



**IN THE UPPER TRIBUNAL**  
**IMMIGRATION AND ASYLUM CHAMBER**

Case No: UI-2022-003859

First-tier Tribunal No: DA/00025/2020

**THE IMMIGRATION ACTS**

**Decision & Reasons Issued:**  
**On 10 May 2023**

**Before**

**UPPER TRIBUNAL JUDGE RIMINGTON**

**Between**

**SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Appellant

**and**

**MOHAMED PELLE**  
**(NO ANONYMITY ORDER MADE)**

Respondent

**Representation:**

For the Appellant: Mr Lams instructed by TNA Solicitors

For the Respondent: Ms H Gilmour, Home Office Presenting Officer.

**Heard at Field House on 27 January 2023**

**DECISION AND REASONS**

1. The Secretary of State made the application for permission to appeal but nonetheless, hereinafter, I shall refer to the parties as they were described before the First-tier Tribunal ("the FtT").
2. FtT Judge Veloso ("the judge") allowed the appellant's appeal against the decision dated 27<sup>th</sup> June 2019 and supplementary decision of 20<sup>th</sup> November 2019 to deport the appellant under Regulation 23(6) (b) and 27 of the Immigration (European Economic Area) Regulations 2016 ("the EEA Regulations").
3. In that decision the judge found that the appellant was not stateless as he claimed but was Romanian (in line with a decision made by the Upper Tribunal in relation to his twin brother). Additionally, the judge

found that the appellant did not have permanent residence and thus was afforded only the lowest level of protection only [61]. The question was whether the respondent had shown that the appellant represented a genuine present and sufficiently serious threat to one of the fundamental interests of the United Kingdom and that the decision to issue a deportation order was disproportionate.

4. The Police National Computer printout showed the appellant committed 7 theft/shoplifting offences between March 2017 and 2018. These were the index offences and related to possession/control of one or more article(s) for use in fraud and led to a sentence of 15 months immediate imprisonment. In March and July 2020, the appellant was convicted of two further offences of dishonesty. His last convictions, at the date of the hearing, were recorded as 'around a year ago' in January and April 2021.
5. The Secretary of State appealed with permission against the FtT judge's decision stating that the appellant was a serious and persistent offender who had show a blatant disregard for the law. On the evidence, there was no reasoning or inadequate reasoning for the finding at [71] that the appellant had changed his 'pattern of offending'. As the judge stated at [71] 'the more numerous the convictions the greater the likelihood that the appellant's continued presence in the United Kingdom represented a genuine, present and sufficiently serious threat' effectively did not apply that principle. The appellant had continued to offend. Even were the appellant not a persistent offender the cessation of offending was insufficient to demonstrate he no longer posed a threat to the fundamental interests of society and in the light of continued offending this was even more so the case.
6. At the hearing Ms Gilmour relied in particular on the judge's findings at [71]. Although the judge may have directed herself appropriately, she did not apply the principle. There was inadequate reasoning bearing in mind the facts.
7. Ms Lams pointed to the context of the appellant's offending as set out in the National Referral Mechanism referral, albeit it was a negative conclusion. He relied on his skeleton argument. It was accepted that the judge had regard to Schedule 1(3) and the Secretary merely disagreed with the findings. The judge had gone on to make findings on proportionality. The appellant had been in the UK since childhood and was integrated. Apart from the period of custody and the offences in 2018 there had not been criminal offending that resulted in a custodial sentence. It was effectively argued that the judge was being perverse. There was no OASys report. The dishonesty was two years ago. The negative NRM decision was because it was concluded he was not forced to go to Boots to commit an offence. The appellant had managed to distance himself from the gang and the context of the NRM had fed into the judge's conclusion that the appellant was a low risk. The integration conclusions were

sustainable and the judge at [66] showed she had had not downplayed the fact that he had committed offences whilst in breach of a conditional discharge.

*Analysis*

8. At the hearing it was explained that the appellant was remanded in custody on 4<sup>th</sup> January 2019 in relation to the index offence, was imprisoned until 23<sup>rd</sup> September 2019 and detained in immigration custody until 6<sup>th</sup> March 2020 whereupon he was released on immigration bail.
9. I set out the key findings of the judge in relation to the offending of the appellant.

*'64. Although I note a further conviction on 29 May 2018 for identical offences, I take into account the fact that these were committed 5 months before the index offences.*

*65. In setting out the criminal convictions above, I have regard to the fact that the decision to deport must be based exclusively on the appellant's personal conduct and that his previous convictions do not in themselves justify the decision.*

*66. I however find elements of his convictions relevant to his personal conduct; specifically that he committed offences:*

*a) In breach of a conditional discharge, community order and whilst on bail;*

*b) After the respondent's stage 1 letter of February 2019, stage 2 letter*

*of June 2019 and supplementary decision of November 2019;*

*c) After his representations of 4 March 2019, in which he stated that he was sorry for his actions and was remorseful for his criminal behaviour (at page 27 of the respondent's bundle) and of 2 July 2019, in which he stated that he was a rehabilitated person (at page 64);*

*d) After he was returned from a failed deportation in December 2019.*

...

