



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

Case No: UI-2024-000523

First-tier Tribunal No:  
EA/11726/2022

**THE IMMIGRATION ACTS**

**Decision & Reasons Issued:**

On 11<sup>th</sup> of June 2024

**Before**

**UPPER TRIBUNAL JUDGE NORTON-TAYLOR**

**Between**

**SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Appellant

**and**

**ALDO DEHARI**

**(ANONYMITY DIRECTION NOT MADE)**

Respondent

**Representation:**

For the appellant: Mr D Wain, Senior Presenting Officer

For the respondent: Mr S Mustafa, Solicitor from Briton Solicitors

**Heard at Field House on 29 May 2024**

## **DECISION AND REASONS**

### **Introduction**

1. For the sake of continuity I shall refer to the parties as they stood before the First-tier Tribunal: the Secretary of State is once again “the respondent” and Mr Dehari is “the appellant”.
2. The respondent appeals with permission against the decision of First-tier Tribunal Judge Hosie (“the judge”), promulgated on 26 October 2023 following a remote hearing on 10 August of that year. By that decision, the judge allowed the appellant’s appeal against the respondent’s refusal of his EUSS application.
3. The appellant is a national of Bulgaria (and, as I understand it, Albania) who initially arrived in United Kingdom at some point in 2017 or possibly before that (the precise date is unclear, but nothing turns on this). In November 2017 he was convicted of supplying Class A drugs and sentenced to 2 years and 10 months’ imprisonment. On 12 July 2018, a deportation order was made and on 31 August of that year the appellant was deported to Bulgaria. On an unknown date, the appellant re-entered the United Kingdom in breach of the deportation order. He made the relevant EUSS application for pre-settled status on 6 November 2020 and this was refused on 11 November 2022.
4. In refusing the application, the respondent concluded that the appellant had not completed a continuous qualifying period of 5 years and was not entitled to settled status. The refusal decision went on to conclude that the suitability grounds under EU15 applied. As required, regulation 27 of the now-revoked Immigration (European Economic Area) Regulations 2016 was considered in detail. Having set out the background information and the various relevant provisions, the respondent undertook an “Assessment of Threat” and concluded that there remained

a risk of re-offending and that the appellant represented a “genuine, present and sufficiently serious threat to the public”, and that the deportation order was justified on grounds of public policy. The refusal decision went on to consider proportionality and rehabilitation in the context of EU law, concluding that deportation was justified.

5. The appellant appealed to the First-tier Tribunal under the Immigration (Citizens' Rights Appeals)(EU Exit) Regulations 2020.

### **The judge's decision**

6. It is fair to say that the judge's decision is a conscientious and thorough piece of work. She set out the relevant legal framework (in respect of which there is no challenge), followed by a helpful summary of the parties' respective submissions: [8]-[22]. Having confirmed that she had considered all of the evidence before her, the judge then set out detailed findings at [26]-[45]. In summary, she found the appellant's evidence to be credible (Counsel for the respondent accepted that the evidence had been “frank”), that the appellant had expressed genuine remorse, that there had been meaningful rehabilitation, and that ultimately the respondent had failed to show that the appellant represented a “genuine, present and sufficiently serious threat”, having regard to all relevant factors including the fundamental interests of society set out in schedule 1 of the 2016 Regulations. The judge then provided an “even if” conclusion on proportionality and found that the respondent's decision was disproportionate.
7. The appeal was accordingly allowed.

### **The grounds of appeal**

8. Two grounds of appeal were put forward. First, it was asserted that the judge had erred by failing to have regard to the appellant's re-entry into the United Kingdom in breach of the deportation order. The re-entry

indicated that the appellant had a propensity to re-offend (reference was made to section 24(1)(a) of the Immigration Act 1971). The grounds regarded the re-entry point as being a “key issue in the overall assessment of the threat” potentially posed by the appellant.

9. The second ground is somewhat difficult to interpret. Reference is made to rehabilitation, but the majority of what is said reads as simple statements of the respondent’s position, not the identification of errors of law. The following is a flavour of the contents of the second ground:

“... The Respondent maintains the appellant has failed to demonstrate that he no longer presents [a risk]

... The refusal remains justified on the grounds of public policy, public security or public health.

... The Respondent submits by his own actions the appellant has shown his personal conduct represents a genuine, present and sufficiently serious threat...

The Respondent submits the appellant, in entering the UK in breach of the deportation order, has not demonstrated he has established a significant degree of wider cultural and societal integration...

The Respondent maintains the decision to refuse the appellant’s application under suitability...”

