



Upper Tribunal  
(Immigration and Asylum Chamber)

Appeal Number: HU/12157/2018

Heard at Field House  
on 21 February 2020

Decision & Reasons Promulgated  
On 12 March 2020

**THE IMMIGRATION ACTS**

Before

UPPER TRIBUNAL JUDGE HANSON

Between

TOUQER ASLAM  
(also known as Mr Tauqeer Aslam)  
(Anonymity direction not made)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

**Representation:**

For the Appellant: Mr A Metzger QC instructed by Caveat Solicitors.  
For the Respondent: Ms R Bassi Senior Home Office Presenting Officer.

**ERROR OF LAW FINDING AND REASONS**

1. On 16 April 2019 former First-Tier Tribunal Judge O'Callaghan ('the Judge') dismissed the appellant's appeal against the respondent's decision of 9 May 2018 to refuse to revoke a deportation order made against him.

## Background

2. The appellant is a citizen of the United States of America, formerly a citizen of Pakistan, born on 15 April 1971.
3. On 16 November 1994 the appellant was convicted and sentenced to 30 months imprisonment on each count, concurrent, and the Crown Court recommended his deportation. The offences were 'falsely purported to insurance companies that his brother, Sahangeer, had died in a car crash on 20 February 1993 in Pakistan. He then commenced claims against the life-insurance policies in an attempt to obtain £498,000'. It is not in dispute that the appellant has never had a brother called Sahangeer and that no other brother of his died in a car crash on 20 February 1993.
4. The Judge notes the appellant was convicted in the name of Touqueer Aslam and that this was a sophisticated offence involving the use of false documents.
5. The Judge notes the terms of the deportation order signed on 20 March 1995 are as followings:

'Whereas a court has under section 6(1) of the Immigration Act 1971 recommended that a deportation order be made in respect of Touqueer ASLAM a person who does not have the right of abode within the meaning of the Act:

And whereas the said Touqueer ASLAM is, accordingly, liable to deportation by virtue of section 3 (6) of the said Act:

Now, therefore, in pursuance of section 5(1) of the said Act, I by this order requires the said Touqueer ASLAM to leave and prohibit him from entering the United Kingdom so long as this order is in force.

And in pursuance of paragraph 2(3) of Schedule 3 to the said Act, I hereby authorise him to be detained until he is removed from the United Kingdom.

6. The Judge notes that notice of the deportation order and details of appeal rights were handed to the appellant at HMP Brixton on 3 April 1995 in response to which the appellant confirmed in writing, on the same day, 'I do not want to appeal against my deportation order to Pakistan' signing the document directly underneath his expressed stated decision not to appeal. The appellant was deported to Pakistan on 13 February 1996 under the name Touqueer ASLAM.
7. The appellant relocated to the United States of America in 1996 following his marriage in Pakistan.
8. In relation to the appellant's subsequent travel to the United Kingdom the Judge at [31 - 37] writes:
  31. The appellant travelled to the United Kingdom in 2003 using a Pakistan passport in the name of 'Tauqeer Alsam'. He was issued with a transit Visa for 24 hours at the airport and took the opportunity to see his family.
  32. He travelled to the United Kingdom with his family in May 2004 and stayed for approximately 2 to 3 weeks.

33. He next entered the United Kingdom in July 2005 while returning to the USA from a holiday in South Africa. He visited his family in this country for approximately one week.
  34. Upon receiving his US passport in 2007, the appellant utilised this passport when subsequently travelling to this country.
  35. He entered this country with his own family in July 2007 having previously visited Pakistan. He visited family in this country for approximately one week.
  36. He travelled for pilgrimage to Saudi Arabia in 2010 and before returning to the USA he visited his family in this country in June/July for approximately one week. During this time, he travelled to France and returned to this country.
  37. A UKBA minute sheet, dated 14 June 2012, details, *inter alia*: '[the appellant's passport] showed that he had made 5 previous visits to the UK on the current document (issued 2007) had been landed on C5N on each occasion.' This suggests that the appellant entered this country on five occasions using his US passport, although the appellant refers to only two entries. As the respondent provides no further details as to entry, I proceed on the basis that prior to 2012 the appellant had entered this country six times, including his return from a short trip to France, whilst subject to a deportation order.
9. The Judge notes that by 2012 a number of the appellant's family resided in the United Kingdom including his mother, father and 5 siblings. The appellant arrived in the UK on 14 June 2012 and sought leave to enter as a visitor with his wife and children. He was travelling on his US passport. The appellant's wife and children were granted the requested leave, but the appellant was refused entry as he remained subject to a deportation order and was returned to the USA on 18 June 2012.
  10. The appellant applied for the revocation of the deportation order on 19 November 2015 which was refused by the respondent in a decision dated 19 January 2016 which was subsequently withdrawn on 7 August 2017. The respondent again decided to refuse to revoke the deportation order in a letter conveyed on 19 May 2018. It is that decision which is the subject of this appeal.
  11. Having had the benefit of considering documentary and oral evidence, that of the appellant given via Skype from the USA, the Judge sets out its findings of fact from [73]. At [86] he writes:

"Both parties before me concentrated on the appellant's re-entry into this country on several occasions from 2003 to 2010 and his unsuccessful effort to enter in 2012. Mr Eaton refers to five such entries at airports, although it is appropriate to also include the appellant's return from France in 2010 as this constitutes an 'entry' into this country. On each occasion he was lawfully permitted to enter, as a Pakistani national and subsequently as a US national. The appellant asserts that he was not aware that he was subject to a bar upon returning to this country until he secured the revocation of his deportation order as he was not aware that he was subject to such order, or at the very least the precise requirements that arose from the order, and so he did not deceive the United Kingdom authorities when he applied to re-enter on these occasions. He further states that he is pro-social, and that evidence of his prosocial nature can be identified upon consideration of several strands of evidence, including his history of study and employment since 1996, his attaining of US citizenship and that he has accumulated no

further criminal convictions since 1994, a period of some 25 years. The respondent's position before me is that the appellant's continued re-entry was a flagrant breach of the terms of his deportation order and the maintenance of effective immigration control is in the public interest. The decision of May 2018 notes the appellant's contention that by entering the United Kingdom on several previous occasions, with permission from the British authorities, he has not breached any domestic immigration laws. It details: *'Although it is stated that you have abided by the laws of the United Kingdom when you have travelled to the United Kingdom previously, it is evident from your offences and your illegal conduct that you have demonstrated a total disregard for the laws of this country.'*

12. At [89] the Judge records that he is required to assess whether the appellant held the requisite knowledge of both the existence and the requirements of the deportation order when he entered the United Kingdom between 2003 and 2010, and also when he attempted to enter in 2012.
13. The Judge at [103] found the appellant's explanation for his offending inconsistent in nature and that the appellant seeks to minimise his actions in what was a planned and sophisticated criminal act involving the use of false documents. The Judge finds the appellant's motives were driven by personal greed and that he was being dishonest as to the true reasons for his acts.
14. The Judge notes the appellant's position as stated to immigration officers in June 2012 differs to that presented at the hearing and that he told an Immigration Officer that he had not informed the US immigration authorities as to his conviction when he migrated to the USA, whereas in his 2019 witness statement the appellant denied having made any such admission. The Judge finds the appellant failed to disclose his conviction when seeking to initially obtain admission to the USA and later when applying to naturalise as a US citizen, and that he told the truth in 2012 of not having disclosed his conviction to US immigration officials [207].
15. The Judge notes the evidence of the appellant's witness, his brother Mr Choudhury, was *"notably silent in his evidence as to the circumstances of the appellant's conviction and also as to whether he was or was not aware that the appellant was subject to deportation proceedings"*. The Judge finds that it was wholly incredible that this witness would not have asked the appellant as to what drove him to commit criminal acts and that Mr Choudhury was willing to lie when giving evidence; meaning very little weight could be placed upon the same [110].
16. The Judge found weight could be placed upon the report of the Immigration Officer signed on the day of the interview with the appellant on 14 June 2012 and so being contemporaneous in nature. The gist of the appellant's statement is recorded in the report to the effect the appellant was fully aware that he had been deported, accepted he had been presented with relevant evidence connecting him to the decision to deport, and that the appellant was aware of the existence of the deportation order against him.
17. The Judge at [118] writes:

*"Upon carefully considering all of the evidence placed before me, including the oral evidence presented at the hearing, I find to the requisite standard that the appellant was given notice that he was subject to a deportation order in April 1995. He was made aware at the Crown Court that deportation proceedings were likely, and I find, on balance, that*

he would have been informed by the sentencing judge and his legal representatives, both counsel and solicitor, as to the true nature of the recommendation by the sentencing judge that he be deported. I find that the appellant is not being truthful in his explanation as to how he confirmed in writing that he did not wish to pursue an appeal against his deportation to Pakistan, but was not aware that he was subject to such an order because he was in a 'traumatised state' and '*[w]hen I was given the opportunity to go home, I saw the light of and longed for that moment every bit of the time. In those moments of hope I may have signed a whole bunch of papers. What those papers were, what each term meant, what I signed, I have no memory of that, nor I recall I understood. I just wanted to go home, close this chapter in my life, put this behind me.*' No evidence has been presented to me confirming that the appellant secured mental health care whilst in prison and I have previously found that after some three months in prison the appellant had adjusted to the basic requirements of prison life on the day that he was served his deportation papers. I have further found above that the appellant was aware from the date of his sentencing that he would have to serve at least 12 months of his sentence before he was eligible for his release to be considered by the parole board and so he is not truthful when asserting that the service of the deportation papers resulted in such a strong belief that he could go home that he simply signed papers presented to him without understanding their content. I note that the appellant does not contend that his English language skills were so poor that he would not have understood the papers if he read them. I find that his assertion that he simply signed papers is inconsistent with the clear evidence that he positively confirmed in writing that he did not wish to appeal against his deportation to Pakistan. The content of his waiver establishes, on balance, that he was informed as to his appeal rights and the nature of the deportation process. I conclude to the required standard that the appellant is not being truthful as to events when he was served with his deportation papers. Rather, I find that the appellant was wholly aware that he was subject to a deportation order and its requirements, including the bar upon return. He fully understood the nature of such order when he confirmed in writing that he did not wish to appeal the decision to deport to Pakistan. I further find that the appellant was aware that the deportation order was made under a different spelling of his name 'Tauqueer', namely 'Touqueer'.

18. The Judge rejected the appellant's evidence presented at the hearing that he had no knowledge of the deportation order. The Judge found the appellant has a history of acting deceitfully in relation to his criminal history [121].
19. The respondent did not dispute before the Judge that the grants of entry clearance and leave to enter were erroneously issued as the appellant was subject to an extant deportation order meaning they could not be validly issued in law. The Judge finds it appears that the respondents error in issuing such grants was based upon a deportation order being in the name of 'Touqueer Aslam', whilst the appellant presented passports in the name of 'Tauqueer Aslam', the name in which all of his passports have been issued. The Judge also notes at [124] having secured leave to enter/entry clearance using his Pakistani passport the appellant proceeded to apply for leave to enter at ports of entry with his US passport again being aware that the deportation order was in the name of 'Touqueer Aslam'. The finding as to the use of the Pakistan and USA passports in the above manner was not challenged before the Upper Tribunal.
20. The Judge finds the appellant was aware he was returning to the United Kingdom in breach of an extant deportation order.
21. The Judge does not find that the appellant had established the required level of support for his parents to establish dependency pursuant to article 8 ECHR [131] although, in the alternative, there is a strong public interest in recognising and

encouraging compliance with a deportation order meaning the respondent's decision not to revoke the deportation order has not resulted in a breach of a protected right.

22. The appellant sought permission to appeal which was refused by another judge of the First-Tier Tribunal. The application was renewed to the Upper Tribunal but again refused on 3 July 2019, the operative part of which is in the following terms:
  2. The grounds assert that the FTT erred by speculating on the appellant's knowledge of the terms of, and consequences of, the deportation order made against him on 20 March 1995; and consequently erred in the proportionality assessment in relation to the appellant's human rights.
  3. The grounds disclosed no arguable legal error. For the reasons set out by a Judge of the First-Tier Tribunal, Judge SPJ Buchanan, in his decision of 28 May 2019 refusing permission to appeal to this tribunal, and whose reasons I adopt, the FTT did not speculate on the appellant's knowledge etc of the deportation order, particularly the length of that order. The FTT was unarguably entitled to make the findings he did, as well as reach the conclusions that he did (including a proportionality assessment) on the evidence before him.
23. The appellant, not being content with these decisions, applied to the High Court by way of a 'Cart' judicial review application. Permission was granted by His Honour Judge Bird sitting as a judge of that court resulting in the decision of the Upper Tribunal to refuse permission to appeal being quashed by an order of 17 December 2019. Permission to appeal was subsequently granted by the Vice President of the Upper Tribunal by an order of 9 January 2020.
24. The matter comes before the Upper Tribunal today to enable it to assess whether the Judge has made an error of law material to the decision to dismiss the appeal.

