



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

Appeal Number: UI-2022-005662
First-tier Tribunal: DA/00148/2021

THE IMMIGRATION ACTS

**Heard at Field House
On 9 August 2023**

**Decision & Reasons Issued
On 13 September 2023**

Before

**UPPER TRIBUNAL JUDGE PITT
DEPUTY UPPER TRIBUNAL JUDGE J F W PHILLIPS**

Between

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

MASLAH COLAD

Respondent

Representation:

For the Appellant: Ms S Cunha, Senior Home Office Presenting Officer
For the Respondent: Ms U Dirie, Counsel instructed by Wilson Solicitors

DECISION AND REASONS

Introduction

1. This is an appeal by the Secretary of State against the decision of the First-tier Tribunal (Judge Brannan) in which the Judge allowed the appeal of the Appellant (as he then was), a citizen of the Netherlands, against the Secretary of State's decision deport him under regulation 23(6)(b) of the

Immigration (European Economic Area) Regulation 2016. Although the Secretary of State is the appellant in this appeal we shall refer to the parties in this decision as they were referred to by the First-tier Tribunal.

2. The grounds of appeal to the Upper Tribunal assert that the First-tier Tribunal Judge erred in law by making a material misdirection firstly in relation to the level of protection and secondly in relation to integration. Permission to appeal was refused by Judge Lodato in the First-tier tribunal on 7 November 2022 but on renewal to the Upper Tribunal was granted by Judge Kebede on 29 December 2022 on the basis that there is “some arguable merit in the respondent’s challenge to the findings on the appellant’s integrative links to the UK” and that “whilst there is less merit in the first ground it is not excluded”. A rule 24 response was filed by the Appellant on 24 February 2023. The response was out of time but with the agreement of both representatives we extended time and admitted the response.

Submissions

3. Ms Cunha on behalf of the Respondent said that she would concentrate on the second ground. Citing the authority of Vomero: Ruling of CJEU - win - FV Italy C/424/2016 Ms Cunha said that the judge looked at integrity of ties without taking into account overall offending. As the grounds did not mention previous offending Ms Cunha sought permission to amend the grounds. With Ms Dirie’s agreement we allowed the amendment. She said that whilst the Judge does consider Vomero at paragraph 41 of the decision he fails to apply the authority. The Judge makes a positive finding of good behaviour without taking proper account of the fact that the Appellant was on licence. The Judge should have considered whether integrative links had been broken when he committed the offences and should have considered the previous offending history. Ms Cunha accepted that this was the strongest ground but said the first ground was not conceded.
4. For the Appellant Ms Dirie said that in respect of ground 2 the starting point was paragraph 40 of the decision where the Judge sets out the correct test and proceeds to engage in requirements of the test. It is a detailed and comprehensive decision. The ground is nothing more than a disagreement. The new ground relating to previous offending also has no merit. The Judge sets out the Appellant’s offending history at paragraph 44 and considers it at paragraph 45. He notes the comments of the sentencing judge. So far as integrative links are concerned the Respondent’s position is that no person can ever be considered to be of good behaviour when on licence. What else should the judge have looked at? Turning to ground 1 the position now adopted is entirely different from the one adopted at the First-tier hearing. Regulation 4(1)(d) of the EEA

Regulations is set out in paragraph 23 of the decision. The Judge takes us through the regulations and reaches a carefully reasoned decision. Ms Dirie commented that the grant of permission appeared 'reluctant'.

5. Ms Cunha replied briefly. So far as the level of earnings are concerned it is arguable that the Judge misread the Respondent's position. In terms of Vomero and previous offending the Judge seems to absolve the Appellant on the basis that he was drunk.