*68. The Judge's Sentencing Remarks confirm a deduction of a quarter from the prison sentence imposed because of the timing of his guilty plea (at page 9 of the respondent's bundle).*

69. *Whilst the appellant has received a negative Conclusive Grounds decision, the general background to his offending has been accepted as credible. At the hearing, Mr Williams did not make any submissions in closing with regards to the said decision.*

70. *Considering the chronology of his offending, his conviction for theft/shoplifting committed in March and July 2020 were his last dishonesty offences, coming up to 2 years ago. On the contents of the negative Conclusive Grounds decision, the further theft/shoplifting offences also resulted from being approached by the same gang. His last convictions were driving offences in January and April 2021, with no further convictions after that, around one year ago. Although he was arrested in March 2022, as at the date of the hearing he had not been convicted of any offence.*

71. *Whilst I have regard to the fact that the more numerous the convictions the greater the likelihood that the appellant's continued presence in the United Kingdom represents a genuine, present and sufficiently serious threat affecting one of the fundamental interests of society, I find on balance that his pattern of offending has changed since the commission of the index offences. Again on the contents of the Conclusive Grounds decision, he has since his NRM referral of 8 March 2020 been living at a private address, where there are no known risks to him (at page 200). I find that as at the date of the hearing, the appellant shows a low risk of re-offending'.*

10. The judge did record at [66] that the appellant committed offences
- (i) in breach of a conditional discharge,
  - (ii) following the respondent's letters indicating the intention of deportation in  
February 2019 and June 2019 and
  - (iii) following his letters of apology of 4<sup>th</sup> March 2019 and 2<sup>nd</sup> July 2019 indicating his remorse and assurance that he was a rehabilitated person.

but inexplicably failed to take that relevant history into account in preference to the context of the negative NRM referral, the approach to which was also not adequately explained in the light of the relevant facts.

11. The judge failed to give adequate reasoning for finding that the 'pattern of offending' had altered. Nor was there any acknowledgment that the appellant was in detention from January 2019 to May 2020 and that within two days of the appellant's release from immigration bail the appellant had resumed offending. There

was inadequate reasoning given for finding that the appellant's offending had changed since the index offence because although the appellant was not given a custodial sentence, he nonetheless continued with offences of dishonesty.

12. The judge also found since the appellant's NRM referral on 8<sup>th</sup> March 2020 (which produced a negative conclusive result of trafficking) that he had lived at a private address 'where there are no known risks to him' but did not explain how that could contribute to a 'low risk of re-offending' when that is precisely, as the judge recorded, what the appellant did even after his removal to the private address. The appellant was convicted of theft/shoplifting committed in March 2020 and July 2020. Thus, the offending continued, the similar nature of the offending continued and as he was released on bail in March 2020, the March 2020 offence was committed, again, whilst on bail.
  13. The appellant was then convicted of driving offences as recently as January and April 2021 which related to driving not in accordance with a licence and driving without insurance. Those offences also involve an element of dishonesty.
  14. The challenge by the Secretary was based on inadequate reasoning rather than perversity. Despite my awareness that '*judicial restraint should be exercised when the reasons that a tribunal gives for its decision are being examined*', the judge has simply not explained why she finds at [79] that the Secretary of State has not shown, in the light of the appellant's history of offending and continuing pattern of offending, (whether or not involving a custodial sentence), he does not represent a genuine and sufficiently serious threat to one of the fundamental interests of the United Kingdom. The judge effectively failed to apply Schedule 1(3) of the EEA Regulations. The proportionality findings are made in the light that the appellant did not represent such a threat and thus I find a material error of law.
  15. There was no challenge to the judge's findings on nationality or that the appellant did not have permanent residence in the UK under the EEA Regulations and thus was only entitled to the lowest level of protection from deportation under the EEA Regulations. I therefore set aside the findings from [62] onwards.
- (iv) Mr Lams submitted that the judge had not undertaken any article 8 findings and that the matter should be remitted to the FtT.

### **Notice of Decision**

The Secretary of State's appeal is allowed.

The conclusive decision of FtT Veloso in allowing the appellant's appeal under the EEA Regulations is set aside.

The findings from paragraph 1 to 61 are preserved. The findings from paragraph 62 onwards are set aside.

The Judge erred materially for the reasons identified. I set aside the decision pursuant to Section 12(2)(a) of the Tribunals Courts and Enforcement Act 2007 (TCE 2007). Bearing in mind the nature and extent of the findings to be made the matter should be remitted to the First-tier Tribunal under section 12(2) (b) (i) of the TCE 2007 and further to 7.2 (b) of the Presidential Practice Statement.

*Helen Rimington*

Judge of the Upper Tribunal Rimington  
30th January 2023      Immigration and Asylum Chamber