### **Grounds and submissions**

25. Pleadings drafted by the late Mr Ian MacDonald QC, dated 20 September 2019, raise four grounds of challenge being:
  - a. Inference and speculation - asserting the Judge's finding the appellant was aware there was at least a 10 year time bar before his deportation order could be revoked and that he had to apply for the revocation of the deportation order before it could be revoked are speculations and not conclusions which can properly or reasonably be inferred from the facts of what took place at the time when the appellant was served with the deportation order on 3 April 1995 or on 13 February 1996 when he was put on a plane and removed from the United Kingdom.
  - b. Rehabilitation of Offenders Act 1974 - the grounds assert the Judge should have but failed to take into account the impact of the Act on the application in that as the appellant was convicted and sentenced on 16 November 1994 and would have been rehabilitated on 16 November 2004 when his conviction became spent. The grounds assert that once

the conviction has become spent it should be an important factor in the assessment required by paragraph 391(a) which the grounds assert had not been considered by the Judge at all. The grounds assert a non-existent offence can no longer be held up as a deterrent to others. The grounds also assert challenge to the Judge's findings regarding the failure of the appellant to inform the USA authorities of his conviction is wrong.

- c. The failure of the Judge to consider the reasons why the ECO in New York and immigration officers in the UK had granted visas and leave to enter when it was accepted by the Judge the appellant had not used any active deceit to obtain such visas and leave. The grounds assert the Judge without any backup evidence held the misspelling of the name explained the reason for the immigration officers' errors and led to the conclusion the appellant had acted deceitfully.
- d. The Judge was wrong to dismiss the appellant's claim pursuant to article 8 when considering the issue of proportionality arguing the positive factors in favour of the appellant at [85], regarding the appellant's ability to visit his parents in the United Kingdom, make it a disproportionate interference. The grounds assert in assessing proportionality the Judge speculated about what the appellant was being told before he was deported without any evidential basis for doing so, fails to take into account the impact of the appellant's rehabilitation, fails to deal with or consider the impact of the Rehabilitation of Offenders Act 1974 upon the appellant's failure to tell the US Department of Homeland Security of his spent conviction, and refuses to consider or accept that the appellants visits to the UK have been allowed every time because of the negligence of immigration officers rather than as a result of an irrelevant spelling mistake.

26. Not all these grounds were pleaded before the First-tier or Upper Tribunal or leave sought to amend in accordance with [Ejiogu \(Cart cases\) \[2019\] UKUT 00395 \(IAC\)](#) in which it was found:

1. *An addition to the grounds of appeal requires the permission of the Upper Tribunal. That is so even if the case has been granted permission following a Cart Judicial Review under CPR 54.7A.*
2. *In deciding whether to grant permission to rely upon additional grounds, the Tribunal will follow the same procedure as in relation to any other procedural default, in particular considering the length of the delay (beginning with the date on which time for appeal to the Upper Tribunal expired).*
3. *It is becoming increasingly clear that a substantial number of Cart Judicial Review claims are succeeding in circumstances where it is difficult to imagine that the Full Court that decided Cart [2011] UKSC 28 intended that the litigation should be prolonged in this way.*

27. Following the untimely death of Ian MacDonald QC, Mr Anthony Metzger QC has been instructed to represent the appellant's interests.
28. Ms Bassi did not object to the hearing proceeding on the basis of Mr Metzger's skeleton argument which adopted some of the matters previously pleaded by Mr Macdonald as she was able to deal with the same.

## Discussion

29. The skeleton argument of Mr Metzger QC submits the issue for the Upper Tribunal is to determine whether the Judge erred in the proportionality exercise when balancing the appellant's rights under article 8 ECHR against the public interest in continuing the deportation order.
30. As correctly recorded by the Judge, the relevant provisions of the Immigration Rules are paragraphs 390 and 391 which provide:

390. *An application for revocation of a deportation order will be considered in the light of all the circumstances including the following:*

- (i) *The grounds on which the order was made;*
- (ii) *any representations made in support of revocation;*
- (iii) *the interests of the community, including the maintenance of effective immigration control;*
- (iv) *the interests of the applicant, including any compassionate circumstances.*

381 *In the case of a person who has been deported for a criminal offence, the continuation of a deportation order against that person will be the proper course:*