Discussion

6. The Appellant is a 27-year-old citizen of the Netherlands who arrived in the United Kingdom as a 5 year old in 2001. He went to school and college in the United Kingdom and has worked here. The Appellant was convicted of various relatively minor offences between 2011 and 2018 and in 2019 was convicted of the very serious offence of attempting to cause grievous bodily harm with intent and sentenced to 78 months in prison. On 29 March 2021 the Respondent made the decision to deport the Appellant. The Respondent accepted that the Appellant had been resident in the United Kingdom for over 10 years but argued that his integrative links had been broken by his offending.
7. In a very detailed and clearly structured decision the First-tier Tribunal set out the legal framework and considered both the level of protection (paragraphs 20-38) and integrative links (paragraphs 39 - 54).
8. Dealing first with the level of protection and although Ms Cunha did not press the point strongly in submissions it is the Respondent's position in the grounds that the Judge erred in law in finding that the Appellant had acquired the highest level of protection because there is no finding that the Appellant had made a declaration that he had sufficient resources not to become a burden on the social assistance system of the United Kingdom and that as a worker his earning was such that it could not be said that his employment was effective and meaningful.
9. As the rule 24 response correctly points out this ground is contrary to the previous position adopted. The Respondent had accepted that the Appellant met the requirements of the definition of a student for the period of 3 years and the only issue before the Judge was whether he could also be considered to be a student during compulsory education. In his carefully reasoned decision the judge finds that he was a student throughout at paragraphs 29 - 30 of the decision. The grounds neither address nor impugn this reasoning. The Respondent had already conceded in the supplementary refusal letter that the appellant was affiliated to the NHS from July 2007 to 12 July 2012 so did not need to show that he had separate comprehensive sickness cover. Although the Judge does not specifically address the issue of whether the Appellant had made a declaration that he had sufficient resources not to become a burden on the social assistance system of the United Kingdom this was not a matter that

was raised by the Respondent in the supplementary refusal letter or referred to in submissions before the First-tier Tribunal. The recent authority of Lata (FtT: principal controversial issues) [2023] UKUT 00163 makes it clear that

Unless a point was one which was Robinson obvious, a judge's decision cannot be alleged to contain an error of law on the basis that a judge failed to take account of a point that was never raised for their consideration as an issue in an appeal. Such an approach would undermine the principles clearly laid out in the Procedure Rules.

10. The grounds go on to assert that the Judge was wrong to find that the Appellant was a worker because his earnings were too low for his employment to be considered effective and meaningful. The Judge deals with the issue at paragraphs 31 - 37 of his decision and concludes firstly that the Respondent was applying the wrong legal test referring to “regular meaningful work” when the correct test is “effective and genuine” and secondly that the work undertaken met that legal test. In these respects the grounds are, in our judgement, no more than a disagreement with the Judge’s clearly and properly reasoned findings.
11. As such we cannot find that there is any error of law so far as level of protection is concerned.
12. Turning to integrative links the grounds and Ms Cunha’s submissions refer to Vomero and suggest firstly that proper consideration was not given to the severing of integrative links whilst imprisoned and that the finding that integrative links were enhanced whilst in prison is perverse and secondly that no proper account was taken in regard to the Appellant’s previous offending.
13. So far as the former is concerned the reasoning in the decision is extremely clear and comprehensive. The Judge considers separately the Appellant’s integrative links before detention, the nature and circumstances of what was a very serious offence and his conduct in detention. There is, in our judgment, nothing perverse about taking into account the Appellant’s conduct in detention or on licence when the reports from prison and the offender manager are positive. It would be as perverse not to take this into account as it would be to fail to take into account bad behaviour whilst in custody.
14. The Appellant’s previous offending is not ignored in the decision. To the contrary the Judge takes account of the appellant’s previous offending in considering both integrative links (at paragraphs 44 and 45) and the Appellant’s personal conduct. Full account is taken of this offending in the context of the report from Dr Galappathie who had concluded that the Appellant presented a low risk of reoffending and the OASys report which came to a similar conclusion. Whilst giving the report little weight for the reasons given the conclusions of low risk of reoffending are not impugned.

15. It is very clear that the Judge takes a comprehensive and holistic approach and in our judgment there is nothing in the Judge's approach or reasoning that could amount to an error of law.

Conclusion

16. The decision of the First-tier Tribunal did not involve the making of a material error of law.
17. The appeal of the Secretary of State is dismissed. The decision of the First-tier Tribunal stands.

Signed: 
2023

Date: 21 August

**J F W Phillips
Deputy Judge of the Upper Tribunal**