



IAC-FH-AR-V1

**Upper Tribunal
(Immigration and Asylum Chamber)**

Appeal Number: DA/00832/2014

THE IMMIGRATION ACTS

**Heard at Field House
On 25th November 2015**

**Decision & Reasons Promulgated
On 21st December 2015**

Before

UPPER TRIBUNAL JUDGE FRANCES

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

**ELJON LUJKAJ
(ANONYMITY DIRECTION NOT MADE)**

Respondent

Representation:

For the Appellant: Mr S Walker, Home Office Presenting Officer

For the Respondent: Mr D Balroop, Counsel, instructed by 12 Bridge Solicitors

DECISION AND REASONS

1. I shall refer to the parties as in the First-tier Tribunal even though this is an appeal by the Secretary of State. The Appellant is a citizen of Albania, born on 26th May 1982. His appeal against deportation was allowed by First-tier Tribunal Judge Gibbs under the Immigration (EEA) Regulations 2006 in a decision dated 1st November 2014.
2. On 5th July 2010 the Appellant pleaded guilty at Canterbury Crown Court to two counts of being knowingly concerned in the fraudulent evasion of prohibition or restriction on importation of Class A controlled drugs. He

was sentenced to five years' imprisonment for the first offence and ten years' imprisonment for the second. These were to run concurrently. He appealed his sentence which was reduced to eight years' imprisonment. He had no previous convictions.

3. The Secretary of State appealed the judge's decision to allow the appeal under the EEA Regulations on the following grounds. Firstly, the judge failed to take into account the nature of the offence and the length of the sentence as well as the circumstances of the Appellant, given that there was no evidence demonstrating a significant change in his personal circumstances since the conviction. And secondly, that the judge's findings on proportionality under Regulation 21(5)(a) and 21(6) were inadequately reasoned and were contradictory.
4. In renewed grounds to the Tribunal the Respondent relied on the case of R v Pierre Bouchereau [1977] EUECJ R-30/77 and concluded that the judge erred in law on the basis of what is set out at paragraphs 27 and 29 of that judgment, in that for the most serious offending, even where there is little or no risk of reoffending, the requirements of public policy might permit removal or deportation on the basis of the most serious past criminality. Permission to appeal was granted on those grounds by Upper Tribunal Judge Goldstein on the 31st March 2015.

Submissions

5. Mr Walker submitted that the judge had misdirected herself in relation to Regulation 21(5)(c). The Appellant had been convicted of a very serious offence and received a lengthy sentence which the judge noted at paragraphs 3 and 4. However, she failed to take this into account when she was assessing his future risk under the Regulations in paragraphs 12 to 18 of the decision. In doing so she made a material error of law.
6. The judge made findings on the Appellant's personal circumstances since the conviction but there was an absence of evidence demonstrating improvement and the nature of the offence was such that if the Appellant found himself in similar circumstances, namely if he started gambling again, then the risk of him reoffending would be substantially heightened.
7. In relation to ground 2, Mr Walker submitted that there were inadequate reasons for finding that the Appellant had integrated in the UK. He had arrived in 2006 and was convicted in 2010. He had not acquired permanent residence and therefore could not have integrated in the UK. The judge's conclusion that he had done so was contradictory given that the Appellant had spent significant time in prison.
8. The judge's findings at paragraph 17 on proportionality, if they were not contradictory, were very unclear. In relation to the renewed grounds Mr Walker relied on paragraphs 27 to 29 of R v Bouchereau, in particular what is stated at paragraph 29, namely

“Although in general a finding that such a threat exists implies the existence in the individual concerned of a propensity to act in the same way in the future, it is possible that past conduct alone may constitute such a threat to the requirements of public policy”.

9. So in essence Mr Walker’s submission was that the serious nature and the length of sentence in this case was such that it could be relied upon in order to show that the Appellant was at risk of reoffending and therefore at risk to the public in the future.
10. Mr Balroop submitted that ground 1 was simply not made out. There was ample evidence before the judge to enable her to conclude that the Appellant was not a genuine present and sufficiently serious threat affecting one of the fundamental interests of society.
11. The judge took into account the probation letter dated October 2014 which was before the Respondent and appears at paragraph 132 and 133 of the bundle. There was clear evidence in this letter that the Appellant had addressed his gambling habit and had changed his behaviour. There was also further evidence of his activities in prison and the fact that he was temporarily released in 2012 to travel from Watford to Borehamwood to work in a charity shop. It was clear from the probation report that the Appellant was not a repeat offender and this was a one off offence due to his gambling addiction which he had now addressed. Therefore, it was not arguable that there was no evidence before the judge that there was a change in circumstances.
12. The judge also relied on the NOMS report which dealt with the nature of the offence and the risk of reoffending. The writers of the report had met the Appellant and were well aware of the offence and his sentence, yet they categorised him as low risk of reoffending, low risk of harm to others and low risk of reconviction. The judge took this into account at paragraph 5 of her decision.
13. This evidence was not disputed by the Respondent. The Respondent either ignored it or just came to a decision that was different to that of the judge and there was no basis on which to say that the judge’s decision was not properly reasoned. The grounds essentially amount to a submission that the judge should have come to a different conclusion and that did not amount to an error of law.
14. The judge assessed the Appellant's personal circumstances and took into account all relevant factors as set out in Regulation 21(6), but came to the opposite conclusion to that of the Respondent. They were sufficient reasons, but in any event, the judge’s findings were open to her on the evidence before her.
15. The Appellant had been out of the country for two months in 2006 during a ten year period. The judge considered all factors in looking at integration which was separate to a decision in relation to permanent residence. Integration took into account how the Appellant would interact with the

rest of society, not just his length of residence in the UK. The judge took into account all relevant factors including that the Appellant had visited Albania. Her finding that his deportation was disproportionate was one which was open to her on that evidence.

