



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal no: IA/46901/2014

THE IMMIGRATION ACTS

At Field House
On 27 November 2015

Decision & Reasons Promulgated
On 16 December 2015

Before:

Upper Tribunal Judge
John FREEMAN

Between:

Váldemar Manuel ALBERTO

Appellant

and

Secretary of State for the Home Department

Respondent

Representation:

For the appellant: *Anna Watterson* (counsel instructed by Freemans)

For the respondent: Mr David Clarke

DETERMINATION AND REASONS

This is an appeal, by the appellant, against the decision of the First-tier Tribunal (Judge Anwen Walker), sitting at Newport on 17 April 2015, to allow a deportation appeal by a citizen of Angola, born 5 August 1983. The appellant had received a permanent residence card on 19 June 2007, after arriving here in 1998 with his mother, a citizen of Portugal, getting an ordinary residence card in 2002, and five years living here after that. Besides various lesser offences before, he was sentenced

NOTE: no anonymity direction made at first instance will continue, unless extended by me.

on 21 March 2014 to 18 months' imprisonment for a 'confidence' burglary, and the decision under appeal followed on 14 November.

2. The judge cited almost all the potentially relevant legislation with great industry; but for the EEA issues involved in this hearing, the most that need be set out is this, starting from reg. 19 of the Immigration (European Economic Area) Regulations 2006 [the EEA Regulations]:

- (3) Subject to paragraphs (4) and (5), an EEA national who has entered the United Kingdom or the family member of such a national who has entered the United Kingdom may be removed if-
 - (a) ...
 - (b) the Secretary of State has decided that the person's removal is justified on grounds of public policy, public security [*or public health*] in accordance with regulation 21; or
 - (c) ...
- (4) ...
- (5) A person must not be removed under paragraph (3) if he has a right to remain in the United Kingdom by virtue of leave granted under the 1971 Act unless his removal is justified on the grounds of public policy, public security [*or public health*] in accordance with regulation 21.

3. The potentially relevant parts of reg. 21 are these:

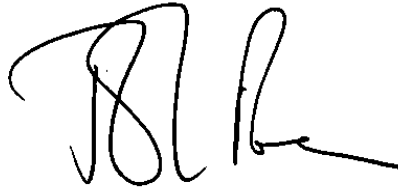
- (1) ... a 'relevant decision' means an EEA decision taken on the grounds of public policy, public security [*or public health*].
- (2) A relevant decision may not be taken to serve economic ends.
- (3) A relevant decision may not be taken in respect of a person with a right of residence under regulation 15 [*which for present purposes includes this appellant*] except on serious grounds of public security or public policy
- (4) A relevant decision may not be taken except on imperative grounds of public security in respect of an EEA national who -
 - a) has resided in the United Kingdom for a continuous period of at least ten years prior to [*sic*] the relevant decision ...
- (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.

4. While the grounds of appeal contain criticisms of the judge's decision on proportionality, the reason why the applicant was given permission to appeal was about her statement of the criteria for deportation. At paragraph 84 of her exceptionally painstaking decision, she set out the criterion at reg. 21 (5) (c) in almost its very words ("a genuine, present and sufficiently serious threat affecting ... the ... interests of society"), which applies to all cases under the Regulations; but she said nothing about the criterion at 21 ("serious [*my emphasis*] grounds of public security or public policy"), which applies to all those where the person concerned has, like this appellant, a permanent right of residence. It is agreed that the judge did not need to consider reg. 21 (4), since that applies only to 'EEA nationals' themselves, and not to their family members.
5. So far as the European jurisprudence is concerned, the leading authority on the questions posed by reg. 21 (3) is *Onuekwere* [2014] EUECJ C-378/12. If this appellant had needed to rely on a recent period of residence to claim a permanent right to it, then the necessary continuity would have been broken by his time in prison. However, he had already acquired a permanent right of residence in 2007, and could only lose that either by over two consecutive years' absence (see reg. 15 (2)), or by an order for his removal under reg. 21 (3). It follows that the judge needed to consider whether there were 'serious grounds of public security or public policy' for that.
6. While Mr Clarke made a valiant attempt to persuade me that the judge's consideration of whether the appellant presented "a genuine, present and sufficiently serious threat affecting ... the ... interests of society" under reg. 21 (5) could be regarded as dealing also with the requirements of reg. 21 (3), I cannot agree. It is clear from the juxtaposition of the two clauses that the intention was that (3) should add something to (5), and that intention has to be respected.
7. The judge rightly set out the sentencing judge's remarks about what this appellant had done, at some length; but for present purposes it is enough to note that he and an accomplice had equipped themselves with documentation to deceive their vulnerable victim into parting with a ring of personal value to him, by pretending to be debt collectors. The sentencing judge took as his starting-point the upper end of the range for category 2 confidence burglaries, on the basis that it did not involve 'greater harm', but did involve 'higher culpability' on the basis of the planning, involving more than one person, and the deception used. With the appropriate discount for plea, that led to a sentence of 18 months' imprisonment.
8. Given those facts, it is neither possible to say that this appellant's crime either inevitably did, or inevitably did not provide 'serious grounds of public security' for his removal. Whether it did or not will be for the judge to decide, on all the relevant facts, following the fresh hearing which I am directing.

Appeal allowed: decision set aside

Fresh hearing before First-tier Tribunal, not Judge Walker

A handwritten signature in black ink, consisting of stylized, overlapping loops and a long horizontal stroke at the end.

(a judge of the Upper Tribunal)