



IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2023-001990
First-tier Tribunal No:
EA/53866/2021
IA/02417/2022

THE IMMIGRATION ACTS

Decision & Reasons Issued:
On the 24 July 2023

Before

UPPER TRIBUNAL JUDGE KEBEDE

Between

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

MANFRED KURZ
(No anonymity order made)

Respondent

Representation:

For the Appellant: Mr N Wain, Senior Home Office Presenting Officer
For the Respondent: Mr A Gilbert, instructed by Turpin Miller LLP

Heard at Field House on 7 July 2023

DECISION AND REASONS

1. This is an appeal by the Secretary of State for the Home Department ('SSHD') against the decision of the First-tier Tribunal allowing Mr Kurz's appeal against a decision to make a deportation order against him under the Immigration (European Economic Area) Regulations 2016 ("the EEA Regulations").

2. For the purposes of this decision, I shall hereinafter refer to the SSHD as the respondent and Mr Kurz as the appellant, reflecting their positions as they were in the appeal before the First-tier Tribunal.

Immigration History

3. The appellant is a citizen of Germany, born on 6 February 1958. He has resided in the UK in accordance with EU law since 1986, and continuously since 2004. On 4 March 2005 he was convicted of driving a motor vehicle with excess alcohol and was fined £200. On 1 November 2018 he was convicted of possession of a significant amount of firearms and restricted or prohibited ammunition including explosives used for the making of ammunition, all without a licence. He 30 May 2019 he was sentenced to seven years and six months' imprisonment. On 5 July 2019 he was

notified of his liability to deportation. He made written representations in response on 14 May 2021. On 15 November 2021 the respondent made a decision to deport the appellant on grounds of public policy, in accordance with regulation 23(6)(b) and regulation 27 of the EEA Regulations 2016.

Background

4. The appellant married Carol Kurz, a British citizen, in 1984 in the UK. The couple moved regularly between Germany and the UK and on 9 October 1986 the appellant was issued with a residence permit. The appellant and his wife had three children, S born in the UK in 1987, R born in 1991 in Germany and C born in Germany in 1992. In 2004 they moved to the UK permanently. As part of the move, the appellant legally imported a number of boxes of guns and ammunition which were used for his guns and shooting hobby. Some of those were later deemed to be illegal for private use and so he returned them to Germany, but he also retained a large amount in the UK despite being refused a licence to hold some of the restricted ammunition. Around 12 years later, in 2016, after having separated from his wife and moved to a different accommodation, he was getting short of space and his niece, Sian Miller, stored some of the boxes for him in her loft. In 2017/2018 Ms Miller initiated a conspiracy to sell some of the appellant's items of ammunition without his knowledge. On 5 February 2018 the police raided various addresses related to the conspiracy and arrested several people including Ms Miller and the appellant. The appellant pleaded guilty to a number of firearm offences and received sentences for each count of which some were held consecutively and some concurrently, amounting in total to seven and a half years. The other co-defendants, including the appellant's niece Ms Miller, received sentences of between nine and 20 years.

5. In their representations of 14 May 2021 responding to the respondent's liability to deportation notice, the appellant's representatives submitted that the appellant had never deliberately sought to distribute his property for use in criminal activities or profit in any way from his past hobby and had stored the items for 16 years before his arrest. It was also submitted that the appellant's family had suffered in many ways over the years and that his children were vulnerable people for whom he had provided care and support. His daughter C had been diagnosed as paranoid schizophrenic and had spent time in psychiatric care, and had been the victim of serious sexual assault after he was imprisoned. His daughter R was also sectioned after suffering from a psychotic episode and R's daughter P had been diagnosed with a condition causing blindness as well as ADHD and autism and was living with her grandmother, the appellant's ex-wife, and received care and support from the appellant. It was submitted that the appellant was not a threat and that his deportation was not proportionate.

6. The respondent, in her decision of 15 November 2021, accepted that the appellant had acquired a permanent right of residence in the UK, that he had lived in the UK for at least 10 years and that he met the integration test and qualified for the highest level of protection under the EEA Regulations. The respondent therefore considered whether deportation was justified on imperative grounds of public security. In so doing the respondent noted that the appellant had been found, in his OASys assessment, to pose a medium risk of harm to the public, observing that the OASys report mentioned that the appellant had not been found to have been involved in the attempting to sell the guns or ammunition, but had, by placing the items in his niece's possession, increased the likelihood of the items being given to undesirable people. The respondent also noted that the appellant had been assessed, in the OASys report, as posing a low risk of re-offending, but considered that the serious harm that could be caused as a result of similar instances of offending was such that it was not considered to be reasonable to leave the public vulnerable to the potential for him to re-offend.

The respondent did not consider there to be evidence to show that the appellant had addressed all the reasons for his offending behaviour and found him to continue to pose a risk of harm to the public. The respondent considered that the appellant's deportation was justified and was proportionate. As for Article 8, the respondent considered that the appellant's daughter and granddaughter could continue to be cared for by his ex-wife (they had separated in 2015) as had been the case when he was in prison. The respondent considered that there were no very significant obstacles to the appellant's integration in Germany and that there were no very compelling circumstances outweighing the public interest in his deportation.

