



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

Appeal Number: DA/00815/2018

THE IMMIGRATION ACTS

**Heard at Field House
Via Skype for Business
On 4 November 2020**

**Decision & Reasons Promulgated
On 3 December 2020**

Before

UPPER TRIBUNAL JUDGE RINTOUL

Between

**MR ADRIAN LEU
(ANONYMITY DIRECTION NOT MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: No Attendance by or on Behalf of the Appellant
For the Respondent: Ms S Cunha, Senior Home Office Presenting Officer

DECISION AND REASONS

The appellant appeals against a decision of the respondent made on 19 November 2018 to deport him pursuant to Regulation 23(6)(b) of the Immigration (European Economic Area) Regulations 2016. That appeal was certified pursuant to Regulation 33. It appears that there was no human rights decision made and although a notice issued under section 120 of the Nationality, Immigration and Asylum Act 2002 was issued to the appellant he has not responded to it. The appeal was previously determined in the appellant's favour but that decision was set aside by Upper Tribunal Judge Kekic in her decision of a copy of which is annexed to this decision.

The appellant did not attend the hearing today. I note also that he did not attend the hearing in the First-tier Tribunal nor did he attend the hearing before my colleague Judge Kekić when she considered whether the decision of the First-tier Tribunal involved the making of an error of law. I note also despite the fact that emails had been sent to the email address given by the appellant in his appeal forms he has not responded to any of them. Indeed, it is fair to say that the appellant has not engaged with either the First-tier Tribunal, or this Tribunal, in any way. He has not, for example, provided any evidence to either Tribunal nor is there any detail whatsoever in the grounds of appeal to the First-tier Tribunal. They are, in effect, silent.

The appellant was, as Judge Kekić noted, advised to keep in contact with the Tribunal were he to be removed. There is no indication that he has done so and in all the circumstances I am satisfied that it would be just to proceed to the hearing to determine the appeal today and I have chosen to do so.

I heard brief submissions from Ms Cunha on behalf of the Secretary of State and I now proceed to give the reasons for my decision.

The facts are as set out in the decision of Judge Kekić at paragraphs 1 to 6. In summary, the appellant is a Romanian national born on 20 August 1974 who entered the United Kingdom in June 2018. Shortly thereafter he was sentenced to one year's imprisonment following a conviction at North Kent Magistrates' on a guilty plea for dangerous driving. I note that this is a case which the Magistrates' thought so serious that their sentencing powers were insufficient and for that reason the matter was referred to the Crown Court for sentence to be passed. The appellant was sentenced also to a disqualification from driving for 27 months. On 19 November 2018 the respondent was notified of the decision to make a deportation order.

The nature of the incident is not entirely clear. What I can glean from the incident that led to the proper conviction is that the appellant, as set out in the sentencing remarks from Judge Brown, that the appellant had engaged in a disgraceful and very dangerous piece of driving which took place over a sustained period. That is clear because the judge says:

“Even if, as I accept, you may have become confused as to your location, you must have realised that driving the way you did was a real risk to you and more particularly to all the other road users on a busy motorway in the mid to late afternoon. I'm satisfied that attempts were made to alert you to the need to stop but you continued nevertheless and if you had not slept since the previous day, that might explain why you behaved in this way but it certainly doesn't excuse it. As a professional driver it is your personal responsibility to make sure that you are fully rested. If you were given a job which was not capable of being completed safely, then as the driver of a van, which has the capability of killing people, you should have declined that job. It was a prolonged period of dangerous driving involving several dangerous manoeuvres and I quite accept the assessment of the police officers that you were very fortunate that nobody was killed or injured.”

I accept those are the facts. there is little evidence of any other factors to be taken into account and there is in reality little evidence before me regarding the appellant. All I do know is that he has been removed to Romania but beyond that, as he has failed to engage with the Tribunal, there is nothing to be added.

The starting point for any assessment as to whether the deportation is justified is Regulation 27 of the EEA Regulations.

