



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

Appeal Number: DA/00307/2019

THE IMMIGRATION ACTS

**Heard at Manchester Civil Justice Centre
On 20 January 2020**

**Decision & Reasons
Promulgated
On 31 January 2020**

Before

UPPER TRIBUNAL JUDGE PICKUP

Between

**PK
(ANONYMITY DIRECTION MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr R Rashid, instructed by Burton & Burton Solicitors

For the Respondent: Mr A Tan, Senior Home Office Presenting Officer

DECISION AND REASONS

Pursuant to Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008 I make an anonymity direction. No report of these proceedings shall directly or indirectly identify the appellant or any member of his family. This direction applies both to the appellant and to the respondent. Failure to comply with this direction could lead to contempt of court proceedings.

This is the appellant's appeal the decision of First-tier Tribunal Judge Tully promulgated on 17 October 2019, dismissing on all grounds his appeal against the decision of the Secretary of State dated 1 June 2019 to deport

him to Poland pursuant to the Immigration (EEA) Regulations 2016 (the Regulations). First-tier Tribunal Judge Chohan refused permission to appeal on 14 November 2019. However, when the application was renewed to the Upper Tribunal Upper Tribunal Judge Kekić granted permission to appeal on 10 December 2019.

Error of Law

For the reasons set out below, I find no material error of law in the making of the decision of the First-tier Tribunal such as to require it to be set aside.

The deportation decision followed the appellant's conviction for an offence of wounding/inflicting grievous bodily harm for which he was sentenced to a term of twelve months' immigration imprisonment. The judge accepted that the appellant was entitled to permanent residence under the Regulations and, therefore, that he qualified for the intermediate or middle level of protection against removal so that he could only be removed on serious grounds of public policy or public security.

In granting permission to appeal, Judge Kekić considered it arguable that the conflict in evidence arising between the appellant's evidence to his OASys case manager identified at paragraph 34 of the decision as well as other discrepancies set out at paragraph 29 of the decision should have been put to the appellant,

“particularly as it led the judge to reject the report as unreliable and to find that the appellant's father could assist with support and rehabilitation in Poland. It is also arguable that the judge failed to properly consider the appellant's remorse and his good government since the offence.”

At paragraph 29 of the decision the judge noted that the OASys Report author stated that the appellant was at low risk of reoffending but represented a medium risk of harm to both his victim and other members of the public if he did reoffend. However, the judge had serious concerns about the weight that could be given to this low risk assessment, because the appellant presented to the author of the report a rather different account of the encounter with the victim than the basis on which he was sentenced. He told the caseworker that the meeting in which the assault took place had been initiated by the victim, that he was not aware of the purpose of the meeting, and that his assault was a “pre-emptive strike”, because he feared being hit by the victim. From the sentencing remarks, it is clear that it was the appellant who had sought the meeting and who insisted that the victim attend. When the victim put forth his hand to shake that of the appellant, the latter punched him in the face with a series of vicious blows, entirely unprovoked. These facts were highly relevant to any risk assessment. The assessment does not address the version of events in the sentencing remarks. It follows that only limited weight could be given to the risk assessment.

The sentencing judge concluded that the attack had been planned by the appellant and his demand that the victim attend served to aggravate the

seriousness of the assault. In those circumstances, the Immigration Judge was entitled to conclude at paragraph 28 that the appellant had been guilty of a serious and vicious attack that was pre-planned and caused serious injury to his victim. Understandably, at paragraph 29 the judge did not accept that the appellant had been entirely truthful with the caseworker preparing the OASys Report, nor, given that he blamed the victim in part for his actions, that he had in fact accepted responsibility for the offence, contrary to what was opined in the report at 2.1. All that was highly relevant to the assessment of risk which was part of the judge's task in assessing this case and in respect of which the OASys report was only one element. Given the above facts, only limited weight could be given to the report. At paragraph 30 the judge rejected the assessment of low risk of reoffending and at paragraph 31 did not accept that the appellant was not at a risk for future offending, finding that he was at such a risk and that if he did reoffend the impact on any person he attacked could be very serious.

At 34 of the decision the judge also noted that the appellant told the caseworker that he had a very good relationship with his father but the judge found that this was inconsistent with the evidence of the appellant's mother, which was to the effect that he had not seen his father since the divorce of his parents some eight years earlier. This discrepancy was put to the appellant's mother in evidence, but the judge did not accept her apparent speculation that perhaps he had gone to see his father when he visited Poland with his girlfriend. The judge was entitled to conclude that the appellant and his mother had sought to disguise the relationship with his father in order to manufacture a distance between them for the purpose of the appeal. The judge found it likely that the appellant was still in fact in contact with his father and that, therefore, the latter would support him in returned to Poland. Those findings were entirely open to the judge on the evidence and are supported by cogent reasoning.

