



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

Appeal Number: DA/00915/2012

**THE IMMIGRATION ACTS**

**Heard at Nottingham Magistrates Court**

**Determination  
Promulgated**

**On 17<sup>th</sup> October 2013**

**On 25<sup>th</sup> October 2013**

.....  
**Before**

**UPPER TRIBUNAL JUDGE MARTIN**

**Between**

**MR LURI DOS SANTOS**

Appellant  
(NO ANONYMITY ORDER)

**and**

**SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Respondent

**Representation:**

For the Appellant: Miss A Radford (instructed Blavo & Co Solicitors)

For the Respondent: Mr J Parkinson (Home Office Presenting Officer)

**DETERMINATION AND REASONS**

1. This is an appeal to the Upper Tribunal by the Appellant, a Portuguese national, in relation to a determination of the First-tier Tribunal (Judge North and Dr J O De Barros) promulgated on 23rd April 2013, in which it dismissed the Appellant's appeal against the Secretary of State's decision to deport him.
2. The matter first came before me on 7th August 2013 to decide whether the First-tier Tribunal had made an error of law and if so whether and to what extent the determination should be set aside.

3. I decided that the First-tier Tribunal had made an error of law in that it had relied upon the content of a National Offender Management System (NOMS) report in its determination when that report had not been seen by the Appellant or his representative nor indeed were they aware of its existence. Furthermore, that report was itself internally inconsistent. I therefore set aside the determination and adjourned the matter for a resumed hearing before me on a later date.
4. Another ground upon which permission to appeal had been sought, which I found not to be made out was that the Tribunal had erred in not adjourning the hearing to allow the Appellant's mother to give evidence. She was detained under the Mental Health Act at the time of the hearing before the First-tier Tribunal. Although I have not found an error of law in the refusal to adjourn I did indicate on 7<sup>th</sup> August that if she was able to give evidence before me at the resumed hearing I would hear her. Save for that I directed that the resumed hearing should be on the basis of submissions only.
5. Thus the matter came before me. The Appellant, having been moved to a detention centre too far away from Nottingham Magistrates Court to be produced, was not present at the hearing. However, as the matter was part heard before me I needed to hear it. Furthermore, given that I had previously directed that the matter should proceed by way of submissions and there was to be no oral evidence from the Appellant I concluded that I was able to proceed in the Appellant's absence. He was represented by Counsel, Miss Radford who indeed had represented him before the First-tier Tribunal and before me on 7th August 2013.
6. The reason for the matter not being finalised on 7th August 2013 was that Miss Radford indicated that those instructing her needed to make enquiries as to any more up-to-date OASys or NOMS reports.
7. At the commencement of the hearing before me and after I decided that I would proceed Miss Radford indicated that there were no more reports. So far as the Appellant's mother was concerned she remained detained in a psychiatric unit under the Mental Health Act and was unable to attend to give evidence. She indicated that the Appellant's social worker was present but having previously indicated the matter would proceed by way of submissions only and the social worker's statement being contained in the bundle of evidence I declined to hear from her.
8. The Secretary of State proposes to deport this Appellant under the provisions of the Immigration (European Economic Area) Regulations 2006 as he is an EU national. He came to the UK in 2004. It was accepted before the First-tier Tribunal that he has acquired a permanent right of residence in the UK. He had not however, prior to his incarceration, been in the UK for 10 years. Therefore, in accordance with Regulation 21(3) he can be deported only on serious grounds of public policy or public security.
9. Regulation 21(5) provides:-

“Where a decision is taken on grounds of public policy or public security it shall, in addition to complying with the preceding paragraphs of this Regulation, be taken in accordance with the following principles-

- a. the decision must comply with the principle of proportionality;
- b. the decision must be based exclusively on the personal conduct of the person concerned;
- c. the personal conduct of the person concerned must represent a genuine, present and sufficiently serious threat affecting one of the fundamental interests of society;
- d. matters isolated from the particulars of the case or which relate to considerations of general prevention do not justify the decision;
- e. a person's previous criminal convictions do not in themselves justify the decision.

10. Regulation 21(6) provides:-

Before taking a relevant decision on the grounds of public policy or public security in relation to a person who is resident in the United Kingdom the decision maker must take account of considerations such as the age, state of health, family and economic situation of the person, the person's length of residence in the United Kingdom, the person's social and cultural integration into the United Kingdom and the extent of the person links with his country of origin.