7. The appellant appealed against that decision and his appeal was heard by Judge Hanbury in the First-tier Tribunal on 28 April 2022. The appellant had, by that time, been released on bail in November 2021. He gave oral evidence before the judge, as did his ex-wife and his daughter C. Judge Hanbury was not satisfied to the required standard that the respondent had discharged the burden of showing that the appellant was a risk to public security. Having thus decided, the judge found it unnecessary to consider the appellant's private or family life as protected under the EEA regulations, but in any event observed that if he had, he would have concluded that his family circumstances were not such as to outweigh the public interest in his deportation. The judge concluded that the appellant was insufficient of a threat to public safety or security to represent an imperative risk to the public and he allowed the appeal under the EEA Regulations 2016.

8. Permission to appeal was sought by the Secretary of State on the grounds that the judge had erred by making a material misdirection of law in regard to the continuing threat and by making a material misdirection of law in regard to the public interest. The grounds asserted that the judge's findings, that there were no reasons the appellant could not return to Germany to live out his retirement, that he had the capability to cause great harm to the public in the UK had the operation to sell the ammunition not been intercepted, and that he continued to deny his role culminating in the index offence, were sufficient justification that his deportation was in the interests of public policy.

9. Permission to appeal was granted in the First-tier Tribunal. Mr Gilbert submitted a Rule 24 response to the SSHD's grounds asserting that the grounds were essentially nothing more than a disagreement with the judge's findings. Grounds for a cross-appeal were also raised, asserting that the judge had mischaracterised the evidence relating to the appellant's granddaughter P and had misdirected himself in law by weighing into his proportionality assessment a 'public revulsion' element.

10. The matter then came before me for a hearing.

11. Both parties made submissions. I shall address the submissions in my discussion below.

Discussion

12. It is the respondent's case, as expressed by Mr Wain in his submissions, that Judge Hanbury failed to conduct a proper assessment under Regulation 27(5)(c) of the EEA Regulations and failed to apply the relevant principles therein, that he failed to consider the various negative factors in the appellant's case which affected the fundamental interests of society and that he made findings which were not supported by the evidence. However, having considered the substance of the grounds, I am amply persuaded by Mr Gilbert that the respondent's grounds are essentially little more than a disagreement with the decision reached by the judge.

13. I accept that Judge Hanbury's decision itself is not without flaws, providing detailed information under each heading but then failing to some extent to provide clarity in its reasoning leading to the brief conclusions given at [64], [65] and [68]. However the judge clearly directed himself properly on the relevant legal provisions and applied those principles to the facts of the case. At [36] he directed himself on the relevant question, namely whether the appellant represented a genuine and present threat to the interests of society, which was clearly a reflection of regulation 27(5)(c). His consideration of the relevant matters followed a structure agreed by the parties and can indeed be seen from the appellant's skeleton argument before him. It seems to me that there is clearly sufficient within the decision to understand how the judge reached the conclusions that he did and to justify the decision reached.

14. The respondent asserts in her grounds, and Mr Wain in his submissions, that the judge ignored the negative aspects of the appellant's case, such as the significant danger arising from the risk of the firearms falling into the wrong hands, the appellant being aware that he did not have the correct permits and that he had illegal firearms and the appellant denying the offence and placing blame on others. However, that was clearly not the case. The judge addressed those negative aspects directly at [55] and it is plain that he took those matters into account when making his assessment. At [42] to [47] and [55] to [63] the judge had full regard to the nature of the appellant's offending and acknowledged that the offence was serious but he went on to consider the circumstances of the offending, the level of the appellant's involvement in the offending and the risk of the appellant offending again. He had regard to the basis of the appellant's conviction and sentence, accepting at [45] the assessment of the appellant in the OASys report as having acted in a reckless risk-taking way, but noting that he was not found by the Crown Court Judge to have been part of the conspiracy in regard to the onward sale of the firearms and that he had not put the items in the hands of criminals himself. At [42] to [46] the judge gave full and careful consideration to the OASys report, considering both the negative aspects of the report and those which were more favourable to the appellant. He noted that, whilst the risk of harm if the appellant re-offended was considered to be medium, that was due to the significant risk posed to the public by firearms, but that it had been concluded that the risk of that happening was considered to be low. Likewise, at [44] and [56], the judge considered that the appellant would be banned from bearing arms for the remainder of his life, that he had a close relationship with his family and had a degree of sensitivity to the effect of his offending on his family and that he recognised the seriousness of his predicament.

15. Accordingly, the judge clearly recognised, and had full regard to, the negative aspects of the appellant's case, but provided cogent reasons for concluding that they did not show him to be a sufficiently serious threat to society to justify the decision made by the respondent. It seems to me that the conclusion reached by the judge was one which was fully and properly open to him on the evidence before him. I do not consider that the grounds have been made out and I uphold the judge's decision. In the circumstances, as agreed by Mr Gilbert, there is no need for me to address his grounds of cross-appeal.

Notice of Decision

16. The Secretary of State's appeal is dismissed. The making of the decision of the First-tier Tribunal did not involve a material error on a point of law requiring it to be set aside. The decision of First-tier Tribunal Judge Hanbury to allow the appeal stands.

Signed: S Kebede
Upper Tribunal Judge Kebede

Appeal Number: UI-2023-001990 (EA/53866/2021)

Judge of the Upper Tribunal
Immigration and Asylum Chamber

14 July 2023