

14.9 Persistent offenders? Who are etc. Cases

SC (Zimbabwe) v Sec of State 2018 EWCA Civ 929 Court of Appeal (Civil Div) SC pleaded to four offences of using a false instrument and three false representation offences. She was given 7 months. The offending was from 2007 to 2013. The Secretary of State ordered her deportation. She appealed the decision and the crucial issue was whether she was a 'persistent offender' in *Immigration Rules Rule 398*. Held. We entirely agree with the decision in *Cherge v SSHD* 2016 UKHT 187 (IAC) which said, "Put simply, a 'persistent offender' is someone who keeps on breaking the law. That does not mean that he [or she] has to keep on offending until the date of the relevant decision or up to a certain time before it, or that the continuity of the offending cannot be broken. We do not accept that a 'persistent offender' is a permanent status that can never be lost once it is acquired. An individual can be regarded as a 'persistent offender' even though he may not have offended for some time. Someone can be fairly described as a person who keeps breaking the law even if he is not currently offending. The question whether he [or she] fits that description will depend on the overall picture and pattern of his [or her] offending over his [or her] entire offending history up to that date. Each case will turn on its own facts. Plainly, a persistent offender is not simply someone who offends more than once. There has to be repeat offending but that repetition, in and of itself, will not be enough to show persistence. There has to be a history of repeated criminal conduct carried out over a sufficiently long period to indicate that the person concerned is someone who keeps on re-offending. However, determining whether the offending is persistent is not just a mathematical exercise. How long a period and how many offences will be enough will depend very much on the facts of the particular case and the nature and circumstances of the offending. The criminal offences need not be the same, or even of the same character as each other. Persistence may be shown by the fact that a person keeps committing the same type of offence, but it may equally be shown by the fact that he [or she] has committed a wide variety of different offences over a period of time." SC was a persistent offender. Appeal dismissed.

Note: This case is not binding on a criminal court but it is exactly the approach one expects the Court of Appeal to approve of. Ed.