



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: EA/05373/2016

THE IMMIGRATION ACTS

Heard at Field House
On 27 April 2018

Decision & Reasons Promulgated
On 10 May 2018

Before

DEPUTY UPPER TRIBUNAL JUDGE APLEYARD

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

MR MIU CORNEL
(ANONYMITY DIRECTION NOT MADE)

Respondent

Representation:

For the Appellant: Mr T Melvin, Home Office Presenting Officer.

For the Respondent: No appearance.

DECISION AND REASONS

1. The Appellant in this case is the Secretary of State for the Home Department. However, for the sake of clarity, I shall use the titles by which the parties were known before the First-tier Tribunal with the Secretary of State referred to as "the Respondent" and Mr Cornel as "the Appellant".
2. The Appellant is a citizen of Romania who appealed against the decision of the Respondent to refuse him admission to the United Kingdom and revoke his Family Permit in accordance with Regulation 1, 19(2) and 21 of the Immigration (European

Economic Area) Regulations 2006. It was said that this was justified at grounds of public policy based upon the Appellant's criminal convictions.

3. Following the hearing, and in a decision promulgated on 23 June 2017, Judge of the First-tier Tribunal Rothwell allowed the Appellant's appeal.
4. The Respondent sought permission to appeal. It was granted by Judge of the First-tier Tribunal Hollingworth on 8 March 2018. His reasons for so granting were: -

"1. It is arguable that the Judge had set out an insufficient analysis in relation to the conduct of the Appellant illustrated by his convictions in relation to risk of repetition. It is arguable that greater weight should have been attached to the failure of the Appellant to surrender to custody and to the repeat offending in the context of theft/shoplifting in relation to risk of repetition. It is arguable that greater weight should have been attached to repeat offending set against the backcloth of the range of offending. It is arguable that the Judge has attached too much significance to the finding that these were low-level offences dealt with by fines. It is arguable that the absence of a sufficient analysis in this overall context vitiates the conclusion that the personal conduct of the Appellant did not represent a genuine, present and sufficiently serious threat affecting one of the fundamental interests of society. It is arguable that the Judge's conclusion that this criterion was not satisfied on the footing that the offences were punished by fines only distracts from the width of the foundations necessary for reaching that conclusion".

5. Thus, the appeal came before me today.
6. Neither the Appellant nor his representatives appeared at the hearing. I had before me a letter from the Appellant's representatives dated 25 April 2018. It states:

"We enclosed (sic) herewith a skeleton argument to be relied for the hearing listed on 27 April 2018 before an Immigration Judge sitting at Field House.

Please note that our instructions are to make a paper submission therefore, we will not be appearing at the hearing to make oral submission. The Immigration Judge is respectfully requested to accept our submission on papers before making a decision in this matter".

Attached to that letter are two skeleton arguments. The first appears to be that which was filed in the original proceedings before the First-tier Tribunal. The second is dated 25 April 2018. It states, amongst other things, that the Judge has "given proper and detailed reasoning as to how and why derived sic) at the conclusion she did". The offences committed by the Appellant were in essence "spent convictions" and the Appellant provided evidence as to his circumstances as to why he committed the minor offences which the Judge was "correct to accept". The Judge was also correct to conclude that the Appellant does not represent a genuine and sufficiently serious threat affecting one of the fundamental interests of society. There is within the Judge's decision no material error and that the issue of £5,000 cash found in the Appellant's possession at the time of his arrest for shoplifting was not within the evidence of this appeal.

7. Mr Melvin relied on the grounds seeking permission to appeal emphasising that the Appellant has been convicted of five offences in the United Kingdom between 2010 and 2015 and that following an attempt to enter the United Kingdom on 16 May 2016 the Appellant maintained that he was a professional poker player and was returning to the United Kingdom to play in a game in Nottingham. He had no knowledge of deposits of over £40,000 in a three-month period paid into a bank account. He submitted the Judge had materially erred in concluding that the Appellant's convictions in themselves did not justify the decision and that it was incumbent upon her to determine whether the Appellant was likely to commit further offences in this country. This is an Appellant with a clear propensity to reoffend. No evidence was provided to suggest otherwise. The Judge has not engaged with this material issue. Beyond that it is unclear on what basis the Judge accepted the witness evidence in relation to the Appellant possessing a small swiss army knife and the Appellant's explanation for failing to surrender. The Judge has failed to provide an adequate assessment of the evidence. He invited me to either remake the decision today dismissing the appeal or in the alternative remit it to the First-tier Tribunal for a fresh hearing.
8. I accept the submission that there is here a material error of law. The Judge has not adequately reasoned her decision and has insufficiently analysed the Appellant's conduct as shown by his convictions and the risk he poses of repeat offending. Further the Judge's analysis at paragraph 31 of her decision, relating to the Appellant's criminal offending, is flawed in that the absence of sufficient analysis in the overall context of this appeal vitiates the conclusion that the Appellant's personal conduct did not represent a genuine, present and sufficiently serious threat affecting one of the fundamental interests of society.
9. I conclude that a material error has been made. In the circumstances further evidence may well be called for and accordingly the appeal will be remitted to the First-tier Tribunal.

Decision

The making of the decision of the First-tier Tribunal involved the making of an error on a point of law. The decision is set aside. The appeal is remitted to the First-tier Tribunal to be dealt with afresh pursuant to Section 12(2)(b)(i) of the Tribunals, Courts and Enforcement Act 2007 and Practice Direction 7(b) before any Judge aside from Judge Rothwell.

No anonymity direction is made.

Signed

Date 3 May 2018.

Deputy Upper Tribunal Judge Appleyard