



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

Appeal Number: DA/01787/2013

THE IMMIGRATION ACTS

Heard at Field House

On 22nd June 2016

**Decision & Reasons
Promulgated
On 5th July 2016**

Before

UPPER TRIBUNAL JUDGE FRANCES

Between

**JOSE ALBERTO OLIVEIRA DE ALMEIDA
(ANONYMITY DIRECTION NOT MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr A Burrett, instructed by ULaw Legal Advice Centre
For the Respondent: Mr P Duffy, Home Office Presenting Officer

DECISION AND REASONS

1. The Appellant is a citizen of Portugal born on 7th October 1971. He appeals against the decision to deport him dated 20th August 2013 under the Immigration (EEA) Regulations 2006.
2. The Appellant's appeal to the First-tier Tribunal was allowed by First-tier Tribunal Judge Mitchell and the Secretary of State appealed. I found that there was an error of law in the decision of the First-tier Tribunal dated 16th February 2015 and set it aside for the reasons given in my decision promulgated on 29th January 2016.
3. I set aside the judge's findings at paragraphs 70, 72, 78 and 79. The findings at paragraph 77 were preserved save for the last sentence in

which the judge concludes that the Appellant was not a genuine, present and sufficiently serious threat to the public to justify his deportation on public policy grounds. It was quite clear from the decision on the error of law that that is where the judge fell into error. I therefore have to remake the decision and decide firstly whether the Appellant does constitute a genuine, present and serious threat affecting one of the fundamental interests of society and secondly whether his deportation would be proportionate.

4. The Appellant relied on the material that was before the First-tier Tribunal and submitted a supplementary bundle of eleven pages containing a further witness statement, a letter of support from Steve Nixon, an email from Peter Taylor, an email from the Appellant's brother, a letter of support from Andy Porter, recovery worker at High Level and a letter of support from Claire Jefferies, project leader at Petrus.
5. Mr Burrett also submitted a skeleton argument in which he submitted that on the current evidence before me the Appellant's personal conduct did not represent a genuine, present and serious threat, but if it did the decision to deport was disproportionate taking into account all the circumstances.

Appellant's evidence

6. The Appellant gave evidence confirming his name and address and relying on his witness statements dated 22nd June 2016 and 2nd February 2015. In cross-examination he stated that he had been living in the UK for 21 years but had been unable to obtain permanent residence because he had been working on and off for five years and could not obtain the relevant evidence to do so. He accepted that his offending was linked to drugs and alcohol and he had been addicted to heroin for fifteen years. He had not used heroin for seven years, but has had an alcohol problem for the last three or four years. His last drink was on his birthday last year. He did not have enough to get drunk and just drank with his meal. The last time he got drunk was in January 2013 when he committed the offence of assault for which he was imprisoned for fifteen months. He would not go back to drinking because his ability to stay in the UK depended on him staying drug and alcohol-free. He had no choice but to remain clean.
7. The Appellant had started drinking because he had no direction and had effectively been off sick for ten years. He was not doing anything with his life and had no objectives or goals. He took one day at a time and was not doing anything constructive. He had goals now. He would like to work, but even if he was unable to do so he did not want to go back to using alcohol because that only made the situation worse. He had a different view on life since he had been detained and since he had lived in Rochdale. He did not want to live that life.

8. The Appellant had a brother and sister-in-law in the UK and they had just had a baby. They lived in Heathrow and he talked to them on the telephone every two weeks. He had a sister in Portugal with whom he kept in contact through social media. He did not keep in contact with any other relatives in Portugal because he had not really spoken to them and they did not want to have anything to do with him because of his drug problem.
9. In answer to questions from me, the Appellant stated that had not been in trouble since the offence in January 2013, but he did not know if this was the longest time he had spent without committing offences. Looking at his previous convictions, there was a gap between 2009 and 2012. He stated that this was when he stopped using class A drugs and moved away from the area in which he was living. He stopped using heroin and moved to Maidstone. He would like to move back to Maidstone, but he did not know if he was able to do so because his job offer was in Ashford. He did not want to remain living in Rochdale because he had never seen a place quite like Rochdale before.
10. He started working with the homeless charity because he had to do something constructive. I asked if he enjoyed working there and he replied that it was different, but he had made a good friend in Steve Nixon, who would probably still help him if he moved away. There was no re-examination.

