



**Upper Tribunal
(Immigration and Asylum Chamber)
DA/01850/2014**

Appeal Number:

THE IMMIGRATION ACTS

Heard at Royal Courts of Justice

Decision & Reasons

On 18 July 2016

Promulgated

On 20 July 2016

Before

UPPER TRIBUNAL JUDGE PITT

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

and

Appellant

**PAULO CICERO FARIAS ALBERGHINI
(NO ANONYMITY ORDER MADE)**

Respondent

Representation:

For the Appellant: Mr Tufan, Senior Home Office Presenting Officer
For the Respondent: Mr Bellara, Counsel instructed by Westerns Solicitors

DECISION AND REASONS

1. This is an appeal against the decision promulgated on 7 May 2015 of First-tier Tribunal Judge Devittie which allowed the Respondent's appeal against deportation under the Immigration (European Economic Area) Regulations 2006 (the EEA Regulations) and Article 8 ECHR.
2. For the purposes of this decision I refer to the Secretary of State for the Home Department as the respondent and to Mr Alberghini as the appellant, reflecting their positions before the First-tier Tribunal.

3. The appellant raised a preliminary issue in his Rule 24 reply as to the timeliness of the respondent's challenge to the First-tier Tribunal decision. That concern was settled at the hearing before me on provision of three pieces of evidence showing that the respondent did appeal in time on 18 May 2015 but that the application was not registered correctly by the Upper Tribunal.
4. The background to this matter is that the appellant, a national of Italy, came to the UK in 2005 aged 10 years' old. He began offending as a minor and was first convicted in 2010 of receiving stolen goods. Further convictions for affray, possessing Class A drugs, possessing an offensive weapon and travelling without paying a fare followed.
5. His offending escalated. On 6 September 2013 he was convicted of possession of Class A drugs with intent to supply and given a sentence of 18 months in a Youth Offender Institution. On 20 January 2014 he was sentenced for a further offence of possession of Class A drugs with intent to supply and given 2 years' detention in a Young Offender Institution.
6. Unsurprisingly, on 31 July 2014 the respondent made a deportation order against him.
7. The appellant's First-tier Tribunal appeal against deportation was allowed by First-tier Tribunal Judge Devittie who heard evidence on 11 March 2015 from the appellant, his mother and, her former partner and Mr Dayes, the appellant's case worker in a project for the rehabilitation of young offenders.
8. In his decision Judge Devittie sets out the correct EEA deportation legal framework at [4]-[5].
9. At [16] he found that the appellant was entitled to the second level of protection provided for by the legislation and that "serious grounds" had to be shown for the respondent to be able to remove him.
10. It is now well understood that in addition to the application of the hierarchy of protection (set out at [4] of the First-tier Tribunal decision) the provisions of Regulation 21 (5) (identified at [5]) require the decision to deport an EEA national to be based "exclusively on the conduct of the person concerned" and provide that the appellant's "previous criminal convictions do not in themselves justify the decision".
11. These provisions make the assessment in a deportation appeal concerning an EEA national quite different from a deportation appeal of a non-EEA national under the Immigration Rules.
12. Having set out the sentencing remarks of the judge at [2(ix)], First-tier Tribunal Judge Devittie considered at [17] to [24] the question of whether the appellant's personal conduct could said to be a genuine, present and sufficiently serious threat to a fundamental interest of society to the "serious" level.

13. First, he addressed the NOMS report which was undated but shows that it was requested by the respondent on 24 February 2014. The NOMS report found the appellant to be at a high risk of reoffending. Judge Devittie set out parts of it and parts of the respondent's view of that evidence at [17]-[21]. At [22] he concludes:

"It is plain to see that the respondent has made a strong case for the conclusion that the appellant's personal conduct constitutes a present and sufficiently serious threat to the public interest; the respondent has relied on the detailed opinion, which is evidenced based, of the offender manager's report."