11. The provisions of Regulation 21 reflect European case law in relation to deportation and in particular the principles of Maslov v Austria 1638/03 [2008] ECHR 546 and the Boultif criteria.
12. The circumstances of this Appellant are that he was born on 27th December 1991. He came to the UK in 2004 with his mother and his sister. His sister returned to Portugal in 2008 where she now lives with her father. His mother was detained under the provisions of the Mental Health Act in 2008 and as a result he was placed in the care of Islington Social Services. The Appellant was aged 13 when he came to the UK and he completed his education here.
13. The Appellant has amassed a considerable number of criminal convictions during his time in the UK and the Police National Computer record is contained in the Respondent's bundle. He was first convicted on 15th May 2008 when aged 16. On that occasion he was convicted of robbery and attempted robbery and a Referral Order was made for five months.
14. On 1st July 2008 he was convicted of two offences of robbery and a breach of the earlier Referral Order and so was sentenced to an 18 months Supervision Order.

15. On 16th January 2009, while still subject to the Supervision Order, he was convicted of one offence of theft and three of robbery. The offences occurred only two months after his last conviction and he was sentenced to an 18 month Detention and Training Order.
16. On 9th June 2010 he was convicted of 3 offences of possessing Class A controlled drugs, heroin and crack cocaine, for which he was given 100 hours Community Order.
17. On 13th October 2010 for failing to comply with the requirements of that Community Order an additional seven hours unpaid work were added.
18. On 9th June 2011 he was convicted of possession of a Class B drug, possession of a Class A drug with intent to supply and possessing an offensive weapon in a public place. He was sentenced to a total of three years in a Young Offenders Institution. That is the conviction which led to the decision to deport him.
19. When the Appellant was convicted in January 2009 and sentenced to 18 months Detention and Training the Secretary of State wrote to him at the Young Offenders' Institution informing him that she had considered deporting him but had decided not to do so on that occasion. He was warned that any recurrence may lead to a deportation decision. That clearly did not deter the Appellant from reoffending. The Secretary of State's letter was dated 14th September 2009 and within six months the Appellant had reoffended.
20. I have been provided with the Judge's sentencing remarks in relation to the last offences and the Judge noted that the Appellant had pleaded guilty and he was given credit for that. The judge said that the Appellant was an able young man and in many ways had a lot on his shoulders. He also thought the Appellant was capable. The Judge noted that the Appellant must have friends and associates whose company he enjoyed and he had studied hard and was looking for work. The Judge said he was hopeful that he was capable of living a good and honest life. The Judge also noted however that he had unfortunately some less desirable friends and that in the "ducking and diving world" which he inhabited, he had come before the courts for serious specified offences. The Judge noted the robberies were serious and that he had been given a custodial sentence in relation to that. He said that the drugs trade is a filthy trade associated with people who commit serious specified offences. The Judge noted that the Appellant had been caught after having been given a chance by the courts only recently and that although he had eventually completed the community-based order he had already offended again. He was in possession of Class A drugs which he intended to supply. The Judge was satisfied that this was not solely to fund his own habit but also for profit. The Judge noted that it was the Appellant's youth that was his best mitigation and he would otherwise have received a sentence twice as long. The Judge also referred to the offence of carrying a bladed article which similarly required a custodial sentence.