Respondent's Submissions

11. Mr Duffy relied on the reasons for deportation given in the letter dated 15th April 2014. He said that the first test was that of a genuine, present and serious threat, which in essence meant the Appellant's risk of reoffending. In the NOMS report the Appellant was assessed as high risk of reoffending and medium risk of harm. He was only released from detention in July 2015, so had only been at liberty for one year. The Appellant's offending and the index offence was because of his abuse of alcohol. Although he said he was not drinking at the moment he had his last drink on his birthday in October 2015. Alcohol addiction was something that remained with him and could well be linked to depression. It was conceivable that he could get into a situation where things would go against him and he would turn to drink.
12. Mr Duffy did not ask me to go behind the Appellant's belief that he had the motivation to stay clean and accepted that that was often the case. However, it was not uncommon for those in the position of the Appellant to relapse under stress. The Appellant's offending was linked to drugs and alcohol. Along with this was the risk in the NOMS report. Mr Duffy submitted that it was reasonably likely that the Appellant would rely on drugs or alcohol at some point in the future and therefore reoffend. The Appellant was a genuine, present and serious threat to one of the

fundamental interests of society. If I concluded that that was in fact the case then I should go on to consider whether the Appellant's deportation was proportionate.

13. The Appellant had returned to Portugal in 2004 and 2011 but had essentially been living in the UK for 21 years, although he could not demonstrate permanent residence. This was an indication that the Appellant was not socially and culturally integrated in the UK because he was not exercising treaty rights here. In terms of EU law he was not integrated. He had lived as a drug addict and had abused alcohol. He therefore lived on the fringe of society causing nuisance and committing crime. On those facts it could not be said that he was integrated in the UK and there was little beyond his length of residence that went in his favour.
14. The Appellant had some contact with his brother, but it was by telephone and could be maintained from Portugal. His rehabilitation was not a weighty factor given that permanent residence had not been acquired. In all the circumstances his deportation was proportionate and Mr Duffy invited me to dismiss the appeal.

Appellant's Submissions

15. Mr Burrett submitted that rehabilitation may not attract much weight in relation to proportionality, but it was relevant to the first part of the test which was whether the Appellant was a serious, genuine and present threat. If the Appellant established he was rehabilitated then it would support the finding that he should be assessed as low risk of reoffending.
16. The Appellant had been remanded in custody in January 2013 and served seven months of his prison sentence. He was not released, but remained in immigration detention where he completed his licence. He should have been released in September 2013 but had been kept in immigration detention for nearly two years. The Appellant had rehabilitated during that period. He had not used drugs or alcohol in prison and that was something that I should take into account. He had taken steps in prison to rehabilitate himself at an early stage, so over three years ago he began seeking help for his alcohol problem. He had dealt with his heroin problem seven years ago and this may well have assisted him, although he accepted that he had used cannabis.
17. The NOMS Report described the Appellant as behaving differently if he drinks heavily. The prison record states that the Appellant did not get into trouble in prison. He followed directions and was given enhanced status. The reason for this was because the Appellant was not abusing drugs or alcohol.
18. Quite early on in his detention in 2013, he was notified that he was at risk of deportation. This had a material effect and significant impact on his

attitude, enough to make him seek to address his problems. He is well aware that if he steps out of line again he will be removed.