14. Judge Devittie considered the appellant's evidence at [23]:

"Equally, if not more compelling, is the evidence of Paul Dayes, the director of a youth programme that engages in the rehabilitation of juveniles who are involved in gangs. I have found the written and particularly the oral evidence of Dayes most impressive. I fully accept his evidence, that if he did not genuinely hold the opinion that the appellant has high prospects of rehabilitation, he would not have attended court to give formal evidence on that issue. I also attach significance to his evidence, that his recent exchanges with the police and the probation officers indicate that they too have come to share and accept his opinion that this appellant is well and truly on the path to rehabilitation. This witness's evidence, as is the case with the offender manager's report, was detailed, - for example, he states that the fact the appellant, on his own initiative, has been able to find employment, is yet a further indication that reinforces his belief as to the progress that the appellant continues to make in the rehabilitation process. I accept Daye's evidence that the appellant does have significant support not just from the probation system but also from his mother, whom he says has a very strong bond with him. He observes that the mother has not been able in the past to have a sufficiently strong influence on the appellant to prevent him from continuing to embark on a life of crime. His most recent offence however earned him the longest prison sentence to date. The appellant states that the length of his sentence has given him the opportunity to seriously reflect on his life of crime. Whilst not wishing to undervalue the opinion of the offender manager in any way, it cannot be contested, that there are strong indicators that support the conclusion that the appellant is undergoing a genuine rehabilitation process. These indicators include the positive relationship he has had with Paul Dayes, the fact that he has fully complied with what has been required of him from the probation service since his release, his initiative in seeking work, the confidence that Paul Dayes expresses in him - to the extent that he has managed to secure an apprenticeship which will enable him to gain a profession and permanent employment. I do not doubt this evidence and I believe that it will go a long way towards enabling the appellant to rely on employment as a form of income and not revert to a life of crime. Paul Dayes' evidence that he has already found a placement for the appellant, and all that he is awaiting, is (sic) the decision of this tribunal is a factor that carries significant weight in my assessment of the likelihood of the appellant re-offending

23. In all the circumstances and having considered the evidence in its totality I come to the conclusion that there is strong evidence to show a

significant reduction in the risk of the appellant re-offending since his release from prison and the compilation of the offender manager's report. In my opinion the evidence does not show that his personal conduct constitutes a genuine, present and sufficiently serious threat to the public interest."

15. It is not arguable that the First-tier Tribunal failed to consider the respondent's case against the appellant appropriately. It did so in terms at [17]-[21] and found it to be a strong case. Judge Devittie overtly kept it in mind during his assessment of the appellant's evidence, referring to it twice, being consistent in his view that it was important and strong evidence.
16. It is also not arguable that the consideration at [23]-[24] failed to provide adequate reasons as to why, notwithstanding the NOMS report, the First-tier Tribunal still did not find the appellant to pose the requisite level of risk. The respondent knows why the appeal was allowed. The First-tier Tribunal gave detailed reasons in [23] as to why it preferred the more recent evidence of Mr Dayes which included reference to the Probation Service's more recent view of the appellant and the conduct of the appellant since release from detention.
17. The decision of the First-tier Tribunal contains a summary of Mr Dayes' oral evidence on this point at [13(i)]:

"He [Mr Dayes] has worked closely with the appellant's probation officer who is based at Walthamstow, and she too has not expressed any concerns. She has in fact informed him that she is very pleased with the appellant's progress towards rehabilitation."

18. It was suggested before me that Mr Dayes' statements concerning the view of the police and probation service was "insufficiently analysed". That is really another way of saying that it was not open to the First-tier Tribunal to place weight on Mr Dayes' statement as to the position of the police and probation service. Nothing before me suggests that it was submitted to the judge that Mr Dayes' was not able or authorised to make those comments or that they were in some way unfounded. There is nothing to that effect before me now, the evidence remaining that Mr Dayes worked closely with the Probation Service who had a positive view as to rehabilitation.
19. It is also not my judgement that it can be said that the weight given to the evidence of Mr Dayes by the First-tier Tribunal was not open to it and perverse. It set out the evidence on which he relied on order to distinguish the risk of reoffending identified in the NOMS report and that was a decision reasonably open to him. It is not a decision that all judges might have reached but remains one that was open to the judge who had the benefit of the oral evidence of the appellant, his mother and Mr Dayes.
20. The respondent's challenge, when analysed, is really one of rationality or weight attributed by the First-tier Tribunal to the evidence. The threshold for the former is a high one and it is well understood that weight is a

matter for the judge. My conclusion is that the respondent's challenge does not succeed.

21. It was agreed before me that having failed on this ground the respondent's second ground fell away as there was no requirement for the First-tier Tribunal to go to assess the proportionality of the decision by way of reference to integration, rehabilitation and so on.
22. As indicated to the appellant at the hearing, this decision is based on his known offences up until 2013. If further criminal offending of any kind comes to light, he should be in no doubt that the respondent will consider re-commencing deportation proceedings against him. It will be very difficult for a judge in future to find even the "serious" threshold had not been met if the appellant showed himself unable to abstain from criminal behaviour in future.

Notice of Decision

23. 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 18 July 2016