



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

Appeal Number: DA/ 00912/ 2013

**THE IMMIGRATION ACTS**

**Heard at Victoria Law Courts,  
Birmingham  
On 12 December 2013**

**Decision & Reasons  
Promulgated  
On 01 December 2014**

**Before**

**UPPER TRIBUNAL JUDGE PERKINS**

**Between**

**SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Appellant

**and**

**S J**

(anonymity direction made)

Respondent

**Representation:**

For the Appellant: Mr M Smart, Senior Home Office Presenting Officer

For the Respondent: Mr J Dixon, Counsel instructed by Fountain Solicitors

**DECISION AND REASONS**

1. Pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008 I make an order prohibiting the disclosure or publication of any matter likely to lead members of the public to identify the respondent (hereinafter “the claimant”). Breach of this order can be punished as a contempt of court. I make this order because the claimant has been identified as a victim of trafficking. If she was identified and then removed she might be re-trafficked.
2. The claimant is a French national who was born in 1975. She is therefore now 39 years old. She appealed successfully to the First-tier Tribunal a decision of the appellant, hereinafter “the Secretary of State”, to make her the subject of a deportation order. The Secretary of State was satisfied that the claimant’s presence in the United Kingdom “would pose a genuine, present and sufficiently serious threat to the interests of public

policy” if she were allowed to remain in the United Kingdom and that the deportation was justified under Regulation 21 of the Immigration (European Economic Area) Regulations 2006.

3. It is quite clear that the claimant has an unimpressive criminal record.
4. On 15 October 2010 she was sent to prison for fifteen months for an offence of attempted robbery. She has been in trouble since then. When she was on bail from immigration detention she committed an offence of theft for which she was sent to prison on 9 February 2012.
5. The reasons for deportation were given in a letter dated 15 May 2013. They set out the Secretary of State’s reasons for her decision and are instructive. The Secretary of State noted that the claimant said that she arrived in the United Kingdom sometime in 2007 or 2008 from France. She had no close family ties to the United Kingdom. She was estranged from her husband and three children who she understood were living in France.
6. Whilst the claimant had undoubtedly been in the United Kingdom for a considerable period of time the Secretary of State was not satisfied that she had a continuous period of five years’ residence in accordance with the Regulations. The Secretary of State noted, correctly, that time spent in prison did not count.
7. The Secretary of State decided that the claimant’s deportation was warranted on grounds of public policy and public security. The Secretary of State clearly had regard to Regulation 21(5) of the 2006 Regulations and addressed herself particularly to the need for proportionality, for the decision to be based exclusively on the personal conduct of the person concerned, that that person’s conduct must represent a genuine, present and sufficiently serious threat affecting one of the fundamental interests of society, that matters isolated from the particulars of the case or which relate to considerations of general prevention do not justify the decision and the decision could not be justified by reason of the convictions themselves.
8. The offence that provoked the decision was described as an attempted theft of a woman’s handbag whilst the victim was shopping.
9. There was a NOMS1 assessment where the claimant was found to pose a “medium risk of harm to the public”.
10. The claimant’s motivation for offending was said to be connected with a need to raise money to pay for the care of her 11 year old daughter.
11. Although the offender manager in the NOMS assessment noted that the claimant had expressed remorse and had been able to demonstrate some insight into the impact her actions had had on her victim, who was described as elderly and vulnerable, the offender manager also noted that the claimant had been in prison before and was not deterred but rather placed “her needs above those of the victim and the law”.

12. The sentencing judge, in his sentencing remarks, noted that the offence was committed a short time after the claimant had been released from prison.
13. She did not even have the insight, for example, to have taken advantage of the “Enhanced Thinking Skills (ETS) programme which was often available to people in custody.
14. The Secretary of State concluded that the claimant had “failed to recognise the implications of your offence and would act in this way again in the same circumstances.”
15. At paragraph 47 of the letter the Secretary of State said:

