



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

Appeal Number: DA/00403/2016

THE IMMIGRATION ACTS

**Heard at Field House
On 11 December 2017**

**Decision & Reasons Promulgated
On 13 December 2017**

Before

UPPER TRIBUNAL JUDGE FINCH

Between

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

ION DRAGOMIR

Appellant

Representation:

For the Appellant: Mr. I. Jarvis, Home Office Presenting Officer
For the Respondent: Mr. M. West (of counsel)

DECISION AND REASONS

BACKGROUND TO THE APPEAL

1. The Respondent, who was born on 12 March 1961, is a national of Romania. He first arrived in the United Kingdom on 12 November 1997 and applied for asylum. His application was refused on 14 November 1998 and his subsequent appeal was dismissed on 2 November 1999.

2. On 22 June 2000, the Respondent married an Irish citizen and was granted residence as her spouse on 30 June 2001. He remained here in this capacity until 3 February 2004. Subsequently on 7 June 2007 was granted leave to enter as an EEA national but on 18 February 2010 he was refused an A2 registration certificate. Meanwhile, he had been involved in a car traffic accident in 2008, which rendered him paraplegic.
3. The Respondent was convicted of driving offences on 18 January 2000, 14 March 2003 and 20 September 2005. He was also convicted of common assault and theft on 15 October 2002 and soliciting on 8 November 2005.
4. On 15 May 2015, the Respondent was convicted of making/supplying articles for use in fraud and sentenced to three years' imprisonment. The Appellant made a decision to deport him from the United Kingdom on grounds of public policy and he appealed against this decision.
5. First-tier Tribunal Judge Cameron allowed his appeal in a decision promulgated on 9 June 2017 and the Respondent appealed. She was granted permission to appeal by First-tier Tribunal Judge Ransley on 19 July 2017.

ERROR OF LAW HEARING

6. Both the Home Office Presenting Officer and counsel for the Appellant made oral submissions and I have referred to the content of their submissions, where relevant, in my decision below.

DECISION

7. The Respondent accepted that, for the purposes of Regulation 21 of the Immigration (European Economic Area) Regulations, he had not resided in the United Kingdom for a continuous period of at least ten years or acquired a right of permanent residence. Therefore, the Appellant can deport him from the United Kingdom on grounds of public policy, public security or public health if the principles contained in Regulation 21(5) of the EEA Regulations are properly applied.

8. In particular, Regulation 21(5) of the EEA Regulations states that where such a decision is taken it shall 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”.
9. The First-tier Tribunal Judge reminded himself that in *LG and CC (EEA Regs: residence; imprisonment; removal) Italy* [2009] UKAIT 00024 the Upper Tribunal found that “a clear distinction is required to be drawn between the three levels of protection against removal introduced in the 2006 Regulations, each level being intended to be more stringent and narrower than the immediately lower test”. The applicable level in the Respondent’s case was the lowest one.
10. It was not suggested that for the purposes of Regulation 21(5)(b) that the First-tier Tribunal Judge had based his decision on anything but the Respondent’s personal criminal offending. But the First-tier Tribunal Judge also had to consider whether, for the purposes of Regulation 21(5)(c) the Respondent’s personal conduct represented a genuine, present and sufficiently serious threat affecting one of the fundamental interests of society. The First-tier Tribunal Judge reminded himself of this test but the issue is whether he gave sufficient reasoning for his findings.
11. Counsel for the Respondent submitted that the decision reached by the First-tier Tribunal Judge was one which was open to him in the light of the evidence before him.
12. The index offence in the Respondent’s case was one count of making or supplying articles for the use in fraud. The articles in question were “Lebanese loops” which were to be used to fraudulently obtain money from ATMs. The sentencing remarks made by a judge at Blackfriars Crown Court indicated that the Respondent was convicted on the basis that he had a workshop in his home where he was preparing these loops for use by another person. In

particular, the evidence indicated that when the police entered his home, the Respondent was sitting at a small table with various pieces of equipment; including a soldering iron and a glue gun and that a number of items were found which were used in ATM frauds. The Judge also took into account the sophisticated nature of the offence and the significant number of items being prepared for use in ATM fraud that were found in his flat. The sentencing judge also accepted that the Respondent had confirmed to the police on arrest that he had detailed knowledge of the methods used to commit fraud at ATMs and that he had been involved with these frauds over a sustained period of time. All of these factors led to the Judge to conclude that the Respondent fell into the category of higher culpability.

13. The First-tier Tribunal Judge did refer to all of these factors in his decision but when considering whether the Respondent was a genuine, present and sufficiently serious threat to one of the fundamental interests of society and at paragraph 67 of his decision the First-tier Tribunal Judge also said that he was in no doubt that the index offence was a serious one. However, when giving reasons for allowing the appeal he concentrated on the content of the OASys Assessment, which did not take into account the conduct which led to the Respondent being found guilty and sentenced. For example, the Respondent told the Service that a friend had left a suitcase at his flat and the items involved in fraud were in this suitcase. This led the assessment to focus on his failure to be aware of his friend's fraudulent background. The First-tier Tribunal Judge did not address this in paragraph 68 of his decision when he said that he had taken into account the OASys report which had clearly scored the "Respondent" as being at low risk of reoffending or harm to the public. The First-tier Tribunal Judge also failed to take into account the fact that the Assessment found that his lifestyle and associates indicated a risk of offending.
14. The First-tier Tribunal Judge did note in paragraph 82 of his decision that the Respondent did not accept that he had committed the offence and that there was nothing on the evidence before him to indicate that he was undertaking any rehabilitation programme. But he did not refer to this when concluding that the Respondent did not pose a genuine, present and sufficiently serious threat to one of the fundamental interests of society in the context of the index offence further than noting that he had complied with his licence conditions and attending his probation appointments. His denial of guilt was something which should have been taken into account as part of the overall reasoning exercise as this is a factor which may indicate a future risk of offending.

15. As a consequence, I find that First-tier Tribunal Judge Cameron did make material errors of law in his decision and reasons.

DECISION

- (1) The Appellant's appeal is allowed.
- (2) The appeal is remitted to the First-tier Tribunal to be heard *de novo* before a First-tier Tribunal Judge other than First-tier Tribunal Judge Cameron.

Nadine Finch

Signed

Date 11 December 2017

Upper Tribunal Judge Finch