



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Numbers: DA/01994/2013

THE IMMIGRATION ACTS

Heard at Nottingham Magistrates' Court
On 25 July 2014

Determination Promulgated
On 25 July 2014

Before

UPPER TRIBUNAL JUDGE PITT

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

and

Appellant

AZ

Respondent

Representation:

For the Appellant: Mr Diwnycz, Home Office Presenting Officer
For the Respondents: Mr Caswell of Dicksons Solicitors

DETERMINATION AND REASONS

The Appeal

1. This is an appeal by the Secretary of State against a determination dated 5 February 2014 of First-tier Tribunal Judge Saffer and Mr G H Getlevog which allowed the respondent's appeal against deportation.

2. For the purposes of this determination, I refer to Mr AZ as the appellant and to the Secretary of State as the respondent, reflecting their positions as they were before the First-tier Tribunal.
3. The appellant is a citizen of Hungary.
4. The background to this matter is that the appellant was convicted on 19 December 2011 of causing death by dangerous driving and sentenced to 4 ½ years imprisonment and disqualified from driving for 5 years. To be entirely clear, a married man, a father, a son of a lady who had already lost another son, was killed as a result of the appellant's dangerous driving. The First-tier Tribunal quite rightly acknowledged their suffering as a result of the appellant's actions at [31] of its determination.
5. It is also undisputed that the appellant has been in the UK exercising Treaty rights since 2006 and it is common ground that his deportation fell to be considered against the "serious grounds of public policy or public security" test set by in Regulation 21 (3) of the Immigration (European Economic Area) Regulations 2006 (the EEA Regulations).
6. As it indicated at [7], the First-tier Tribunal also had to consider the provisions of Regulations 21 (5) and (6) of the EEA Regulations when making their decision. These are as follows:

Decisions taken on public policy, public security and public health grounds

...

(5) Where a relevant 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.

(6) 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's links with his country of origin.

7. The respondent's challenge was that the First-tier Tribunal failed to take into account or weigh properly that the appellant had not taken responsibility for his crime and that he continued to dispute that he had been reckless. It was also submitted that the panel failed to give adequate reasons for finding that such a crime should not lead to deportation where the appellant had been "reckless, foolish and irresponsible", according to the sentencing judge.
8. It did not appear to me that the First-tier Tribunal in any way failed to weigh the seriousness of the appellant's crime, his attitude to that crime or gave inadequate reasons for reaching their decision. The panel noted at [17] the key features of the crime, including the appellant's conduct at driving so poorly in bad weather and the judge's sentencing remarks on his "reckless, foolish and irresponsible" conduct.
9. Contrary to what is suggested in the grounds and, to an extent, the grant of permission to appeal, the appellant's failure to admit dangerous driving, as opposed to careless driving, was balanced by other comments in the sentencing remarks on "what I accept to be your remorse" and on the fact that the appellant had plead guilty, the sentencing judge accepting that he had "always accepted fault and that you are sorry for what has happened."
10. The First-tier Tribunal went on to find the crime to be a serious matter and again referred to the impact on others at [25]. It took into account at [19] the respondent's view of the matter, setting out the negative features to be weighed against the appellant. It took into account the professional assessments of the appellant's risk of re-offending and risk of serious harm at [18] and [21]. With respect to my colleague who granted permission to appeal, it did not appear to me that the First-tier Tribunal could be said to have placed insufficient weight on the seriousness of the crime and the sentence handed down given their clear and accurate reference to the offence, the sentence, the views of the sentencing judge and the respondent's view of the matter.
11. Having taken the material factors into account, it was clearly open to the panel here to conclude at [27] that on the basis of the sentencing remarks, professional risk assessments and the appellant's conduct since the offence that the risk of reoffending had reduced and that, together with his family circumstances, he did not represent this "genuine, present and sufficiently serious to one of the fundamental interests of society."
12. The respondent's second ground appears to be that the crime was so serious that in itself it justified deportation. With respect, that approach is expressly excluded by

Regulation 21 (5) (e) of the EEA Regulations. The First-tier Tribunal did not err in failing to consider whether the crime alone was sufficient to warrant deportation therefore. Mr Diwyncz sensibly conceded this point for the respondent at the hearing.

13. In short, in my judgement, the panel addressed the material issues before them, including the seriousness of the crime and the ramifications thereof, did not fail to address a material matter that might have made a difference to the outcome of the appeal and it was clearly within a range of reasonable responses for it to conclude that deportation was not justified. The decision addressed the relevant factors precisely and the adequacy of reasons challenge is really only a disagreement with the conclusion that deportation was not justified.
14. For these reasons, it was not my view that the decision of the First-tier Tribunal disclosed an error on a point of law.
15. I endorse the comments of the First-tier Tribunal at [31] on the need to distinguish EEA deportation cases from those of other foreign national criminals and its recognition of the devastating loss for the family of the victim here.
16. Mr Diwyncz indicated at the hearing that there is a letter on the respondent's file which was produced on 14 March 2014, so after the decision of the First-tier Tribunal, to the effect that the respondent no longer sought to deport the appellant. Without more it did not appear to me that the jurisdiction of the Tribunal was affected and I proceeded to determine the matter as above. If the letter of 14 March 2014 has any force, my decision reaches the same conclusion, in any event.
17. Decision
17. The decision of the First-tier Tribunal does not disclose an error on a point of law and shall stand.

Signed: 
Upper Tribunal Judge Pitt

Date: 25 July 2014

Anonymity

I make an anonymity order under Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008, precluding publication of any information regarding the proceedings which would be likely to lead members of the public to identify the appellant, his wife or his child. I do so in the best interests of the child in order prevent a likelihood of serious harm arising in that regard.