



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

Appeal Number: DA/00622/2015

**THE IMMIGRATION ACTS**

**Heard at Field House  
6 July 2016**

**Promulgated on  
On 29 July 2016**

**Before**

**MR C M G OCKELTON, VICE PRESIDENT  
UPPER TRIBUNAL JUDGE PERKINS**

**Between**

**THE SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Appellant

**and**

**DANA OLAHOVA  
(ANONYMITY DIRECTION NOT MADE)**

Respondent

**Representation:**

For the Appellant: Mr P Deller, Senior Home Office Presenting Officer.  
For the Respondent: No appearance.

**DETERMINATION AND REASONS**

1. Ms Olahova is a national of the Czech Republic. She appealed to the First-tier Tribunal against the decision of the respondent on 13 November 2015 to make a deportation order against her. The deportation order was said to have been made with regard to reg. 21 of the Immigration (European Economic Area) Regulations 2006, and was based on her history of offending: she had been convicted of seven offences between March 2013 and March 2015, and had served a number of prison sentences.

2. Ms Olahova's history is not fully known. She came to the United Kingdom in 2006 and apparently worked illegally at some stage. She has two children, who are not said to have lived with her, but with her mother. The younger was born in the United Kingdom. She was a prostitute in the Czech Republic and it is said that her offences in the United Kingdom were committed in order to fund a drug habit.
3. Her appeal came before Judge Juss, who heard oral evidence from her. Noting the date of her arrival in the United Kingdom, Judge Juss concluded that she counted as a person who had resided in the United Kingdom for a period of at least ten years prior to the decision under challenge, and that in accordance with reg. 21(4) she could therefore not be the subject of deportation "except on imperative grounds of public security". He applied that test in conjunction with the requirements set out in reg. 21(6). In relation to the latter, he applied the decision of the Court of Appeal in Essa [2012] EWCA Civ 1718 and concluded that deportation would prejudice the prospects of her rehabilitation. Thus, Judge Juss allowed the appeal.
4. The Secretary of State for the Home Department sought and obtained permission to appeal to this Tribunal. She raises two principal points. The first is that the "imperative grounds of public security" test was not applicable; the second is that the Essa grounds were not made out on the evidence. Ms Olahova has been removed from the United Kingdom. She has not put in any notice under Rule 24, nor has she indicated either a wish to attend the hearing or any grounds of opposition to the Secretary of State's grounds of appeal. We determined that this was an appropriate case in which to proceed in her absence.
5. So far as concerns the "imperative grounds of public security" issue, there is no doubt that the Secretary of State's grounds of appeal are amply made out. It is indeed impossible to tell the basis upon which Judge Juss thought that the appellant before him even might have resided in United Kingdom "for a continuous period of at least ten years prior to the relevant decision", as required by reg. 21(4). Her evidence was that she arrived in 2006. The decision identified by Judge Juss as that against which he was hearing an appeal was made on 13 November 2015, as we have said. The period of time between those dates is incapable of being as long as ten years.
6. Further, there was before the judge no evidence of continuity of residence in the United Kingdom between those two dates. Ms Olahova produced material showing that she had been in the United Kingdom between 2006 and perhaps 2008, and it is clear that she had been in the United Kingdom during the period of her offending from 2013 onwards. But there was no documentary evidence, and the judge does not refer to any oral evidence, of her presence in the United Kingdom between 2008 and 2013. There was accordingly no evidential basis for Judge Juss's conclusion that her arrival in the United Kingdom was ten years before the relevant decision, no evidential basis for his conclusion that she had been in the United Kingdom for a continuous period of ten years before the decision, and,

further, as it happens, no evidential basis even for a conclusion that she had been in the United Kingdom for long enough to obtain a permanent right of residence under reg. 15.

7. So far as concerns the ground based on Essa, the Secretary of State points out that there was no evidence that Ms Olahova had made any attempts to rehabilitate herself, that she was in course of rehabilitation, or that any appropriate rehabilitation could not be continued in the Czech Republic. Those points also seem to us to be well made. It follows that there is really nothing to set against the Secretary of State's decision. Ms Olahova's record of criminal offences is clearly such as to demonstrate that she represents a genuine, present and sufficiently serious threat to the fundamental interests of society: indeed, nobody has suggested to us that that is not the case. In the circumstances there is no basis for saying that the removal decision was unlawful.
8. It is perfectly clear that Judge Juss's determination, having been made apparently in defiance of the lack of evidence that might support it, cannot stand. We set it aside. The truth of the matter is that the grounds upon which Ms Olahova might properly have resisted deportation are imperceptible. We substitute a determination dismissing her appeal.

C. M. G. OCKELTON  
VICE PRESIDENT OF THE UPPER TRIBUNAL  
IMMIGRATION AND ASYLUM CHAMBER  
Date: 25 July 2016