



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: DA/02072/2013

THE IMMIGRATION ACTS

Heard at: Cardiff Crown Court
On: 27 July 2015

Decision & Reasons Promulgated
On: 27 August 2015

Before

UPPER TRIBUNAL JUDGE GRUBB
DEPUTY UPPER TRIBUNAL JUDGE J F W PHILLIPS

Between

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

HAD
(ANONYMITY DIRECTION MADE)

Respondent

Representation:

For the Appellant: Mr D Mills, Home Office Presenting Officer
For the Respondent: In person

DECISION AND REASONS

1. This appeal is subject to an anonymity order by the First-tier Tribunal pursuant to rule 45(4)(i) of the Asylum and Immigration Tribunal (Procedure) Rules 2005 (SI 2005/230). Neither party invited us to rescind the order and we continue it pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008 (SI 2008/2698 as amended).

2. This is an appeal by the Secretary of State against the determination of a panel of the First-tier Tribunal (Judge Britton and Mr P Bompas) in which the panel allowed the appeal of HAD, a citizen of Austria, against the Secretary of State's decision to make a deportation order by reference to regulations 19(3)(b) and 24(3) of the Immigration (European Economic Area) Regulations 2006 and section 3(5)(a) of the Immigration Act 1971. We shall refer to HAD as the Applicant, although he was the Appellant in the proceedings below.
3. The decision to make a deportation order was made as a consequence of the Applicant's conviction on 21 October 2011 at Gloucester Crown Court of possessing a class A controlled drug with intent to supply and his subsequent sentence to 8 years and 6 months imprisonment. The Applicant exercised his right of appeal against the decision to make the deportation order to the First-tier Tribunal. This is the appeal which came before the panel on 24 March 2014 and was allowed. The Secretary of State applied for permission to appeal to the Upper Tribunal. The application was refused by First-tier Tribunal Judge Ford on 28 April 2014 but on renewal to the Upper Tribunal was allowed by Judge Rintoul in the following terms

"It is arguable that the First-tier Tribunal have failed to properly identify the basis on which the appeal was allowed, and failed properly to engage with the Immigration (European Economic Area) Regulations 2006."
4. At the hearing before us the Applicant was not legally represented. His father attended the hearing. Mr Mills represented the Secretary of State and submitted copies of the Court of Appeal decision in SSHD v Dumliauskas and others [2015] EWCA Civ 145 and the judgement of the Court of Justice of the European Union in Onuekwere v SSHD C-378/12. As the Applicant was not represented we explained the nature of the proceedings to him and the procedure to be followed.

Submissions

5. For the Secretary of State, Mr Mills referred to the grounds of appeal and to the decision in Land Baden-Württemberg v Tsakouridis [2011] CMLR 11. The issue of rehabilitation in the United Kingdom rather than the home state or state of origin is only relevant when the offender is genuinely integrated. Referring to the Advocate General's opinion in Onuekwere Mr Mills said that serious offending is a demonstration against integration. Rehabilitative prospects require genuine integration. Paragraph 34 of the panel's decision is very brief and does not adequately explain why the appeal has been allowed.
6. The Applicant said that he is genuinely integrated into the United Kingdom. He has been here since he was 13 years old and he went to school and college here. He has been studying with the Open University in prison. He has been in this country for 11 years and he has lots of friends here. His potential of reconviction has been assessed as low. The Applicant said that he has a strong family unit in this country and this reduces the prospects of re-offending still further. He wants a second chance with his family in the United Kingdom. This was, in effect, a first

conviction at the age of 20. He denied that it showed an escalation in offending as alleged by the Secretary of State. The Applicant said that having left Austria at the age of 13 he has no ties there. All of his family are here.

7. We reserved our decision.

Decision

8. The Applicant was born in Iraq on 3 October 1990 and moved to Austria in 1997 with his parents and his younger brother where the family were all granted asylum and subsequently Austrian nationality. The family moved to the United Kingdom on 1 April 2004. On 21 October 2011 the Applicant was convicted of the possession of class A drugs with intent to supply. It was to all intents and purposes a first offence (as shown by the Trial Judge's sentencing remarks the Applicant was a man of previously good character) but it was a most serious offence involving drugs with a street value of about one million pounds and in which the applicant played a significant role. The seriousness of the offence is reflected in the sentence of eight and a half years imprisonment.
9. The decision of the First-tier Tribunal is succinct. There is however no suggestion that it does not take account of all salient facts. Paragraphs 33 and 34 explain why the panel reached their decision to allow the appeal. It is clear from these paragraphs that the panel, having heard oral evidence from the Applicant and his father, came to the conclusion that the Applicant had learned his lesson and with the support of his family was well along the road to rehabilitation.
10. The Secretary of State's assertion of error of law is three-fold. Firstly it is asserted that the findings of the panel are unclear and fail to identify the basis upon which the appeal was allowed. Mr Mills, correctly in our view, did not seek to pursue this in his oral submissions. The findings of the First-tier Tribunal are, as we have described them above, succinct but nevertheless clear at paragraphs 33 and 34 that the appeal was allowed by reference to the EEA regulations.
11. Secondly the Secretary of State asserts that the panel have failed to make lawful findings on whether there are serious grounds to warrant the Applicant's deportation. It is suggested that the panel have materially misdirected themselves in placing undue weight on the Applicant's rehabilitative prospects. The assertion, emphasised by Mr Mills, is that the Applicant has not met the test of genuine integration.
12. In our judgment this assertion is ill-founded. The panel found, and we can see no error in their factual findings, that the Applicant has been living in the United Kingdom since the age of 13 and has a permanent right of residence. At the time of the offence the Applicant had been resident in the United Kingdom for some 7 years and had attended school and college in this country. All of his family lived here. Genuine integration is a matter of fact and in our judgment there is no error of law in these factual findings and although the panel does not use the term there could be no reason to find that the Applicant was not genuinely integrated. We do

not accept Mr Mills proposition that the commission of an offence of itself militates against genuine integration and we do not accept that the Advocate General's opinion in Onuekwere is authority for such a proposition. In our judgment the panel's conclusions that

"... the appellant is very remorseful for his offending and appreciates the effect that drugs has on the community and the misery it brings with it. We are satisfied that the Appellant has learnt his lesson the hard way being sentenced to a long term of imprisonment at a young age. We accept that the appellant's rehabilitation would be better served by remaining in this country and having the direct support of his family"

are conclusions that were open to the panel. Having reached these conclusion the panel's assessment that it would not be proportionate (in the terms of the EEA regulations) for the Applicant to be deported to Austria was, in our judgment, properly open to the panel. It cannot be said to be irrational on the basis of all the evidence and the sustainable findings of the panel.

13. The final assertion made relates to the panel's finding (at paragraph 35) that is would be disproportionate to deport the Applicant by reference to Article 8 ECHR. Having found that the panel did not err in law in allowing the appeal by reference to the EEA Regulations there is no need for us to consider this assertion further as the Applicant's appeal succeeds in any event under the EEA Regulations.

Conclusion

14. The decision of the First-tier Tribunal did not involve the making of a material error of law. The Secretary of State's appeal is dismissed and the decision of the First-tier Tribunal to allow this appeal under the EEA regulations stands.

Signed:

Date:

**J F W Phillips
Deputy Judge of the Upper Tribunal**