



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

Appeal Number: DA/00325/2017

THE IMMIGRATION ACTS

Heard at : Field House

**Decision and Reasons
Promulgated**

On : 8 January 2018

On: 23 January 2018

Before

UPPER TRIBUNAL JUDGE KEBEDE

Between

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

**MUBARRACK NASSER HASSAN
(ANONYMITY ORDER NOT MADE)**

Respondent

Representation:

For the Appellant: Mr T Lindsay, Senior Home Office Presenting Officer

For the Respondent: Ms J de Souza, instructed by City Wide Solicitors

DECISION AND REASONS

1. This is an appeal by the Secretary of State for the Home Department against the decision of the First-tier Tribunal allowing Mr Hassan's appeal against the decision to deport him from the United Kingdom pursuant to Regulation 23(6) (b) and Regulation 27 of the Immigration (European Economic Area) Regulations 2016 ("the EEA Regulations").

2. For the purposes of this decision, I shall hereinafter refer to the Secretary of State as the respondent and Mr Hassan as the appellant, reflecting their positions as they were in the appeal before the First-tier Tribunal.

3. The appellant is a citizen of the Netherlands who was born on 8 August 1990 in Somalia and who moved with his family at the age of two years to the Netherlands. He claims to have entered the UK on 11 October 2002 with his family at the age of 12 years, and to have remained here since that time aside from a two week holiday to the Netherlands. He first came to the attention of the UK authorities when he was arrested in January 2015 and convicted on 22 July 2015 on two counts of false imprisonment and one count of blackmail. He was sentenced to six years' imprisonment.

4. On 6 May 2017 the appellant was served with a notice of liability to deportation and was asked to give reasons why he should not be deported. The appellant responded by way of written representations, asserting that he had lived in the UK with his family since October 2002 exercising treaty rights. On 26 May 2017 the respondent made a decision to deport the appellant on grounds of public policy in accordance with regulations 23(6)(b) and 27 of the EEA Regulations and issued a deportation order.

5. In her decision, the respondent noted that there was no evidence from the appellant of his claimed residence in the UK and it was therefore not accepted that he had acquired a permanent right of residence or that he had been continuously resident for 10 years in accordance with the EEA Regulations. The respondent considered whether the appellant's deportation was justified on grounds of public policy or public security. The respondent referred to the index offence which involved the appellant and two co-defendants demanding money and threatening to shoot the two victims whom they believed had sold him a stolen car and keeping them at a property from 2am until 5.30pm the following afternoon. The respondent had regard to the comments of the sentencing judge in relation to the index offence. The respondent considered that the appellant's actions showed that he had the potential to cause serious physical and psychological harm and to act violently and considered that he had demonstrated that he posed a significant risk of harm to the public in the UK. The respondent considered that the evidence indicated that the appellant had a propensity to re-offend and that he represented a genuine, present and sufficiently serious threat to the public justifying his deportation on grounds of public policy. It was concluded further that his deportation to the Netherlands would be proportionate and justified. The respondent went on to consider Article 8, noting that the appellant did not have a partner or children for the purposes of paragraph 399(a) and (b) of the immigration rules and considering that he could not meet the requirements of paragraph 399A as he had not been lawfully resident in the UK for half his life, that he was not socially and culturally integrated in the UK and that there were no very significant obstacles to his integration into the Netherlands. It was not considered that there were any very compelling circumstances for the purposes of paragraph 398. The respondent accordingly concluded that the appellant's deportation would not breach his human rights.

6. The appellant appealed against that decision and his appeal was heard on 15 August 2017 by First-tier Tribunal Judge Saffer. Judge Saffer heard from the appellant and his mother. He found that the trigger offences did not mean that the appellant should be deported due to imperative grounds of public security or that there was a genuine or present threat to anyone specifically or the public generally. He concluded that it was not proportionate to deport the appellant either under the EEA Regulations or on Article 8 grounds and he accordingly allowed the appeal on all grounds.

7. The Secretary of State sought permission to appeal to the Upper Tribunal on the grounds that the judge had not applied the correct criteria when reaching his decision and had failed to take a holistic approach to integration and that he had provided no reasons for his conclusions as to present threat.

8. Permission to appeal was initially refused, but was subsequently granted in the Upper Tribunal on 10 October 2017.

9. Having heard from both parties it seems to me that the judge's decision cannot stand and has to be re-made in its entirety.

10. The judge proceeded in his decision on the basis that the appellant had the benefit of the highest level of protection of imperative grounds of public security in order for his deportation to be justified, but did not provide any explanation as to how he reached that conclusion. It appears from his observations and findings at [18], taken together with [7], that he concluded that the higher level of protection was met as a result of the appellant's studies and voluntary work covering a period of over 10 years. However, and despite his finding at [21] as to integration, such a conclusion failed to include a consideration of whether or not the appellant's integrative links had been broken by his offending and imprisonment, in accordance with the principles in Warsame v The Secretary of State for the Home Department [2016] EWCA Civ 16.

11. Furthermore, the judge's conclusion failed to include an assessment of whether the appellant had acquired a permanent right of residence which, according to the persuasive Opinion of the Advocate General in B v Land Baden-Wurttemberg and Secretary of State for the Home Department v Franco Vomero C-316/16 and C-424/16, was a prerequisite for the enhanced protection under Article 28(3)(a) of the Directive. As the respondent asserted at [4] of her grounds, there was no evidence that the appellant had comprehensive sickness insurance so as to be able to demonstrate that he had acquired a permanent right of residence in the UK as a "self-sufficient person" or "student" pursuant to Regulation 4(c) and (d). Ms de Souza submitted that the appellant qualified under the Regulations as a member of a household of EEA nationals who came to the UK at the same time. However she accepted that there was no evidence that they were exercising Treaty rights and I do not see, therefore, how membership of the household, without more, would be sufficient in itself to make the appellant a qualified person for a continuous five year period.

Accordingly the judge's decision was materially deficient in its assessment of the relevant level of protection available to the appellant.

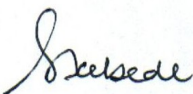
12. Had the judge's conclusion that the appellant did not represent a genuine, present and sufficiently serious threat to society been a full and properly reasoned one, clearly independent from the findings on the level of protection, the above error may not necessarily have been a material one requiring the re-making of the decision. However the judge's findings were not fully and properly reasoned and it is cannot be said that his decision was not influenced by his observations on the enhanced level of protection available to the appellant. Although the judge considered the nature of the trigger offence there was otherwise a lack of any detailed analysis of the threat posed by the appellant, with the judge's entire consideration limited to one brief sentence at [20]. There was no consideration of efforts at rehabilitation but simply an unexplained comment that no rehabilitation was needed. There was no proper consideration of the appellant's conduct, but simply a comment that he had not misbehaved in prison and was previously of good character. The judge, furthermore, failed to consider the harm to society of an offence as serious as that committed by the appellant.

13. Accordingly it seems to me that the judge's decision is materially flawed and unsustainable and cannot stand. There are no findings that can justifiably be preserved and the decision must be re-made in its entirety. The appropriate course, therefore, is for the matter to be remitted to the First-tier Tribunal to be heard afresh.

DECISION

14. The making of the decision of the First-tier Tribunal involved the making of an error on a point of law. The Secretary of State's appeal is allowed and the decision is set aside.

15. The appeal is remitted to the First-tier Tribunal pursuant to section 12(2) (b)(i) of the Tribunals, Courts and Enforcement Act 2007 and Practice Statement 7.2(b), to be heard before any judge aside from Judge Saffer.

Signed: 
Upper Tribunal Judge Kebede
2018

Dated: 10 January