Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: EA/01591/2020

THE IMMIGRATION ACTS

Heard remotely at Field House	**Decision & Reasons**
By UK Court Skype	**Promulgated**
On 28 May 2021	On 15 June 2021

Before

UPPER TRIBUNAL JUDGE OWENS

Between

Mr BOGDAN-CORNEL CAZACU
(ANONYMITY ORDER NOT MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr Fratila, Counsel instructed by Cabinet Individual de Avocatura Biber Bianca
For the Respondent: Mr Lindsay, Senior Home Office Presenting Officer

DECISION MADE PURSUANT TO RULES 34, 39 & 40 (3) OF THE TRIBUNAL PROCEDURE (UPPER TRIBUNAL) RULES 2008

1. The appellant appeals with permission against the decision of First-tier Tribunal Judge Sangha sent on 7 December 2020.

2. Both parties agreed that the decision of the First-tier Tribunal involved the making of an error of law in that the judge had

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made a mistake of fact which led him to fail to give weight to supporting evidence.

3. The judge determined the appeal on the papers without a hearing and had before him the respondent’s bundle which contained various evidence about the appellant’s residence, ties and work history in the UK.

4. The bundle also included a document translated into English entitled ‘release from prison’. From this, it was apparent that the appellant’s detention commenced on 13 February 2017 and on 28 August 2018.

5. The judge failed to have regard to these dates and erroneously found at [19] that the appellant had only arrived in the UK after his release from detention after 28 August 2018 and that his residence in the UK amounted to one year and five months; whereas in fact the appellant had first entered the UK in January 2015, some years earlier. The judge gave considerable weight to this short period of residence when looking at the issue of length of residence and social and cultural integration into the UK. I take into account that it is more difficult to understand evidence without the benefit of hearing oral evidence or having a representative present to clarify matters and that the appellant could have set out his chronology more clearly, nevertheless there was evidence in relation to the appellant’s dates of incarceration before the judge and there exists an error of fact.

6. As a result of this factual error the judge also failed to give weight to some supporting evidence in respect of the appellant’s employment including references from various employers providing character references for instance the reference from Alex Forman.

7. I am satisfied that the error is material because it goes to the proportionality of the decision. Had the judge taken into consideration the length of time the appellant had remained in the UK, his work history, good character and lack of offending during that period he may have come to a different decision when deciding whether the decision to deport was proportionate. When finding that the error is material, I take into account the principles in IA (Somalia) v SSHD [2007] EWCA Civ 323 and SSHD v Robinson [2018] EWCA Civ 85.

8. I would also comment that at [5] and [23] the judge errs by referring to the appellant bearing the burden of proof. In an deportation appeal it is for the respondent to discharge the burden of proving that the personal conduct of the individual represents a genuine, present and sufficiently serious threat affecting one of the fundamental interests of society and that

the decision is proportionate in accordance with Arranz (EEA-Regulations- Deportation – test) [2017] UKUT 00294.

9. In respect of disposal, while mindful of statement 7 of the Senior President's Practice Statements of 10 February 2010, it is the case that the appellant has yet to have an adequate consideration of his deportation appeal at the First-tier Tribunal and I am satisfied that the appropriate course of action is to set aside the decision as well as all of the factual findings in order for the appeal to be heard de novo by the First-tier Tribunal.

10. Rule 40 (1) of the Tribunal Procedure (Upper Tribunal) Rules 2008 provided that the Upper Tribunal may give a decision orally at a hearing which I did. Rule 40 (3) provides that the Upper Tribunal must provide written reasons for its decision with a decision notice unless the parties have consented to the Upper Tribunal not giving written reasons. I am satisfied that the parties have given such consent at the hearing.

Notice of Decision

11. The decision of the First-tier Tribunal involved the making of an error of law and is set aside.

12. I remit the appeal to the First-tier Tribunal for a fresh hearing in front of a judge other than First-tier Tribunal Judge Sangha.

Direction

13. The appellant indicated that he would like to have an oral hearing of the remitted appeal and the appeal should be listed accordingly with an appropriate interpreter if necessary.

Signed Date: 28 May 2021

R J Owens
Upper Tribunal Judge Owens