The grounds also complain that the judge had made no findings in respect of the appellant's alleged remorse or that the offence was a one-off and out of character and therefore unlikely to be repeated. It is also pleaded that the decision showed no proper assessment of the appellant's good government since the incident leading to the conviction over a year later, and only considered his behaviour since release from imprisonment. However, at paragraph 27 the judge adopted the sentencing remarks, which took account of these factors, as an authoritative summary of the assessment of the offence and did not need to repeat them in full. At paragraph 31, the judge took into account that the appellant had not reoffended since release but was entitled to note that he was on probation with a risk of being recalled to serve the balance of the sentence for any act of violence.

At paragraph 39 of the decision the judge confirmed that all the evidence had been taken into account and gave a summary of the findings leading to the conclusion at paragraph 40 that the appellant's behaviour represented a genuine, present and sufficiently serious threat affecting one of the

fundamental interests of society, namely the prevention of crime or disorder. Accepting that the burden of proof was on the respondent, the judge nevertheless concluded that the viciousness of the attack, the risk of reoffending, and the impact on the victim combined with the impact on any future victim, was so significant as to meet the higher threshold of strong grounds. Having considered the matter in the round, I do not find any error of law on the basis that relevant factors were not taken into account. It is not necessary for the judge to set out every fact. In Budhathoki [2014] the Upper Tribunal stated that:

“It is generally unnecessary and unhelpful for First-tier Tribunal judgments to rehearse every detail or issue raised in a case. This leads to judgments becoming overly long and confused and is not a proportionate approach to deciding cases. It is, however, necessary for judges to identify and resolve key conflicts in the evidence and explain in clear and brief terms their reasons, so that the parties can understand why they have won or lost.”

There is no definition of what amounts to ‘serious grounds’. In MG and VC (Ireland) [2006] UKAIT 00053 the Upper Tribunal said that:

“Where Regulation 21(3) applies to an individual because he is an EEA national with a permanent right of residence he may be removed as previously on the grounds that there is a risk of his committing further offences, with the proviso that the risk of harm must constitute serious grounds of public policy for his removal.”

In BF (Portugal) v SSHD [2009] EWCA Civ 923 the appellant, a citizen of Portugal, arrived in the UK in 1999 and had acquired permanent residence. He was convicted of battery against his partner and sentenced to 42 months’ imprisonment. He could only be removed on serious grounds of public policy or public security. The Court of Appeal held that the Tribunal first had to determine the claimant’s relevant personal conduct; secondly, whether the conduct represented a genuine, present and sufficiently serious threat; thirdly, whether that threat affected one of the fundamental interests of society; and fourthly, whether deportation would be disproportionate in all the circumstances. The Tribunal noted the evidence that the claimant had a high propensity to reoffend against the same victim and any new partner but went on to find that the Secretary of State had failed to prove that there were serious grounds of public policy or security which made deportation proportionate. In remitting the appeal, the Court of Appeal said that the Tribunal should have reached a conclusion as to whether the threat which was clearly present at the time of the offence was still present at the hearing. The Tribunal had to decide whether there was a present serious threat and if so, the extent of that threat. That was the task that the First-tier Tribunal in the present case addressed.

In Batista v SSHD [2010] EWCA Civ 896 the issue was whether there were serious grounds of public policy for expulsion. The appellant had

numerous convictions culminating in a sentence of eight years for GBH. The Court of Appeal held that the Tribunal was entitled to conclude that the appellant's record showed a propensity to renewed violence such as to satisfy the relevant test.

The primary issue raised in this case is whether the judge's assessment of the OASys Report and the weight given to it was something that should have been put to the appellant for his comment, to put in the evidence for him to make comment before the judge made the findings supporting the decision. Mr Tan points out that the OASys Report was but one factor taken into account and it is not necessary for the judge to set out each and every factor. As Mr Rashid agreed, the weight to be given to evidence was a matter for the judge. In large part, as I pointed out to him, Mr Rashid's submissions were effectively a plea litigation, listing a wide-ranging list of mitigating factors which were to the appellant's credit, or which otherwise reduced the alleged seriousness of the offence.

