UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

THE IMMIGRATION ACTS

Heard at: Birmingham
On: 21 July 2014

Decision Promulgated:
On: 22 July 2014

Before

Upper Tribunal Judge Pitt

Between

SFC
(ANONYMITY ORDER MADE)

Appellant

and

Secretary of State for the Home Department

Respondent

Representation:
For the Appellant: Mr Howard, Fountain Solicitors
For the Respondent: Mr Mills, Senior Home Office Presenting Officer

DETERMINATION AND REASONS

1. The appellant is a national of Zimbabwe, born in 1978.

2. This is an appeal against the determination promulgated on 14 May

2014 of First-tier Tribunal Judge North and Ms V S Street JP which refused the appellant's appeal against the automatic deportation order made against him on 5 February 2014 by the respondent.

3. The background to this matter is very sad. The appellant came to the UK in 2001 and has remained unlawfully ever since. He has become a prolific offender since then. Many of the offences related to dishonesty or use of false identities. At times he has failed to report for bail and absconded from immigration control. The most recent offences led to a prison sentence of 20 months on 17 July 2013. Meanwhile, he had formed a relationship with a woman from Zimbabwe in 2003. They married and had a son on 25 October 2005. The appellant and his partner are both HIV positive. The partner also has mental health problems. She has now been granted British citizenship but the child remains a citizen of Zimbabwe. This appears to be because whilst the appellant was serving one of his prison sentences, as a result of her mental health problems, the mother was unable to care for the child and he is now under special guardianship with another couple.

4. The First-tier Tribunal did not find that paragraphs 399(a) or (b) of the Immigration Rules were met. That must be right and no material error arises there from. It was not correct to state at [6] that the child had not been in the UK for 7 years but that cannot be material where he can be cared for by the couple who are his special guardians, appointed by the Family Court, so paragraph 399(a) could not be met.

5. The child has not been living with his parents for some time. The fact that his best interests lie in remaining with his guardians in the UK does not form the basis of insurmountable obstacles to his mother going to Zimbabwe with the appellant. The special guardianship order will remain in place unless an application is made to discharge it. The Family Court has seen that as the most appropriate way to protect the welfare of the child. That is how the specialist court view his best interests and how they should be promoted. No application to discharge the guardianship order has been made by either parent. They consented to the child being placed away from them. The oral evidence referred to visits by the parents to see the child and the child's letter suggests this is so. There is nothing to show how often those visits take place or under what conditions. The evidence of the child's involvement with his birth parents was very limited therefore. As indicated by the panel at [6], despite the involvement of social services, there was nothing from an appropriate third party to suggest that his birth parents living abroad would be detrimental to him. Even if the "insurmountable obstacles" requirement were met, the appellant has not lived in the UK for 15 years, a further reason

why paragraph 399(b) is not met here.

6. I have indicated above that I appreciate the difficult circumstances that this family have had to face. It remains the case that only a "very strong case indeed" can succeed where an automatic deportation order is made; SS (Nigeria) v SSHD [2013] EWCA Civ 550 applied. The appellant's length of unlawful residence, his health, his relationship with his wife, her mental health problems and the situation on return to Zimbabwe simply could not meet that test. This appellant's offending history is very extensive and continued even after earlier steps to deport him were pursued, after his child was born and so on. His immigration history is appalling and further weighs against him.

7. The Tribunal found at [10] that there were no exceptional circumstances that could lead to the appeal being allowed. It was manifestly open to them to do so where the potentially most serious factor, that of the child being separated from one or both birth parents, was vitiated by his being found to be best placed living with another couple and there was nothing to indicate that not to be in his best interests and nothing to show that either parent had done anything to attempt to persuade the Family Court otherwise.

8. The challenge to the findings on the appellant's refugee claim cannot succeed. He has shown himself to be a person of a significant degree of dishonesty. He did not appeal a first refusal of asylum some years ago. He claimed again only after deportation proceedings commenced. The evidence adduced to show that he would be identified as being in opposition was weak. The Tribunal's findings at [13] to [17] are eminently well reasoned and sustainable. No possible error arises from them.

9. For all of these reasons, I did not find that the determination of the First-tier Tribunal disclosed an error on a point of law.

DECISION

10. The decision of the First-tier Tribunal does not contain an error on a point of law and shall stand.

Anonymity

I make an anonymity order under Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008, precluding publication of any information regarding the proceedings which would be likely to lead members of the public to identify the appellant, his partner or minor child. I make this decision on the basis of the nature of the appellant's asylum claim, his medical condition

and that of his partner and the best interests of their child.

Signed:  Date: 21 July 2014

Upper Tribunal Judge Pitt