



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

Appeal Number: EA/00605/2019

THE IMMIGRATION ACTS

**Heard at Manchester CJC
On 12 March 2020**

**Decision & Reasons Promulgated
On 19 March 2020**

Before

UPPER TRIBUNAL JUDGE PICKUP

Between

**BRAD DANIEL
[ANONYMITY DIRECTION NOT MADE]**

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the appellant: Mr C Timson, instructed by Manchester Associates

For the respondent: Mr A McVeety, Senior Home Office Presenting Officer

DECISION AND REASONS

1. This is the appellant's appeal against the decision of First-tier Tribunal Judge Gould promulgated 12.9.19, dismissing his appeal against the decision of the Secretary of State, dated 16 .1.19, to refuse to admit him to the UK pursuant to regulation 11 of the Immigration (EEA) Regulations 2016 (the Regulations).
2. First-tier Tribunal Judge Saffer granted permission to appeal on 16.1.20 on all grounds, finding it arguable that the judge materially erred in law in stating at [24] of the decision that "facts were agreed", when it was clear from [14] that they were not.

Error of Law

3. In the first instance I have to determine whether or not there was an error of law in the making of the decision of the First-tier Tribunal such that it should be set aside.
4. The application for entry was refused on the basis that the appellant would pose a threat to the requirements of public policy if admitted, and that this was proportionate, and represented a genuine, present and sufficiently serious threat affecting one of the fundamental interests of society.
5. The allegation was that on 16.1.19 when loading his lorry in Belgium, the appellant, who is a Romanian national, agreed to transport an Albanian national to the UK, knowing, having seen his passport, that he needed a visa to enter the UK and did not have one. In interview, he told the immigration officer that when approaching UK Passport Control the man hid in the bunk behind and he failed to tell the Border Force officer that there were two people in the cab. He allegedly admitted to having transported people in the same manner on previous occasions because "he just wanted to help."
6. The grounds argue that the First-tier Tribunal Judge made a series of "central and core" findings without providing any or any adequate reasons for those findings. It is submitted in particular that at [24] the judge was satisfied on the 'agreed' evidence that the appellant was prepared to transport a man to border control without knowing his identity and/or whether he had documents. It is asserted that this evidence was not agreed by the appellant or his representative, pointing to [5] of his witness statement where he alleges that he was told that the man he transported did have documents which would be presented to border control. This it is said, "is a clear indication that the Judge has made his finding on the flawed basis that the above "evidence" was agreed when clearly it was not.
7. It is further argued that the judge stated that the appellant had done this once or twice before, but failed to provide sufficient reasoning for this finding.
8. However, the grounds are based on a misconstruction or misunderstanding of the judge's findings.
9. At [24] the judge stated: "I am entirely satisfied on the agreed evidence that the appellant was prepared to transport a man into border control without knowing his identity or whether he had documents. I am satisfied that the appellant has done this once or twice before. I am satisfied that the appellant's employment meant he would be thoroughly familiar with the requirements that those passing through border control must have appropriate documentation and that those without the same were attempting to enter the United Kingdom unlawfully." The judge went on at [25] to find that on the basis of the finding at [24] that the appellant was

“attempting to facilitate unlawful immigration into the UK and but for the actions of Border Force it was more likely than not he would have been successful.”

10. The judge did not state that the facts were agreed, but that it was found as a fact on the agreed evidence that the appellant had attempted to facilitated illegal entry. The appellant did not attend the tribunal appeal hearing but was content to rely on his bundle, including his witness statement. He did not present himself for cross-examination on the assertions in his statement. However, from [19] of the decision that “on the appellant’s own admission he has permitted a man he encountered at a car park and had never met before to enter his cab. The appellant made a decision to help this man enter the United Kingdom. The appellant knew nothing about him and had seen none of his documents – the appellant gave evidence (paragraph 5) that he said he would present his documents to the border control and “I decided to help without knowing his full situation.”” It follows that the first sentence of [24] is entirely accurate. The findings, “I am satisfied” in the remainder of that paragraph were findings open to the judge and based on the evidence before the Tribunal. It is entirely possible to read [24] as meaning that the first sentence only is the agreed evidence and the rest is not agreed but sustainable findings on the evidence.
11. Alternatively, what the judge intended by reference to “agreed evidence” may merely mean the evidence that was put before the Tribunal for consideration and not that the facts asserted by the evidence were agreed by the appellant. It is clear that the judge took into account both the appellant’s witness statement and interview accounts, as well as the submissions of both representatives before making findings which were entirely open on the evidence. It is clear that At [17] the judge stated that regard was had to all of the evidence and all of the submissions, not merely those summarised in the decision. It is clear on a reading of the decision as a whole that the findings commenced at [18] of the decision and were fully reasoned.
12. Mr Timson attempted to make other points on appeal as to whether the findings justified the conclusion that refusal to grant entry met the specific requirements of the Regulations. However, those were not grounds pleaded in Mr Timson’s grounds and I declined to hear him on grounds in respect of which no appeal had been made and no permission granted.
13. In the circumstances, and for the reasons set out above, I am satisfied that there was no error of law in the decision of the First-tier Tribunal.
14. In VW (Sri Lanka) [2013] EWCA Civ 522 at [12], LJ McCombe stated, “Regrettably, there is an increasing tendency in immigration cases, when a First-tier Tribunal Judge has given a judgment explaining why he has reached a particular decision, of seeking to burrow out industriously areas of evidence that have been less fully dealt with than others and then to use this as a basis for saying the judge's decision is legally flawed because

it did not deal with a particular matter more fully. In my judgment, with respect, that is no basis on which to sustain a proper challenge to a judge's finding of fact." This is such a case.

Decision

15. The making of the decision of the First-tier Tribunal did not involve the making of an error on a point of law such that the decision should 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 12 March 2020

Anonymity

I have considered whether any parties require the protection of any anonymity direction. No submissions were made on the issue. The First-tier Tribunal did not make an order pursuant to rule 13(1) of the Tribunal Procedure Rules 2014.

Given the circumstances, I make no anonymity order.

Signed DMW Pickup

Upper Tribunal Judge Pickup

Dated: 12 March 2020