21. The Judge was aided by a Pre Sentence Report prepared by a Probation officer. In the offence analysis part of the report the Probation officer said that the Appellant's explanation for the offences lacked credibility. She indicated that it was unfortunate given the intervention from Services, particularly in relation to increasing his chances of legitimate employment, as well as his apparent potential, that he had again chosen to offend for money. She indicates that his behaviour indicated he had some pro-criminal attitudes and associations including in relation to the use of illicit drugs that had supported his offending. She did acknowledge however that he appeared to have assumed responsibility for supporting his family which may have been a contributory factor to the offending. As to the latter claim I will refer to that later as it does not accord with the facts.
22. The Probation officer noted his previous convictions for robbery at the age of 16 and that at the time he was reported to have been a member of a gang and that he had committed offences while subject to a Supervision Order.
23. The Probation officer referred to the fact that when he was released from custody on 18th September 2009 he was supervised by the Islington Youth Offending Team who reported that his compliance was good. However, he nevertheless reoffended in March 2010 prior to the expiry of his licence. He also breached his Community Order once prior to successfully completing it.
24. The Appellant had apparently been living in private rented accommodation for the previous six months, having been placed there on a temporary basis by the Islington Leaving Care Service while he was awaiting permanent accommodation. He had been asked to leave his previous supported accommodation as a result of his conviction for drug offences.
25. The Probation Officer refers in the report to his Social Worker, Miss Stewart who has provided a separate witness statement for these proceedings. She described the Appellant as very bright and that he had engaged well with their Service. He had apparently never disclosed any drugs problems or presented under the influence of drugs and rarely requested help. It was the Social Worker's view that the Appellant felt he needed to be self-sufficient and had taken responsibility for looking after his family, particularly his mother.
26. The Probation Officer noted that he lacked family support. His father was deceased and his sister returned to Portugal. His mother had significant mental health problems and spent periods of time in psychiatric hospital. She had supported accommodation and the Appellant apparently saw her most weekends.
27. At this stage I would state that the Social Worker and Probation Officer seem to have mistaken or been misinformed as to the facts. The Appellant had not lived with his mother since 2008. He rarely saw her. He had no

other family in the UK "to support". His father is not dead but in Portugal living with his sister. The reference to his taking responsibility for his family is therefore puzzling.

28. Finally the Probation Officer concluded that in view of his preparedness to behave in the way he had for financial gain he was assessed as posing a medium risk of harm to the public, particularly when in the company of negative peer influences and under the influence of drugs. She concluded that he was likely to remain at fairly high risk of similar offending given his history of offending including while subject to supervision in the form of a Supervision Order and on licence. She indicates that those risks are only likely to be reduced if he addresses his thinking and attitudes.
29. The information from the prison includes the NOMS report referred to earlier. That has now been seen by Miss Radford. It is not without its difficulties as it variously assesses the risk that he poses as medium and high and refers at one stage to the absence of an OASys report and in another part refers to an OASys report. That document therefore must have less evidential value than it would normally be afforded. However there is no evidence adduced by the Appellant assessing his future risk save for his assertions and the view of his Social Worker. Taking the NOMS report at its lowest therefore it assesses the Appellant as a medium risk which accords with the assessment by the Probation Officer in the PSR.
30. Looking at the statement from the Social Worker, Miss Stewart; she is a Young Person's Adviser and Social Worker at Islington Care Leavers' Service and has been the Appellant's adviser since 2010. She says that she tries to see him in person every three months and says he is "a good lad who means well." She said that when his mother became very unwell he tried to keep hold of their home and look after her and his younger sister but unfortunately found an easy way of making money to pay the rent and fell in with a bad crowd in the Holloway/Islington area.
31. She states he had made good progress when he was remanded into local authority care and he completed a training place successfully in 2010-2011 but when he finished he seemed to lose direction and started to offend again.
32. She says that the Appellant really regrets his actions and has asked to be accommodated well away from the gang in Islington which caused him problems before. He has asked for education and regular visits to his mother. She indicates that he does have some positive friends and has achieved many certificates while in custody and has progressed towards getting a job. She indicates that she is aware that he has had four adjudications whilst in prison but also is aware that other prisoners have come in from Islington and brought him trouble. Finally she indicates that if released she does not believe the Appellant will behave as he has in the past. He will continue to be supported by her and will be provided with accommodation, training, health care including counselling and will be

moved away from the area where he would be at risk of reoffending. She confirms that he will be supported by Social Services until he is 25.