Discussion and Conclusions

16. In relation to ground 1, I find that the judge took into account the sentencing remarks and the letter from the Appellant's probation officer, and she was well aware of the nature of the offence and the length of the sentence which she set out at paragraphs 3 and 4 of her decision. It cannot be said that these matters were ignored in her findings at paragraph 12 to 18 when she considered the Appellant's personal circumstances.

17. The judge took into account the evidence regarding what the Appellant did during his time in prison and also his credible oral evidence and that of his wife and, at paragraph 15, she made the following findings:

"I have relied on the documents set out above together with the credible oral evidence of the Appellant and his wife. I find that since November 2012 the Appellant started to leave prison to work in a charity shop, and subsequently was also given overnight release to his wife. In my view, he had demonstrated that he is able to function in society without reverting to his previous gambling habits, and I place weight on the Appellant's oral evidence that he has attended Gamblers Anonymous and also the fact that now that his wife is aware of this issue she is also able to help him. Again I place significant weight on the conclusion reached by the Probation Officer who knows the Appellant that *'The Probation Service has assessed Mr Lujkaj as presenting a low risk of both reoffending and harm. He has given us every reason, both in word and deed, to conclude that he has learned his lesson and is determined and well equipped to make a valuable contribution to society in the event that he is permitted to remain in the UK.'* "

18. These findings were open to the judge on the evidence before her and she gave cogent reasons for her conclusions at paragraph 16 where she stated:

"I take a different view to the respondent who, although accepting the findings of the NOMS assessment nonetheless focuses on the risk to the public if the Appellant was to reoffend. I am persuaded however that the evidence before me (and particularly that set out above) supports a finding that such a risk is so low that the Appellant cannot be said to present a 'genuine, present and sufficiently serious threat affecting one of the fundamental interests of society'."

19. The judge was aware that other conduct had to be taken into account under Regulation 21(5)(e), which states that a person's criminal convictions do not in themselves justify the decision. She took into account the Appellant's change in behaviour and circumstances, namely his attendance at Gamblers Anonymous, the fact that he has disclosed his gambling habit to his wife and his work with the charity shop which she set

out at paragraph 15. The risk of reoffending was low and it was three years since the Appellant was released from prison.

20. The judge properly considered all factors of the Appellant's personal conduct including his conviction and length of sentence. I find that her conclusion that he was not a genuine, present and sufficiently serious threat affecting one of the fundamental interests of society was a finding which was open to her on the evidence and there was no error of law in respect of Regulation 21(5).
21. In relation to ground 2, having concluded that the Appellant was not a genuine, present and sufficiently serious threat to one of the fundamental interests, the judge was entitled to take this into account in assessing proportionality. Although there is a strong public interest in deporting the Appellant, because of the seriousness of the offence, the judge was entitled to take into account this finding and balance it against the public interest.
22. There were also other matters to which the judge referred at paragraph 17 where she found:

“With regard to Regulation 21(6) I accept that the Appellant has lived in the UK since 2006 and is integrated here, as is his wife who has lived here for ten years. Both of them speak fluent English and the couple are self-sufficient which is to their credit. In addition, prior to May 2010, the Appellant has lived lawfully in the UK since 2006, as has his wife. They are both healthy, young individuals and the Appellant's evidence is that he has returned to Albania with his wife on occasions. Although I accept that they would prefer to live in the UK, I do not find that these ties in themselves make the Respondent's decision disproportionate, but I do find that this is evidence that I must take into account in my proportionality assessment.”
23. The judge has given clear reasons for why she finds that the Appellant is integrated into the UK and the level of that integration which was not dependant on him acquiring a right of permanent residence.
24. There was no contradiction as alleged at paragraph 12 of the grounds of appeal because the judge makes it clear that the Appellant's ties in themselves do not render the decision to deport him disproportionate. This was just one of the factors the judge took into account.
25. I am persuaded by Mr Balroop's submissions on this point that the judge's findings were certainly not contradictory and she has given adequate reasons. The judge properly considered proportionality under Regulation 21(6) and her finding that the deportation of the Appellant was disproportionate was one which was open to her on the evidence. Therefore, there was no material error of law.
26. In relation to the renewed grounds of appeal, that in essence for the most serious offending the requirements of public policy permit removal on the basis of the most serious past criminality, the judge's decision was not contrary to the findings in R v Bouchereau. Although there was significant

weight to be attached to the public interest in this case, the judge found that it was outweighed for the reasons given at paragraphs 12 to 18 of the decision.

27. Accordingly I find that there was no misdirection on the Immigration (EEA) Regulations 2006. The judge's finding that the Appellant was not a genuine, present and sufficiently serious threat affecting one of the fundamental interests of society was a finding which was open to her on the evidence before her. The Judge gave adequate reasons for that finding and for finding that the Appellant's deportation was disproportionate in the circumstances.
28. There no error of law in the decision of 1st November 2014 and the Respondent's appeal is dismissed.

Notice of Decision

Appeal dismissed

No anonymity direction is made.

J Frances

Signed

Date: 9th December 2015

Upper Tribunal Judge Frances