“All the available evidence indicates that you have propensity to reoffend and that you represent a genuine, present and sufficiently serious threat to the public to justify your deportation.”
16. The Secretary of State then found deportation to be proportionate and found no reasons on Article 8 grounds to refrain from making the order.
17. Against this background, and with respect to the experienced First-tier Tribunal Judge who, I think, was sitting with a non-legal member, the claimant’s prospects of succeeding in her appeal did not seem to be very high. Nevertheless, the appeal was allowed and I have looked carefully at the determination to understand the reasons.
18. The First-tier Tribunal decided, uncontroversially, that the claimant’s stay in the United Kingdom had not been an exercise of treaty rights for more than perhaps a short period of time and although an EEA national she qualified for only the “basic level of protection” (paragraph 44).
19. At paragraph 55 of the determination the Tribunal reminded itself expressly that the protection of the public is an aspect of public policy and recognised that the claimant had been assessed as facing a high risk of reoffending. The Tribunal accepted that this did indeed suggest a genuine, present and sufficiently serious threat to public policy. In short, the Tribunal completely understood and agreed with the Secretary of State’s decision when she made it.
20. The Tribunal had to deal with the evidence that was before it and things had changed. In particular the claimant had for the first time opened up about her appalling personal history. She had been introduced to the Poppy Project which is a respected and specialised organisation with expertise in dealing with the victims of trafficking.
21. The Tribunal said at paragraph 51:

“We accept given the findings of the Poppy Project report that the [claimant] has been a victim herself in that she was trafficked, forced into crime and abused over a prolonged period. She is now being supported by the Poppy Project and other sources including Praxis and will be counselled. Her conduct in prison has been good and she is an enhanced prisoner. A prison officer provided a letter in her support. She has undertaken some work in prison towards rehabilitation for example the ‘Confident Woman’ course. She is remorseful and has some awareness of the impact on her victims.”

22. The Tribunal concluded that if the claimant was allowed to remain in the United Kingdom “there are reasonable prospects of rehabilitation.”
23. The Tribunal allowed the appeal because it was satisfied that removing her at that stage in her life was a disproportionate act.
24. The Tribunal was aware that things may not develop as planned and observed that further trouble from the claimant would be likely to lead to her being deported.
25. The Tribunal recognised that it was the claimant’s case that she would be under intolerable pressure in the event of her return to France but did not accept that there was any real risk to her Article 3 rights in the event of living there. Although inclined to accept that the claimant would come under attack by her family the French authorities could be expected to provide appropriate protection.
26. The real reason the Tribunal allowed the appeal is that it was desperately sorry for a woman who for the first time in her life had found a way to free herself from the bad influences that were causing her to go into crime. She was sorting out her life and the Tribunal decided that she needed another chance.
27. The matters raised in the Poppy Project report are summarised accurately in the determination but only very briefly. I have to say that it was only when I read the report that I appreciated just what a dreadful time this claimant had experienced and how the support of the Poppy Project represented an enormous change.
28. The Poppy Project report accepted that the claimant had been trafficked within France as a child and then trafficked to the United Kingdom as an adult. Her childhood was characterised by frequent beatings. She was made to marry when she was 13 or 14 years old. Her husband’s family taught her and required her to steal.
29. I have looked carefully at the grounds challenging the decision.
30. Ground 2 complains that the Tribunal made no clear finding of fact of the risk posed by the claimant at the date of the hearing. According to the ground the Tribunal, by saying there were reasonable prospects of rehabilitation, considered that at the date of the hearing there had not been rehabilitation “and therefore remained at risk”. I do not accept the logic of that at all. I do not accept that a person who is not yet rehabilitated is necessarily and in all cases a risk to society. The process of rehabilitation is an ongoing process. Maybe it is not something that ever reaches a complete conclusion.
31. It would have been helpful if the Tribunal had said in terms that it did not find that the claimant now presented a risk to society. However I cannot make any sense of paragraph 55 without assuming that that is what the Tribunal meant. I set out below paragraph 55:

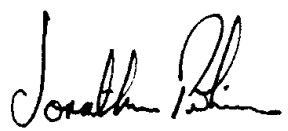
“The protection of the public is an aspect of public policy. The assessment of a high risk of reoffending suggests a genuine, present and sufficiently serious threat to public policy but the assessment was made eighteen

months ago, the [claimant] has since sought help, is eligible for the support and counselling provided by the Poppy Project and notwithstanding the previous persistent offending, at least in part under duress from family members we find there are reasonable prospects of rehabilitation.”