19. The Appellant's first response to the intention to deport him was that he could not go back to Portugal because he had no ties. He stayed in immigration detention in the UK for two years because he had no ties to Portugal and nothing to go back for. The Appellant had built a life in the UK and had taken steps to address his drug and alcohol problems.
20. Given the Appellant's level of education and background, his history of drug use, living on the streets, and being in and out of work, the steps taken by the Appellant to address his offending behaviour were significant and likely to be genuine. He had been released on bail to an address in an area he did not know and where he had no support network. If he was likely to 'fall off the wagon' he would have done so during the last year. The circumstances he found himself in were enough to tip him over the edge, but that was not the case. To the Appellant's credit, he had obtained a support network and had become involved in charity work. He had not drunk heavily since the offence.
21. The NOMS Report in July 2013 was completed after only one visit and only five months into the Appellant's sentence. At that stage he could not be anything other than at high risk of re-offending. However, he pleaded guilty and accepted the offence. It was for the Respondent to establish that three years later the Appellant was still a genuine, present and serious threat. The NOMS Report was of little relevance in this case given its age and the fact that the Appellant had not had the opportunity at that time to address his alcohol and drug problems.
22. Putting the NOMS Report aside, there was only the Appellant's past conduct to assess. This was the longest period the Appellant had stayed out of trouble and this period was different to the others because the Appellant had actually sought and obtained support and was under the threat of deportation. All factors taken together, the Appellant's past conduct was not sufficient to show that he was a genuine, present and serious threat today. It was three and a half years since his last offence and he had rehabilitated himself. It was a sufficiently long time to show that he was at low risk of reoffending.
23. On the Appellant's conduct today he was not a genuine, present and serious threat. He had addressed his alcohol problems and therefore the risk of re-offending was negligible. He could manage his alcoholism because he had put support networks in place to enable him to do so. He had been living in an unfamiliar part of the UK when he had set up and obtained support. He was still seeking support today, so he acknowledged that it is still required. He recognised that he needed to work and was currently doing charity work and keeping himself occupied. His intention

was to go back to work, not to abuse alcohol. He had a job offer in Ashford and all these matters were relevant to the risk of re-offending.

24. On the facts the Respondent had not established that the Appellant was a genuine, present and serious threat to one of the fundamental interests of society. If I did find him to be such threat then I should go on to consider proportionality.
25. The Appellant had no ties in Portugal. He had resided in the UK for over twenty years and he had been in immigration detention for two years, which was far longer than any sentence of imprisonment that had been imposed for criminal offences. Rehabilitation was a factor, though not a weighty one. The Appellant had no life in Portugal, but had made a life here in the UK. There were many letters of support and the Appellant had managed to accomplish a great deal in the past three years whilst subject to the difficulties of detention and with little financial support or accommodation.
26. The Appellant did not want to return to Portugal and had not offended whilst on bail. There were strong arguments to support him being allowed to remain, even if Regulation 21(c) was engaged. The Appellant's past criminal history alone was not sufficient to show that his deportation was proportionate. Mr Burrett invited me to allow the appeal.

Findings and conclusions

27. I found the Appellant to be a credible witness. He gave his evidence in a straightforward manner and clearly accepted responsibility for his actions in the past. It was quite clear from listening to the Appellant that he did not want to return to a lifestyle of drugs and alcohol which led him into offending. I accept the Appellant's evidence that if he were to relapse then he would have to give up the opportunity to live in the UK. He was well aware that this was a last chance for him and he must do everything in his power to remain drug, alcohol and conviction-free. The Appellant has taken numerous steps to achieve this goal.
28. There was evidence in the bundle that the Appellant had been doing charity work since September 2015 for an organisation called Petrus. The Appellant assisted with van collections and also in the shop. There was a letter from Steven Nixon which stated that the Appellant is a very reliable work colleague who had never been late. He and the Appellant had become very good friends. Mr Nixon was well aware of the Appellant's past, but felt that he had displayed great integrity and a willingness to work.
29. There was also a letter from High Level Northern Trust which stated that the Appellant started attending this service on 31st July 2015. He started attending one to one support sessions with the author, Andy Porter, and

these sessions were related to drug and alcohol issues. Initially the sessions were conducted weekly and the Appellant attended all of those sessions and was making an effort to move forward. The sessions had then become fortnightly and as the Appellant improved they were currently monthly.

