



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: DA/00295/2017

THE IMMIGRATION ACTS

Heard at the Royal Courts of Justice
On 23 July 2018

Determination & Reasons Promulgated
On 30 July 2018

Before

UPPER TRIBUNAL JUDGE KEKIĆ

Between

JONAS BILY
(ANONYMITY ORDER NOT MADE)

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Ms M Vidal, Counsel instructed by The Legal Guys
For the Respondent: Mr T Melvin, Senior Home Office Presenting Officer

DETERMINATION AND REASONS

1. The appellant challenges the determination of First-tier Tribunal Judge A M Black promulgated on 7 February 2018 dismissing his deportation appeal under the EEA Regulations 2016. The appellant is a Slovak national of Roma ethnicity born on 9 August 1992 who was convicted in November 2015 to 18 months' imprisonment, varied to five years by the Court of Appeal, for wounding with intent to commit grievous bodily harm. He also has numerous other convictions dating back to 2003. These include offences involving burglary, drunk driving, violence and drugs.
2. The judge heard oral evidence from the appellant, his partner and his mother. She found that the appellant had not been residing in the UK in accordance with the Regulations as there was no evidence that his parents had ever worked or

that he had comprehensive sickness insurance (CSI) when he had been a student or that he had worked after leaving school. She found he had not completed ten years of residence under the Regulations and that there was little evidence of integration into British society. She took account of the factors put forward on his behalf but concluded that he represented a genuine, present and sufficiently serious threat to society and that despite his personal circumstances and family life, his deportation was not disproportionate and was not a breach of the Regulations. Accordingly, the appeal was dismissed.

3. Permission to appeal was refused by First-tier Tribunal Judge Lever on 26 February 2018 but granted upon renewal by Upper Tribunal Judge Coker on the single ground that the judge may have erred in her conclusion on the period of residence accrued by the appellant.

4. The Hearing

5. At the hearing before me on 23 July 2018, I heard submissions from the parties. For the appellant, Ms Vidal acknowledged that the issue was a very narrow one and submitted that the judge had failed to engage with whether the appellant had accrued ten years of residence in the UK. She confirmed that the period could only commence from 1 May 2004 when Slovakia became an EU member. She submitted that under the transitional arrangements of the respondent's policy, the applicant did not require CSI until 20 June 2011. She admitted that he had not had any from that date but that nevertheless this point had not been considered by the judge.
6. Mr Melvin relied on the contents of the respondent's Rule 24 response. He submitted that given the appellant's submissions, it was difficult to see how the appeal could have succeeded. The judge's findings did not contain any error of law regarding the period of residence which had been considered (at paragraph 38) but even if there had been an error, the appellant could not succeed as he had never had leave under the Regulations and had been granted leave with his parents under the family consideration programme. There was no evidence that the family or the appellant had ever exercised treaty rights and the transitional arrangements for CSI would not therefore apply to him. The appellant was not entitled to permanent residency and the appeal had no merit.
7. Ms Vidal submitted briefly that the judge had only alluded to the ten year provision in the determination and had not considered the absence of a requirement for CSI prior to June 2011.
8. That completed the hearing. I reserved my determination which I now give with reasons.

9. Findings and Conclusions

10. As submitted by Ms Vida, the issue is a narrow one. Is the appellant entitled to the higher level of protection afforded by an EEA national with permanent residence or the lower level of protection, as found by the judge.
11. The applicant's representatives argue in Ground 1 (on which permission was granted) that as a student, the appellant was exercising treaty rights under reg. 4 between 2004 and 2010 and the judge failed to have regard to this. It is then argued that the appellant did not need CSI until 20 June 2011, that he is entitled to permanent residence and that under reg. 27(3) he is then entitled to the higher level of protection; i.e., there have to be imperative grounds to remove him.
12. There are difficulties with this argument which cannot be overcome. I make the following points in no order of priority.
13. First, the judge did consider the issue of permanent residence; it is not correct to state that she did so only briefly. At paragraphs 35-43 she considered the issue of the appellant's status.
14. Secondly, the appellant never sought to rely on his rights as an EEA national prior to this appeal because, following an unsuccessful asylum application, he had been granted indefinite leave to remain as the dependant of his father in a family ILR exercise on 5 March 2004, even before Slovakia joined the EU. He had never therefore been here exercising his rights to free movement because he already had indefinite leave to remain.
15. Thirdly, even if his position as an EEA national were to be considered, the evidence does not demonstrate that he had completed ten years of residence in accordance with the Regulations. Whilst there is evidence that the appellant was a student, there is an anomaly with the dates. There is confirmation that the appellant attended primary school from March 2001 – July 2003 (AB: 21) but this predates Slovakia's admission to the EU and so is irrelevant for our purposes. A letter from King Ethelbert School dated 8 December 2015 states that the appellant was in full time education at the school from 1 September 2003 – 31 August 2008 (AB:22). This, however, conflicts, with the letter from East Kent College of 21 December 2017 which states that the appellant was studying at that college between 4 September 2006 – 27 June 2008 (AB:23). Plainly, the appellant could not have been attending both school and college full time between 2006 and 2008. The evidence is therefore unreliable and does not assist. However, even taking the evidence at its highest, and disregarding the conflict I have identified, the appellant has only shown that he studied from the relevant start date of 1 May 2004 until September 2009, if the second letter from Kent College (AB:24) is reliable); that is, a total of five years. Even setting aside the issue of CSI for the

moment, he has not established that he studied for ten years. Certainly, given the fact that he has never had CSI, he cannot show that even if he had been studying until 2014 when he would have completed a period of ten years in accordance with the Regulations.

16. Fourthly, there is no evidence that the appellant worked or was self-employed after he completed his studies; indeed, he appears to have spent his time committing a litany of crimes.
17. Having carefully considered all the evidence, the judge was, therefore, entitled to conclude that the appellant was not entitled to the higher level of protection. Her assessment of the sufficiently serious threat was properly undertaken and discloses no legal errors. The appellant cannot show that he has completed ten years of residence under the Regulations. The judge's assessment of the other issues raised as part of this appeal are not open to challenge as permission was not granted on any other grounds.

18. **Decision**

19. The First-tier Tribunal did not make any errors of law and the decision to dismiss the appeal is upheld.

20. **Anonymity**

21. I was not asked to make an anonymity order and there is no reason to make one.

Signed



Upper Tribunal Judge

Date: 24 July 2018