32. This must mean that the lapse of eighteen months and the contact with the Poppy Project had changed things so that the no doubt perfectly sensible finding of the NOMS report no longer carried weight.
33. I am reinforced in this view by the Tribunal’s consideration of the evidence from the prison officer reviewed at paragraph 26 of the determination where the claimant was said to be desperate for “the chance of a fresh start and a safe place with appropriate support”.
34. The Tribunal did not accept that the claimant was a threat to public policy when it made its decision and so did not fail to heed the advice in **Essa v Secretary of State for the Home Department (EEA: rehabilitation/integration) Netherlands [2013] UKUT 316 (IAC)**. Neither did the Tribunal fail to follow the decision in **Vasconcelos (risk - rehabilitation) [2013] UKUT 00378 (IAC)**. There the Tribunal was quick to emphasise that the NOMS report is not determinative. In that case the Tribunal found that the NOMS report gave too glowing a picture. Here the Tribunal has found that the NOMS report gave too bleak a picture.
35. Grounds 1 and 4 are linked. Ground 4 complains that the Tribunal had no jurisdiction to determine whether the claimant had been trafficked and ground 1 complains it was procedurally unfair not to give the Secretary of State an opportunity of considering the Poppy Project report.
36. Although Mr Smart was as helpful as ever I did not follow the argument in the hearing room and I have not been able to understand it properly since. Perhaps the deficiency is mine. Clearly the Secretary of State wants to decide if a person has been trafficked because if, in her opinion, a person has been trafficked there may be a requirement in international Conventions to treat the person in a particular way. That is a matter for the Secretary of State. There is no right of appeal to the Tribunal against the Secretary of State’s decision that a person has not been trafficked for such a decision is not an “immigration decision”. However a person is not barred from arguing that she has been trafficked because the Secretary of State disagrees. Here there was a reasoned decision by the Secretary of State that the claimant had not been trafficked but a flood of additional evidence provided at the last minute to say that she had. The evidence was from a respected source and fully reasoned. The First-tier Tribunal decided as a matter of fact that the claimant had been trafficked because that is what she said and, much more importantly, because the Poppy Project report supported her case. Without trespassing on the Tribunal’s function that report gave full reasons for believing the claimant and these included referenced to parts of the account and behaviour by the claimant which were wholly typical of a victim of trafficking. The claimant would be unlikely to have known that and this, no doubt, is something that the Tribunal took into account when deciding, as it has to do, if the claimant was telling the truth.

37. I do not see what an adjournment would have achieved. The Secretary of State could decide for herself if she was satisfied that the claimant had been trafficked and if she was satisfied that the claimant had been trafficked it was open to her to take a certain course whatever the Tribunal said. If the Secretary of State did not agree that the claimant had been trafficked (and, indeed if the Secretary of State agreed that the claimant had been trafficked) the Tribunal would have to decide if it accepted the evidence. Realistically it is hard to think that anything could have been done differently except a delay if there had been an adjournment.
38. If the Secretary of State was keen to reconsider the case she could have withdrawn the decision. The "competent authority" is not prevented from making a decision by reason of the Tribunal's findings.
39. Mr Smart argued the case close to the grounds but said, rightly, that a finding on future reoffending was fundamental to the decision but there was no such finding. I have explained that above. I am satisfied that if the determination is read properly in context the necessary finding should be implied.
40. There is a proper reply under Rule 24 from the claimant's representatives. I do not mean to criticise it by saying it makes obvious points. They are points worth making.
41. I was reminded in argument that I cannot interfere with the decision unless I am satisfied it is wrong in law. The grounds make it clear that it is the claimant's case that the decision was right in law. There were matters supporting the conclusion other than the one given by the NOMS report about future risk of reoffending. A clear implication, although not the expressed finding, was that there had been a change and there was no longer a great risk.
42. With hindsight the determination could have been done better but that can be said about most determinations. I am satisfied that it was done well enough. The essential point here is that the judge decided that the claimant's circumstances had changed because, for the first times, she had faced up to her past and knew someone wanted to help her. She did not present a risk to the public or at least not one that made it necessary for her to be removed, in fact removing her now when she was starting to sort out her life would be disproportionate.
43. The First-tier Tribunal's decision is kindly and, I emphasise, one I understood rather better when I read the Poppy Project report carefully. I do not accept that the First-tier Tribunal erred in law and I dismiss the Secretary of State's appeal.

Signed  
Jonathan Perkins  
Judge of the Upper Tribunal



Dated 27 November 2014