- (a) *In the case of a conviction for an offence for which the person was sentenced to a period of imprisonment of less than 4 years, unless 10 years have elapsed since the making of the deportation order when, if an application for revocation is received, consideration will be given on a case-by-case basis to whether the deportation order should be maintained, or*
- (b) *in the case of a conviction for an offence for which the person was sentenced to a period of imprisonment of at least 4 years, at any time,*

*Unless, in either case, the continuation will be contrary to the Human Rights Convention or the Conventional Protocol Relating to the Status of Refugees, or there are other exceptional circumstances that mean the continuation is outweighed by compelling factors.*

31. It is argued on the appellant's behalf that the Judge erred in law at [76] where it is written:

*'This paragraph sets out the proper length of time for which a deportation order should continue before a deportee can apply to revoke the order. In this matter, the appellant's deportation order was signed on 20 March 1995, over 24 years ago, and he was deported on 13 February 1976, some 23 years ago. He therefore meets the 10-year requirement established by paragraph 391(a).'*

32. The relevant provisions provided a period of 3 years after the deportation before the respondent could consider revocation, the 10-year period being introduced



by paragraph 40 of HC607 which came into effect in July 2008. At the date the deportation order was signed in this case the relevant period before revocation became possible was 3 years. It is not disputed the Judge was wrong to find the appellant knew revocation would not be possible for 10 years.

33. Whilst the Judge was legally incorrect to refer to the longer provision rather than the period in force at the date the deportation order was signed, neither provision states that the deportation order would automatically be revoked or had no effect once such a period had been completed. In ES (Togo) and Anr v Secretary of State for the Home Department [2008] EWCA Civ 230 the Court of Appeal held that it was a clear statement of principle that a deportation order could not be revoked by implication.
34. A deportation order will remain in force unless a successful application is made for it to be revoked. In cases involving either the three-year or ten-year period if no such application is made, with a successful outcome, the deportation order will remain in force as it did before the Judge. Any error made by the Judge in relation to the 10-year period is therefore not material in relation to the question of whether the deportation order remained in force. It still does and the Judge was aware of and considered the period the order has remained in force.
35. Mr Metzger QC also argues the Judge erred in law in failing to consider the provisions of the Rehabilitation of Offenders Act 1974. It is submitted that paragraph 392 of the Immigration Rules, which came into force in 1994 and which reads: “*revocation of a deportation order does not entitle the person concerned to re-enter the United Kingdom; it renders him eligible to apply for admission under the Immigration Rules*” means a decision on revocation is therefore not a relevant immigration decision or relevant nationality decision within the exceptions to rehabilitation under section 56(A) UK Borders Act 2007, entitling the appellant to rehabilitation under the provisions of the 1974 Act.
36. Section 56A provides:

*56A No rehabilitation for certain immigration or nationality purposes*

(1) *Section 4(1), (2) and (3) of the Rehabilitation of Offenders Act 1974 (effect of rehabilitation) do not apply –*

(a) *in relation to any proceedings in respect of a relevant immigration decision or a relevant nationality decision, or*

(b) *otherwise for the purposes of, or in connection with, any such decision.*

(2) *In this section –*

*“immigration officer” means a person appointed by the Secretary of State as an immigration officer under paragraph 1 of Schedule 2 to the Immigration Act 1971,*

*“relevant immigration decision” means any decision, or proposed decision, of the Secretary of State or an immigration officer under or by virtue of the Immigration Acts, or rules made under section 3 of the Immigration Act 1971 (immigration rules), in relation to the entitlement of a person to enter or*

*remain in the United Kingdom (including, in particular, the removal of a person from the United Kingdom, whether by deportation or otherwise),*

*“relevant nationality decision” means any decision, or proposed decision, of the Secretary of State under or by virtue of—*

*the British Nationality Act 1981,*

*the British Nationality (Hong Kong) Act 1990, or*

*the Hong Kong (War Wives and Widows) Act 1996,*

*in relation to the good character of a person.*

- (3) *The references in subsection (2) to the Immigration Acts and to the Acts listed in the definition of “relevant nationality decision” include references to any provision made under section 2(2) of the European Communities Act 1972, or of EU law, which relates to the subject matter of the Act concerned.*

37. Paragraph 392 of the Immigration Rules in full reads:

392. *Revocation of a deportation order does not entitle the person concerned to re-enter the United Kingdom; it renders him eligible to apply for admission under the Immigration Rules. Application for revocation of the order may be made to the Entry Clearance Officer or direct to the Home Office.*

38. Whilst the particular rule does not satisfy the definition of a relevant immigration decision as defined in section 56A Borders Act 2007 the decision of the Secretary of State to revoke the deportation order is, arguably, a relevant immigration decision in cases where that occurs, although as it is a decision in the favour of the person previously subject to the order for his deportation the Rehabilitation of Offenders Act would normally not be pleading in any challenge to that decision. Paragraph 392 merely confirms the legal effect of the decision by the Secretary of State to revoke a deportation order on a right to re-enter the UK.

