promulgated  
On 29<sup>th</sup> May 2018

Before

THE HON. MR JUSTICE LANE, PRESIDENT

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

MR MD JAHANGIR AHMED CHOWDHURY  
(ANONYMITY DIRECTION NOT MADE)

Respondent

**Representation:**

For the Appellant: Mr Bates, Home Office Presenting Officer

For the Respondent: Mr Khan, Counsel, instructed by Lawmans Solicitors

**DECISION AND REASONS**

1. This is an application made by the Secretary of State for the Home Department to appeal the decision of First-tier Tribunal Judge Pickup, who allowed the appeal on human rights grounds of the claimant in a decision dated 6<sup>th</sup> February 2018.
2. The issue in this case is concerned with the correct approach to applications to revoke deportation orders. In this case, crucially, the deportation of the claimant had occurred more than ten years ago. The First-tier Judge produced what is by any standards a detailed and cogent analysis of the position. He examined carefully the

application of the Immigration Rules. He reached the conclusion that the ten year period was significant because after that the Secretary of State's own policy pointed to there being a case-by-case analysis in order to determine whether it was proportionate to lift the deportation order.

3. The First-tier Judge at the beginning of paragraph 78 of his decision concluded that in the circumstances of this particular case it was disproportionate to maintain the order. He accordingly allowed the appeal.
4. Mr Bates, who appears on behalf of the Secretary of State, pointed to what might be said to be a problematic finding in paragraph 83 of the determination concerning very compelling circumstances. Mr Bates fairly acknowledged, however, that in the light of the decision as a whole any error in that regard would be, in his own view, immaterial. I endorse that conclusion.
5. Mr Bates also helpfully and appropriately drew the Tribunal's attention to the decision of Upper Tribunal Judge Canavan in the reported case of Smith [2017] UKUT 00166. That states that in cases involving conviction for an offence for which the person was sentenced to a period of less than four years' imprisonment, not only does the ten year point carry the significance that I have just described; it is in fact the Secretary of State's policy, as expressed in paragraph 391(a) of the Immigration Rules, that the public interest does not require continuation of the deportation order. In any event, as I have already said, the approach of the First-tier Tribunal Judge cannot, in my view, be faulted.
6. It is, I have to say, somewhat regrettable in the circumstances that the Secretary of State saw fit to appeal Judge Pickup's decision. It is even more regrettable that the contention was made that the mere passage of time could not be a material factor. For the reasons I have given, it is in this case a highly material factor. By the same token it is regrettable, in my view, that Judge O'Garro saw fit to grant permission. In any event, matters are now resolved. The Secretary of State through Mr Bates does not in effect pursue the appeal.
7. For the reasons I have given, there is no material error of law in Judge Pickup's decision and I therefore dismiss the appeal.

### **Notice of Decision**

The appeal is dismissed.

No anonymity direction is made.

Signed

Date 25 May 2018

The Hon. Mr Justice Lane  
President of the Upper Tribunal  
Immigration and Asylum Chamber