30. The Appellant had shown continuous improvement over the last twelve months and had also started attending sessions with a counsellor. The Appellant had only just started the counselling sessions, but so far had attended all those that had been scheduled for him. He also signed up for an eight week anger management course and had only three sessions left to complete. Andy Porter stated in the letter that he believed the Appellant was committed to rehabilitation and he was also aware of his work with Petrus.
31. There was a letter from a project leader at Petrus who stated that she had met the Appellant in church in July or August 2015 and he had begun volunteering at the Petrus People Store for two to four days per week. He had received a certificate of thanks from Petrus and she was happy for him to continue to volunteer for two days a week.
32. I find that the Appellant's evidence taken with this evidence shows that he has taken all necessary steps to rehabilitate himself and that his wish to do so was genuine and ongoing. The Appellant has done everything it seems possible to address his offending behaviour and to address his drug and alcohol problem to ensure that he becomes at low risk of reoffending in the future. I am satisfied from hearing his evidence that something has changed since his last offence. He stated that his time spent in detention and his time in Rochdale had made him realise that he needed to turn his life around and do something about his behaviour. I accept that that is what he is seeking to do. He has sought help of his own accord, he is continuing to seek help and he is improving with that help.
33. It is particularly noteworthy that he was bailed to an address in Rochdale which was an area where he had not lived before and immediately on release he sought help from High Level. Soon after his release he met Claire Jefferies, from the Petrus Community Project, at church, and volunteered to do charity work. His rehabilitation clearly started whilst he was in immigration detention and the reports of that time show that he was drug and alcohol-free. He was an exemplary detainee who did all that was asked of him.
34. Therefore, I am of the view that the Appellant appreciates the seriousness of his situation and has done all in his power to ensure that he does not re-offend. I acknowledge Mr Duffy's submission that under stress the Appellant may well relapse and therefore be at risk of reoffending, and that is always a possibility. However, on the evidence I have heard, I find that this is unlikely in the Appellant's particular case.

35. I find that the Appellant is not a genuine, present and serious threat to one of the fundamental interests of society because he currently has the support that he needs, he has the motivation to continue that support and he has obtained that support himself in difficult circumstances. Even if the Appellant does relocate, his past experience in seeking out help and finding work in a new area, Rochdale, will enable him to do the same again should he move.
36. Accordingly, I find that the Respondent has failed to establish that Regulation 21(5) of the Immigration (EEA) Regulations 2006 is satisfied.
37. In any event, I find that the Appellant's deportation would not be proportionate in the particular circumstances of this case. I take into account the entire circumstances, including all the efforts he has made to rehabilitate himself. I bear in mind the serious nature of his previous convictions and the escalation from driving a motor vehicle with excess alcohol, to possession of class A drugs, to assault occasioning actual bodily harm. I acknowledge that the Appellant has seventeen convictions for 34 offences since 1997 and his last offence in January 2013 was an attack on his neighbour in his neighbour's own home in front of his neighbour's child. This conduct is clearly serious.
38. I balance this against the Appellant's current situation and the efforts that he has made to address his offending behaviour. I have taken into account not only the witness statements of the Appellant, but also of a Mr Paulo Rodriguez, Mr Peter Taylor and Miss Ana Maria Marquez. Also the support from the Appellant's brother.
39. The Appellant has no ties to Portugal, save for his sister, and has built a life in the UK. I accept Mr Duffy's submission that his integration has been limited because of his offending behaviour and the lifestyle he leads. However, it cannot be said that he has not integrated at all. The Appellant is 44 years old and has spent nearly half his life here in the UK. There are no very significant obstacles to his integration in Portugal.
40. Therefore, I find that the Appellant is a 44 year old man whose brother, sister-in-law and niece live in the UK and he has regular telephone contact with them. He has resided in the UK for over twenty years and has only made two brief visits to Portugal. He has the support of friends and a job doing charity work. He also has his own support network which he has set up with High Level and another counsellor to enable him to address his alcohol and drug problems. He is committed to working and improving himself and therefore in those circumstances the Appellant's efforts to live a law-abiding life in the UK, his family ties here and his lack of significant ties to Portugal lead me to conclude that on the particular facts of this case the Appellant's deportation is not proportionate.
41. Accordingly, I allow the Appellant's appeal under the Immigration (EEA) Regulations 2006.

Notice of Decision
Appeal allowed.
No anonymity direction is made.

J Frances

Signed
Upper Tribunal Judge Frances

Date: 1st July 2016

TO THE RESPONDENT
FEE AWARD

No fee is paid or payable and therefore there can be no fee award.

J Frances

Signed
Upper Tribunal Judge Frances

Date: 1st July 2016