33. The Social Worker referred to his adjudications and I was provided with the details of those. The first occurred on 25th May 2011 when he is said to have walked towards another prisoner in an aggressive manner. When asked to move away the request was ignored and he had to be removed by force. The next incident is on 17th February 2012 when officers carried out a cell search. Prior to the search the Appellant was asked if he had anything unauthorised and he said he had not. However, a mobile phone was found taped underneath a cupboard. The Appellant apparently denied the phone had anything to do with him despite him being the sole occupant of the cell.
34. The next incident took place on 20th March 2012 when an officer witnessed the Appellant repeatedly punch another prisoner. Finally on 27th October 2012 while officers were looking for a missing Playstation 2 they went to the Appellant's cell where the missing item was found in a kitbag. The Appellant had denied having it.
35. Miss Stewart's faith in the Appellant is, I have no doubt, genuinely felt if misguided. The fact is that this Appellant is now aged 21 years and has been offending from the age of 16. He has been given every opportunity by the criminal justice system which he failed to take advantage of. He has been given every opportunity by Social Services which he failed to take advantage of. He was warned by the Secretary of State of the possible consequences of his continuing to offend and he ignored the warning. Miss Radford submitted that the most recent offences did not amount to an escalation of his offending behaviour being possession of drugs as opposed to violence. I disagree as it not only involved possession with intent to supply Class A drugs but also possession of a bladed article. That is a strong indication of violence or the propensity to use it. Further the most recent offences attracted a three year custodial sentence - far more than he had received before. His behaviour in prison demonstrates a willingness to commit offences of dishonesty and also violence. I do not accept the excuse offered by the Social Worker that persons from Islington have come into prison and caused him trouble. The Appellant is, as has been stressed by the Social Worker and Probation Officer, a bright and intelligent young man. He thus ought to be able to withstand the influence of others, particularly with the support available to him both in the community and in prison.
36. The Appellant's stated wish to look after his mother is commendable but I find has been overstated for the purpose of this appeal. The Appellant has not lived with his mother for many years and it is apparent that his mother is seriously unwell. I was told she is currently detained under section 3 of the Mental Health Act which means that she, unless discharged earlier will remain in hospital for a period of six months receiving treatment which is necessary for her own health and safety and/or for the protection of others. On discharge she will be entitled, by Statute, to support from psychiatric and social services and will have the assistance of a Care Coordinator in that

respect. She has not been looked after by her son for many years and I do not accept that she will be dependent upon him for support in future.

37. I am told that the Appellant's sister returned to Portugal in 2008. It therefore cannot be said that his offending thereafter was in any way to support his family. His mother would be in receipt of support and assistance because of her Mental Health difficulties and I am unable to accept therefore that his offending was motivated by anything other than his own desire for financial gain in addition to feeding his drugs habit. It is also telling that the Social Worker refers to his not having a drugs problem when clearly he has quite a number of drugs related offences recorded against him.
38. Miss Radford referred me to Essa (EEA: rehabilitation/integration) [2013] UKUT 00316 (IAC) and the importance of rehabilitation and that a person who has embarked upon a course of rehabilitation should not be deported if the effect of that would be to interfere with the process of rehabilitation. However given this Appellant's demonstrable inability/ unwillingness to respond to support in the past and notwithstanding the courses he has undertaken in prison, his adjudications, I am unable to find that he is in the process of rehabilitation. Similarly his integration into British society is largely to the criminal underworld rather than mainstream society.
39. Miss Radford relies heavily on Essa, the positive view given by the Social Worker and her submission that his offences are not escalating. I have indicated why I do not accept her submissions.
40. Miss Radford also refers to the fact that the Appellant left Portugal as a child and his teenage years were spent in the UK. Although his father is in Portugal, not deceased as suggested elsewhere, he was abusive to the Appellant's mother and is thus unlikely to be a source of support. That is pure speculation and does not sit well with the fact that the Appellant's sister returned to Portugal and lives with him. He is said to be no longer in contact with his sister. However, there no evidence that they are particularly estranged and no reason why they should not make contact in future. In any event, the Appellant is Portuguese. He speaks the language. It is the country of his nationality, culture and heritage. It may well be that he has extended family there but in any event as an adult he does not require the level of support that a child would.
41. I therefore find that the conduct of the Appellant in this case over a lengthy period of time has shown a complete disregard for the law and society. Offences relating to drugs and violence represent a very serious threat to the fabric of society. There is a very real risk that he will continue his offending. Other than his criminal associates the Appellant has developed very little in the way of a private life in the UK. I therefore find that there are serious grounds of public policy and public security to deport this Appellant and that his deportation is a proportionate response.
42. The appeal to the Upper Tribunal is dismissed.

Signed

Dated 23rd October 2013

**C J Martin**  
**Judge of the Upper Tribunal**