1. Regulation 27 provides as follows:-

- 27.** -(1) In this regulation, 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 permanent residence under regulation 15 except on serious grounds of public policy and public security.
- (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 the relevant decision; or
- (b) is under the age of 18, unless the relevant decision is in the best interests of the person concerned, as provided for in the Convention on the Rights of the Child adopted by the General Assembly of the United Nations on 20th November 1989
- (5) The public policy and public security requirements of the United Kingdom include restricting rights otherwise conferred by these Regulations in order to protect the fundamental interests of society, and where a relevant decision is taken on grounds of public policy or public security it must also 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.
- (f) the decision may be taken on preventative grounds, even in the absence of a previous criminal conviction, provided the grounds are specific to the person.

...

(8) A court or Tribunal considering whether the requirements of this regulation are met must (in particular) have regard to the considerations contained in Schedule 1 (considerations of public policy, public security and the fundamental interests of society etc.).

2. It is important to note Dumliauskas [2015] EWCA Civ 145 at [40]

“I have to say that I have considerable difficulty with what was said by the Advocate General in relation to rehabilitation. In the first place, it had no, or very little, relevance to the questions referred to the Court, which concerned the meaning of “imperative grounds of public security”. **Secondly, it is only if there is a risk of reoffending that the power to expel arises** [emphasis added] It is illogical, therefore, to require the competent authority “to take account of factors showing that the decision adopted (i.e., to expel) is such as to prevent the risk of re-offending”, when it is that very risk that gives rise to the power to make that decision. Secondly, in general “the conditions of [a criminal’s] release” will be applicable and enforceable only in the Member State in which he has been convicted and doubtless imprisoned. ...”

The sentence highlighted is confirmed at paragraph [55].

In principle, it is only if there is a risk of reoffending that the power to expel arises. It is not suggested in this case that the appellant benefits from any of the enhanced protections against deportation as there is insufficient evidence to demonstrate that that he had been in the United Kingdom for anything more than a few months let alone the five years of exercising Treaty Rights to acquire permanent residence.

I bear in mind what is said in Regulation 27(5). The core issue is whether the appellant represents a genuine, present and sufficiently serious threat affecting one of the fundamental interests of society. I am satisfied from the sentencing remarks that what had occurred in this case was a sustained period of dangerous driving, not one incidence but several in which the appellant persisted despite the fact that the police were trying to stop him. That is, I consider, a serious matter and indicates his attitude towards the offending which he must have known he was doing. He pleaded guilty but that does not indicate that he has any remorse from what he has done or that he would not seek to do so in future. The fact that he is a professional driver only aggravates this matter, as the judge noted.

I find that the appellant who has shown no remorse and has provided no proper explanation for driving in such a dangerous manner, while not stopping when he should have done, has shown scant regard for the norms of lawful behaviour. He persisted in a course of action he must have known to be unlawful which I find strongly indicative that he will act in the same manner again

Taking all of these factors into account, and bearing in mind that the appellant has no previous convictions, I am satisfied that the Secretary of State has shown that this appellant presents a genuine, present and sufficiently serious

threat to society. There is no indication provided that he would not carry out exactly the same thing again and I note that he did so within a very short period of arriving in the United Kingdom. To drive in such a way is in my view a serious matter. It affects a very large number of people who are driving on the road as well as him and in that sense, bearing in mind what is set out in Schedule 1, I am satisfied that the test set out in Regulation 27(5) is met by the Secretary of State.

I must now go on to consider whether nonetheless the decision is proportionate. There is before me simply nothing to show what the effect would be on the appellant of removal. He has been removed, his life in the United Kingdom is very limited, there is no evidence of any regular re-employment, there is no evidence of any family connections and, taking these matters as a whole, I consider that the need to protect the public in light of the appellant's actions and likely to offend again in future is such that it outweighs any of the factors that there may be in his favour and therefore his deportation is proportionate, having had regard also to the matters set out in Schedule 1 of the 2016 Regulations.

Accordingly, for these reasons I am satisfied that the Secretary of State's decision was proportionate and in accordance with the Regulations and I therefore dismiss the appeal on all grounds.

Notice of Decision

1. The decision of the First-tier Tribunal involved the making of an error of law and is set it aside.

I remake the decision by dismissing the appeal on all grounds.

Signed

Date 25 November 2020

Jeremy K H Rintoul
Upper Tribunal Judge Rintoul