However, I have to consider whether the judge's conclusion to give limited or little weight the OASys Report's assessment that the appellant was at a low risk of offending was justified without that matter having been raised with the appellant during the hearing. I bear in mind in this regard that the OASys Report was produced by the appellant and put before the Tribunal at the appellant's request. Before the Tribunal were also the judge's sentencing remarks. It is clear and obvious from those two documents that they inhabit separate factual worlds that could only be explained by the fact that the appellant had presented a version of events to the case officer different to and inconsistent with the judge's view of the offence as set out in the sentencing remarks. That obviously undermined the weight that the judge could give to the OASys Report. However, it is not the case that the judge rejected the OASys report entirely. It is clear that some parts of the report were relied on, and it is also clear from a reading of the decision that the judge had given careful consideration to the report. For example, at paragraph 30 of the decision the judge noted that the appellant had not yet expressed an understanding of the emotional and psychological harm he had caused, as set out at 2.5 of the report, and noted that the appellant was recorded as having a lack of attitude supportive of violence, which was a factor that contributed to his risk of offending. After considering all the evidence in the round, at the end of paragraph 30 of the decision, the judge stated: "I do not accept that the assessment that he is at low risk of reoffending is reliable and given the facts and the very serious nature of the offence and the triggers highlighted in the report."

A further telling point made in Mr Tan's submissions, is that even if the discrepancies between the OASys Report and the sentencing remarks had been put to the appellant, he could not gainsay them, except by further undermining the report. He would either have to assert he said no such thing, which was not Mr Rashid's submissions to me, or accept that he had given an inaccurate account to the author of the report. In reality, the point raised in the grounds has no materiality as there is no benefit to be

gained by the appellant even if he had been given an opportunity to address the discrepancy. As Mr Tan suggested, anything he could say would likely further undermine the weight to be given to the OASys Report.

It is also important to note in considering the grounds of appeal that they make no criticism as to the threshold identified by the judge of strong grounds or any part of the judge's definition of what might amount to be strong grounds. At paragraph 39 of the decision the judge properly set out the test and the factors that undermine the assertion that the appellant is integrated into society.

Considering the matter carefully, I do not accept that the judge fell into error in attributing limited or little weight to the OASys Report in relation to the risk of reoffending. The judge justified the approach taken by cogent reasoning set out in the decision. I do not accept that it was necessary for the judge to put these inconsistencies to the appellant any more than it would be necessary for the judge to do so before giving limited weight to an expert medical or country background report. The discrepancies or inconsistencies were evident on the face of the documents put before the court and the appellant had had every opportunity to address the issue of risk. It was not necessary for the judge to point out the obvious. I also note that if the submissions on behalf of the appellant on this point are correct, it would require almost every Tribunal judge to recall the parties for a further hearing to air the likely findings and invite further submissions before the decision is made. This is not the case of a novel issue, not previously identified, being raised by the judge but not relied on by either party, or the judge introducing new evidence or background material gained through post-hearing research. The judge was entitled to carefully consider the evidence in the round and reach findings and conclusions on that evidence, provided that cogent reasoning open on the evidence can be discerned from a reading of the decision. I am satisfied that it can.

The other grounds of application for permission to appeal are in reality mere disagreements with the decision and, as I have stated, an effective plea in mitigation as to factors which are in the appellant's favour. Ultimately, Mr Rashid accepted that his submissions could be summarised as being that the judge made an error as to the weight to be attached to the OASys Report. I am satisfied that weight is a matter for the judge and that on the facts of this case the judge was entitled to attach limited weight to the report, for the clear reasons given. In the circumstances, I find no material error in relation to that ground.

Mr Rashid also made points in submission about the content of paragraph 34 of the decision and the judge's conclusions as to whether the appellant had a relationship with his father in Poland, which was obviously relevant to his ability to resettle there. I find no merit in these grounds as they are no more than a disagreement with the decision. The judge set out at paragraph 34 the evidence that had been given and the reasons why the

evidence was not accepted. That was entirely within the province of the judge and discloses no error of law.

I accept that a different judge may have reached a different conclusion as to whether on these facts there were in fact 'strong grounds' justifying removal, but that is not the issue raised in the grounds or before the Upper Tribunal.

In all the circumstances, I find that the decision of the First-tier Tribunal disclosed no material error of law.

Notice of Decision

The making of the decision of the First-tier Tribunal did not involve the making of an error on a point of law such as to require the decision to be set aside.

I do not set aside the decision.

The decision of the First-tier Tribunal stands and the appeal remains dismissed on all grounds.

Signed



Upper Tribunal Judge Pickup

Dated

27 January 2020

**To the Respondent
Fee Award**

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

Signed



Upper Tribunal Judge Pickup

Dated

27 January 2020