39. When considering whether to revoke a deportation order a decision-maker is entitled to consider the reason why the order was made in the first instance. Paragraph 390(1) requires a decision maker to take into account on a revocation application the reason the deportation order was made in the first instance. This requires specific reference to the conviction. The Secretary of State is therefore entitled to consider the appellant’s conviction, as was the Judge, notwithstanding that for other situations that conviction may be spent.

40. Whilst the skeleton arguments and oral submissions referred to what are described as ‘relevant provisions’ of the 1974 Act, there is no reference to Section 7(3) which states:

- (3) *If at any stage in any proceedings before a judicial authority in (not being proceedings to which, by virtue of any of paragraphs (a) to (e) of subsection (2) above or of any order for the time being in force under subsection (4) below, section 4(1) above has no application, or proceedings to which section 8 below applies) the authority is satisfied, in the light of any*

*considerations which appear to it to be relevant (including any evidence which has been or may thereafter be put before it), that justice cannot be done in the case except by admitting or requiring evidence relating to a person's spent convictions or to circumstances ancillary thereto, that authority may admit or, as the case may be, require the evidence in question notwithstanding the provisions of subsection (1) of section 4 above, and may determine any issue to which the evidence relates in disregard, so far as necessary, of those provisions.*

41. The Upper Tribunal considered this matter in the case of Ogundimu (Article 8 - new rules) Nigeria [2013] UKUT (IAC) in which the panel composed of the Honourable Mr Justice Blake, President of the Upper Tribunal, and Upper Tribunal Judge O'Connor, find at [37 - 40] of the judgement:

*Admission of the appellant's spent convictions*

37. *One of the appellants grounds of appeal before the Upper Tribunal was that the determination of the First-Tier Tribunal contained a further error of law in that it had relied on convictions of the appellant that was spent and should have been excluded from consideration.*

38. *Section 7(3) of the Rehabilitation of Offenders Act 1974 provides as follows:*

*"If at any stage in any proceedings before a judicial authority in Great Britain... the authority is satisfied, in the light of any considerations which appear to it to be relevant (including any evidence which has been or may thereafter be put before it), that justice cannot be done in the case except by admitting or requiring evidence relating to a person's spent convictions or to circumstances ancillary thereto, that authority may admit or, as the case may be, but require the evidence in question notwithstanding the provisions of subsection (1) of section 4 above, and may determine any issue to which the evidence relates in disregard, so far as necessary, of those provisions"*

39. *It is for the Secretary of State to satisfy us that justice could not be done without admitting the appellant's spent convictions (AA (Spent convictions) Pakistan [2008] UKAIT 00027. We conclude that she has done so on the facts of this case.*

40. *In a case of this sort, where the Secretary of State relies on a persistent course of conduct rather than a single serious offence to justify deportation, it is of importance to look at the appellant's offending behaviour as a whole. It is the Secretary of State's case that the appellant's offending behaviour escalated and would continue to do so. It would be artificial in such circumstances to consider only the most very recent convictions. We therefore directed that we would admit the whole of the appellant's criminal record when we remade the decision, in order to obtain a complete picture. The weight to be attached to spent convictions is a very different matter, but their relevance is the information they throw on the strength of the public interest in deporting the appellant for his most recent offending.*

41. *We also observe that where persistent criminal conduct is relied on, it is important for the Judge to have the full Criminal Record Office printout rather than just a summary of the dates of convictions. The full list assists discovery of when the offending occurred, whether it was a breach of a Community Order, whether the appellant was on bail at the time of the offending, and other data about the sequence of the offending. We pointed out at the hearing that any suggestion that the Data Protection Act restricted disclosure of such information to a court is misconceived.*

42. In the current appeal, whilst not a persistent offender case, it is of equal importance that a decision-maker considering an application to revoke the deportation order imposed as a result of an appellant's most recent conviction,

