



Upper Tribunal  
(Immigration and Asylum Chamber)

Appeal Numbers: DA/01587/2013

**THE IMMIGRATION ACTS**

Heard at Birmingham  
On 24 March 2014

Determination Promulgated  
On 26 March 2014

Before

UPPER TRIBUNAL JUDGE PITT

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

SH

(ANONYMITY ORDER MADE)

Respondents

**Representation:**

For the Appellant: Mr Smart, Senior Home Office Presenting Officer  
For the Respondents: Mr Pipe, instructed by J M Wilson

**DETERMINATION AND REASONS**

The Appeal

1. This is an appeal by the Secretary of State against a determination dated 25 October 2013 of First-tier Tribunal Judge Sommerville and Dr J O de Barros which allowed

the respondent's appeal on Article 8 grounds against a decision to make a deportation order against her.

2. Ms H is a citizen of Bosnia Herzegovina and was born on 1 May 1990.
3. For the purposes of this determination, I refer to Ms H as the appellant and to the Secretary of State as the respondent, reflecting their positions as they were before the First-tier Tribunal.
4. This appeal concerns not only Ms H but her three young children. In order to prevent the likelihood of any serious harm arising to those children, further to the anonymity order made by the First-tier Tribunal, 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 or other members of her family and thereby the children.
5. The undisputed background to this matter is that the appellant came to the UK at the age of 15 in 2005, made an unsuccessful asylum claim but on 14 June 2011 was granted discretionary leave to remain until June 2014.
6. The appellant formed a relationship with DR, a Serbian national who also has discretionary leave to remain. The couple have three children, L born on 13 March 2006, V born on 24 April 2007 and A born on 13 February 2010.
7. On 14 January 2006 the appellant was cautioned in relation to theft. On 21 September 2006 she received a 9 month referral order in relation to an offence of theft against a person. On 24 April 2007 she received a 3 month referral order for theft consecutive to the earlier referral order. On 30 November 2007 she was given 5 concurrent terms of 4 months' imprisonment in a Young Offenders Institution for 3 counts of theft and burglary. On 27 April 2010 she was sentenced to 18 weeks' imprisonment for theft and failing to surrender to custody.
8. On 25 February 2012 the appellant was sentenced to 20 months' imprisonment for theft.
9. Notwithstanding this history of offending, in summary, the First-tier Tribunal allowed the appeal as it found that the best interests of and damage to the children were the appellant deported outweighed the public interest in her deportation. The respondent conceded prior to the hearing before the First-tier Tribunal that the children could not be expected to go to Bosnia with the appellant.
10. Paragraph a. of the respondent's grounds argue that that the First-tier Tribunal placed too much weight on the appellant's family life with her children and on the best interests of the children. The panel also engaged insufficiently with the appellant's criminality.


11. Paragraph b. of the grounds maintains that that the appellant's index offence was "serious and despicable", that the appellant has a history of offending and was assessed as being at a medium to high risk of reoffending. The public interest lay in preventing further offending, in deterring others and in expressing condemnation for such offences required deportation. The children could be cared for by their father and other relatives as they were whilst the appellant was in detention. There was a clear and pressing need for the public interest to be realised through the deportation of the appellant and such an outcome was proportionate.
12. Paragraph c. of the grounds argues that the First-tier Tribunal gave inadequate reasons for finding it disproportionate for the father to care for the children if the appellant were deported.
13. The panel cannot be said to have failed to identify and weigh appropriately the public interest factors in this matter. Her offences were set out in full; see [9]. The Tribunal directed itself at [24] to the presumption in favour of deportation and to the need for "a very strong claim indeed" to defeat the public interest in deportation, SS Nigeria v SSHD [2013] EWCA Civ 550 cited.
14. Having taken into account the high threshold for a deportation appeal to succeed, the First-tier Tribunal next addressed the best interests of the children at [25], correctly applying the dicta of ZH (Tanzania) (FC) the Secretary of State for the Home Department [2011] UKSC 4. Mr Smart maintained that the panel placed too much weight on the social work report where it did not contain the opinions of the children. It is difficult to see how much weight could have been placed on the opinions of the children, the oldest being only 7 at the time of the hearing before the First-tier Tribunal. It is also difficult to see how the best interests of the three young children here would not have been found to be in their mother remaining with them in the UK, it being undisputed that she remains their primary carer, even had there been no professional evidence on the point. Also, as set out at [43], it was not the social work report which the panel found of particular importance but the oral evidence they heard from the father, DR, as to the difficulties he and the children would face were the appellant deported.
15. The assessment of the weight to be afforded to the appellant's family life and the best interests of the children was also properly made as it was conducted against the other factors relevant to deportation as identified in Uner v The Netherlands (2007) 45 EHRR 14; see [28] and following. Those factors included weighing, first, the nature and seriousness of the offence, including the remarks of the sentencing judge in line with Masih (deportation - public interest - basic principles) Pakistan [2012] UKUT 00046 (IAC). I did not accept Mr Smart's submission that the panel failed to properly reflect at [29] the seriousness of the offence and the sentencing judge's view. They refer in terms to the appellant being a "serial thief", to her criminal history, to the vulnerability and distress of the victim, the view of the criminal courts that the offence was "serious and despicable", that the appellant had failed to respond to previous convictions. They went on to indicate at [30] that they took the appellant's

risk of reoffending as “a significant factor” and correctly identified at [31] the wider public interest beyond the particular individual reoffending.

16. In short, it was my judgement that the grounds amounted only to disagreement with the decision of the panel and with the weight that they gave to the competing factors in this appeal. Having set out and applied the guidance from case law on the correct approach to Article 8 in automatic deportation cases, including the weight to be afforded to the public interest, the final proportionality assessment was a matter for the First-tier Tribunal. The conclusions were reasoned, addressed the relevant factors, did not rely on irrelevant factors and it was open to the panel to conclude at [44] that this was a sufficiently strong claim to succeed.
17. Notwithstanding my conclusion, I indicated at the hearing and requested that Mr Pipe communicate to those instructing him and thence to the appellant who was not present, that it applies only to the circumstances as they were before this First-tier Tribunal. If the appellant reoffends, given her criminal history thus far, she can expect that further custodial sentences will be considered where permitted by statute, that the respondent will readdress her deportation and, in the event of further deportation proceedings, that a future Tribunal may make a different decision, regardless of the difficulties her children will face.

#### Decision

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

Signed:   
Upper Tribunal Judge Pitt

Date: 24 March 2014