



IAC-FH-CK-V1

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

Appeal Number: DA/01637/2014

THE IMMIGRATION ACTS

**Heard at Field House
On 8 February 2016**

**Decision & Reasons
Promulgated
On 7 March 2016**

Before

UPPER TRIBUNAL JUDGE McWILLIAM

Between

**SBH
(ANONYMITY DIRECTION MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr R Khubber, Counsel instructed by Turpin & Miller
Solicitors

For the Respondent: Mr E Tufan, Home Office Presenting Officer

DECISION AND REASONS

**Direction Regarding Anonymity - Rule 14 of the Tribunal Procedure
(Upper Tribunal) Rules 2008**

Unless and until a Tribunal or court directs otherwise, the appellant is granted anonymity. No report of these proceedings shall directly or indirectly identify him or any member of his family. This direction applies both to the appellant

and to the respondent. Failure to comply with this direction could lead to contempt of court proceedings.

1. The appellant is a citizen of Sweden and his date of birth is 24 August 1944. He appealed against a decision of the Secretary of State to deport him pursuant to the Immigration (European Economic Area) Regulations 2006 as a result of his conviction at Reading Crown Court of 15 October 2013 of sexual assault on a female child under the age of 13. His appeal was dismissed by Judge of the First-tier Tribunal B Lloyd following a hearing on 11 March 2015 in a decision that was promulgated on 18 March 2015.
2. The period of the appellant's residence in the UK was not agreed by the respondent. However, the judge found that the appellant had been in the UK in accordance with the Regulations from 1997 to January 2014 (see paragraph 32) and following this he could show a continuous period of at least ten years.
3. The judge applied the test of imperative grounds of public security and concluded that, albeit that the appellant could show a continuous period of residence of at least ten years, there are imperative grounds of public security which justify his deportation. However, there is an absence of adequate reasons for this conclusion which is a material error; particularly in the light of the assessment of risk conducted by the Probation Service which concluded that the appellant was at low risk of reoffending (see paragraph 27 of the decision of the First-tier Tribunal). The judge did not properly consider the issue with regard to Regulation 21(5) (c).
4. The judge further fell into error because he did not properly consider the issue of integration and the level of protection. The appellant in this case had spent a period of ten years here prior to his incarceration. However, case law including MG and Warsame v The Secretary of State for the Home Department [2016] EWCA Civ 16 makes it clear that the ten year period of residence must be continuous and be calculated by counting back from the date of the decision ordering the expulsion of the person concerned. In this case there is a break in the period and a period of imprisonment is, in principle, capable of interrupting the continuity of the period of residence and of affecting the decision regarding the grant of the enhanced protection even where the person concerned has resided in the host member state for the ten years prior to imprisonment.
5. For the above reasons the judge materially erred and I set aside the decision to dismiss the appeal under the 2006 Regulations. It is a matter for the judge determining the appeal to consider the impact of the ten years' residence prior to imprisonment as part of the overall assessment required in order to determine whether the integrating links previously forged with the host member state have been broken.

6. The judge made a number of findings which were challenged in the grounds and it is asserted that the judge relied on irrelevant considerations and particular reference is made to paragraphs 36 and 39. These findings were open to the judge. However, it the judge in this case failed to focus on the issues which are narrower for the purposes of the 2006 Regulations than a deportation order made under Section 32 of the 2007 Act.

Notice of Decision

The decision of the First-tier Tribunal is set aside and the matter is remitted to the First-tier Tribunal.

Signed Joanna McWilliam

Date 25.02.16

Upper Tribunal Judge McWilliam