- including a judge, is able to consider the nature of that offence and the sentence handed down for the same.
43. It is also important to note that during the proceedings before the Judge no submissions were made that the Judge was unable to consider the appellant's offending as a result of the effect of the Rehabilitation of Offenders Act or otherwise. This case is a clear example of matters being raised on a 'Cart' application which were never canvassed before either the First-tier or Upper Tribunal, and which the Judge was therefore unable to address, being used as a vehicle to assert the Judge had erred in law in a manner material to his decision. Whilst it is submitted by Mr Metzger QC that the Judge should have taken the issue of the Rehabilitation of Offenders Act into account it is not establish why this should be so on the facts. The Judge properly notes that the appellant himself referred to his offending and the reason the deportation order was made. I find no arguable legal error material to the decision to dismiss the appeal made out on this ground. It is arguable that justice cannot be done in relation to a revocation of a deportation appeal without considering the reasons why the deportation order was imposed in the first place.
  44. Mr Metzger QC also submitted that the Judge erred in law in finding as fact that the appellant knew he was required to apply for the revocation of the deportation order before he made any application for entry clearance with the British Consulate in New York, and was wrong to take this into account in the balancing exercise.
  45. A well-known legal principle is that 'ignorance of the law is no defence/excuse'. This maxim imposes constructive knowledge of the laws of the land upon those to whom such laws apply. A person subject to a deportation order is such a person in relation to the laws relating thereto. The principle means that a person cannot escape liability for violating a law on the basis of an assertion that the content of that law was in fact unknown to him.
  46. The Judge found the appellant is subject to deportation order which had no automatic cessation or revocation provision. The appellant failed to establish before the Judge how he credibly believed such an order would have come to an end. The appellant, a very intelligent individual with IT skills, had not established that he could not have sought advice or undertaken his own research to ascertain the circumstances in which the deportation order would have ceased to have effect. The evidence before the Judge appeared to show the appellant made no applications or enquiries of the respondent as to how the deportation order could be ended. He rather chose, as the Judge found, to employ other means of entering the United Kingdom using the Pakistani passport with a different spelling of his name or passport issued by the authorities in the USA following his acquisition of citizenship of that country.
  47. The appellant does not dispute that he is the person named as 'Touqueer Aslam' who was deported from the UK as a result of his conviction and sentence. It is therefore relevant to note the terms of the deportation order which specifically provides that the appellant was required to leave the UK and is prohibited from entering the UK so long as the deportation order remains in force (my emphasis).

48. The grounds fail to establish the Judge has erred in law in concluding that the appellant was aware the requirement to revoke the deportation order before he entered the United Kingdom. On the basis of the appellant's actual knowledge as found by the Judge, or alternatively, in light of the fact the appellant appears to have consciously avoided making any such enquiries as to revocation, I find it was not unreasonable for the Judge to find as he did. The weight to be given to the evidence was a matter for the Judge.
49. Whilst the appellant asserts he never attempted to hide his identity and did not take advantage of the fact he was convicted and deported under the alternative spelling of his name; he also made no attempt to apply for the deportation order to be revoked. The submission in the skeleton argument that the passport and identity documents contained important features which should have enabled an immigration officer to identify the appellant against the Home Office database is noted but such submission has no arguable merit in relation to the claim the Judge's findings were not reasonably available to him.
50. The Judge had the benefit of seeing and hearing oral evidence being given including how the appellant dealt with cross-examination. The conclusion of the Judge that the appellant lacked credibility in relation to his claims has not been shown to be a finding outside the range of those available to the Judge on the evidence considered as a whole.
51. A core aspect of the challenge is the appellant's disagreement with the Judge's adverse findings including that relating to the use of deceit by the appellant. It is said this finding was made without giving the appellant the opportunity to address the same making the Judge's conclusion unfair. Such a submission has no arguable merit. Proceedings before the First-tier Tribunal are adversarial in nature. Parties are given the opportunity to submit the evidence they seek to rely upon which is then tested before a judge. Once the evidential stage of the proceedings is completed a judge makes findings upon the relevant issues supported by adequate reasons for such findings. Judgment can be given either orally or in writing. That is what the Judge did. This is not a case in which the Judge considered evidence not disclosed to the parties or upon which the advocates did not have the opportunity to comment. The appellant received a fair hearing and the finding of deceit is a conclusion reached by the Judge on the evidence he received, and view formed of the appellants actions, from the same. It is a finding clearly within the range of those available to the Judge on the evidence and has not been shown to be infected by arguable legal error. No procedural unfairness is made out sufficient to amount to an error of law.
52. The claim by Mr Metzger QC the appellant used his Pakistan and USA passports and made no attempt to hide his identity or name disclosed in those documents is noted, but what he did not do is make it known he was the same person as that named in the deportation order. The use of a different name and different forms of travel documents further distanced the appellant from his true identity as the person who is the subject of the deportation order.
53. The Judge notes at [125]:

"Ultimately, I find that the appellant was aware that he was returning in breach of an extant deportation order. Persons who engage, or who might be tempted to engage, in

action which they know seeks to circumvent the bar upon return that is consequential to the signing of the deportation order and continues during its continued existence, needs to be aware that such actions will have disadvantageous consequences for those who seek to benefit from such conduct. There is strong public interest in recognising and encouraging compliance with a deportation order”

54. The Judge notes the appellant relies upon his family life with his parents who are in poor health as part of the human rights/compassionate element of the revocation application. At the time the appellant’s father was unwell but has since passed away. The Judge notes the content of the medical evidence relating to the appellant’s mother at [127].
55. The Judge finds at [131] that on the basis of the evidence presented the appellant did not provide the required level of support to his parents to establish the required dependency. The Judge makes a similar finding in relation to the appellant’s sister in the UK concluding that it had not been established that family life recognised by article 8(1) had been shown to exist. It has not been shown this is a finding outside the range of those available to the Judge on the evidence.
56. The weight to be given to the appellants conviction will have to be assessed in light of all the facts including its age if it had been found article 8 was engaged and the issue was that of proportionality pursuant to ECHR, although the length of time since the deportation order was made is clearly a factor that is also considered when assessing the merits of the claim pursuant to the Immigration Rules outside the ECHR, as the Judge did.
57. The Judge in the alternative, considers whether the respondent had established the decision was proportionate on the facts, concluding she had done so for the reasons set out at [132] in the following terms:

132. If I am wrong, I proceed to consider the appellant’s article 8 rights both on family and private life grounds. I also proceed to consider the article 8 rights of both the appellant and his parents, in light of the deteriorating health of Mr Choudhury and Mrs Akhtar. There is no right for a non-British national to enter this country to visit British relatives. The public interest as identified within the Rules and though there is no presumption in favour of a public interest in the continued bar upon entry in this matter, I am required to balance the public interest in continuing the order against the interference with the appellant’s family and private life rights: ZP (India). The evidence before the Tribunal confirms that the appellant’s parents secure appropriate support from their children in this country and from friends. I further note that the appellant’s children are British citizens and so can visit their grandparents with their mother in the absence of the appellant. When assessing proportionality, I note that the appellant has entered this country on six occasions since 2003 in the knowledge that he is barred from entry until his extant deportation order is revoked. The last such entry was in 2010, so if the appellant had not been stopped and detained in 2012, I find that he would have continued to seek to enter without seeking to apply to revoke the order. Such action was a flagrant breach of the requirements of the deportation order and I have found that the appellant was aware of such requirements. I observed that there is a strong public interest in recognising and encouraging compliance with a deportation order.

- 58. The Judge clearly took into account the competing arguments and balanced the same in arriving at his conclusions.
- 59. Whilst the Judge is criticised in relation to the appellant’s actions concerning the authorities of the United States of America and the citizenship application, that is a matter outside the ambit of this appeal. The requisite test in America is that of ‘moral turpitude’. It was not made out the Judge needed to make any findings in relation to that issue which is within the jurisdiction of another sovereign state. That is not, however, a material matter.
- 60. The Judge clearly spent a considerable amount of time considering the merits of the appeal. The Judge’s conclusion that the appellant had not made out that it was appropriate in all the circumstances to allow the appeal and that the respondent had established that it was not appropriate for the deportation order to be revoked has been adequately reasoned by the Judge. It has not been shown this is a conclusion that was not available to the Judge on the evidence.
- 61. Whilst the appellant disagrees with the Judge’s findings no arguable legal error material to the decision to dismiss the appeal is made out sufficient to warrant a grant of permission to appeal to the Upper Tribunal.

**Decision**

- 62. **There is no material error of law in the Immigration Judge’s decision. The determination shall stand.**

Anonymity.

- 63. The First-tier Tribunal did not make an order pursuant to rule 45(4)(i) of the Asylum and Immigration Tribunal (Procedure) Rules 2005.

I make no such order pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008.

Signed.....  
Upper Tribunal Judge Hanson

Dated the 5 March 2020