10. Notwithstanding the sense I have that insufficient thought has been given to the fact that the Upper Tribunal operates an error of law jurisdiction, the thrust of what is said appears to relate to the first ground, namely an alleged failure by the judge to have considered the re-entry issue.

11. Permission was granted by the First-tier Tribunal on both grounds.

### **Rule 24 response**

12. The appellant did not provide a rule 24 response.

### **The hearing**

13. At the outset of the hearing Mr Wain candidly informed me that, whilst the application for permission was still pending an official of the respondent had for some reason mistakenly sought to revoke the deportation order on 6 February 2024. The appellant had not, it was confirmed, been granted leave. Mr Mustafa was aware of the situation and it appeared as though the parties had been in correspondence.
14. Having canvassed the parties' views and considering all the circumstances, I concluded that I could proceed to deal with the error of law issue in this case, notwithstanding the somewhat strange situation existing in the background. There is no basis on which to treat the appellant's appeal as abandoned and any dispute as to the validity of the purported revocation of the deportation order does not concern me at this juncture.
15. Mr Wain relied on the grounds in unamended form. I was concerned to try and ascertain whether the re-entry issue had in fact been properly raised by the respondent as part of the appeal before the judge. In response, Mr Wain pointed to the initial section in the refusal decision under the heading "Public policy, public security or public health consideration", in which the fact of the appellant's pre-entry had been stated. He acknowledged that this issue did not appear in the "Assessment of Threat" section or at any stage thereafter. The respondent had not produced a pre-hearing review. Mr Wain confirmed that there was no evidence before me as to whether any oral submissions had been made to the judge on the re-entry issue. All that

could be said was that the respondent's representative would have relied on the refusal decision. It was submitted that although the judge referred to the fact of re-entry at [3] of her decision, it had not been mentioned thereafter.

16. On the second ground, Mr Wain submitted that the appellant's pre-entry constituted "an offence" under section 24(1)(a) of the Immigration Act 1971, but he could not confirm whether the point was raised before the judge. He submitted that it was "obviously" an offence, thereby suggesting that the judge was bound to have considered it.
17. Mr Mustafa submitted that the judge had correctly directed herself in law, and had the re-entry point in mind, and considered the case properly in the form it was put to her.
18. At the end of the hearing I reserved my decision.

## **Conclusions**

19. I exercise appropriate judicial restraint before interfering with a decision of the First-tier Tribunal.
20. I bear in mind also the importance of the guidance set out in Lata (FtT: principle controversial issues) [2023] UKUT 00163 (IAC), the judicial headnote of which reads as follows:

"1. The parties are under a duty to provide the First-tier Tribunal with relevant information as to the circumstances of the case, and this necessitates constructive engagement with the First-tier Tribunal to permit it to lawfully and properly exercise its role. The parties are therefore required to engage in the process of defining and narrowing the issues in dispute, being mindful of their obligations to the First-tier Tribunal.

2. Upon the parties engaging in filing and serving a focused Appeal Skeleton Argument and review, a judge sitting in the First-tier Tribunal can properly expect clarity as to the remaining issues between the parties by the date of the substantive hearing.

3. The reformed appeal procedures are specifically designed to ensure that the parties identify the issues, and they are comprehensively addressed before the First-tier Tribunal, not that proceedings before the IAC are some form of rolling reconsideration by either party of its position.

4. It is a misconception that it is sufficient for a party to be silent upon, or not make an express consideration as to, an issue for a burden to then be placed upon a judge to consider all potential issues that may favourably arise, even if not expressly relied upon. The reformed appeal procedures that now operate in the First-tier Tribunal have been established to ensure that a judge is not required to trawl through the papers to identify what issues are to be addressed. The task of a judge is to deal with the issues that the parties have identified.

5. Whilst the Devaseelan guidelines establish the starting point in certain appeals, they do not require a judge to consider all issues that previously arose and to decide their relevance to the appeal before them. A duty falls upon the parties to identify their respective cases. Part of that process, in cases where there have been prior decisions, will be, where relevant, for the parties to identify those aspects of earlier decisions which are the starting point for the current appeal and why.

6. The application of anxious scrutiny is not an excuse for the failure of a party to identify those issues which are the principal controversial issues in the case.

7. 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.

8. A party that fails to identify an issue before the First-tier Tribunal is unlikely to have a good ground of appeal before the Upper Tribunal.”

Underlining added

21. As claimed in the grounds of appeal, the re-entry issue was said to be “key” to the overall assessment of threat. However, on the evidence before me I am satisfied that its sole appearance in the respondent’s case was as a simple statement of fact in what was to all intents and purposes a summary of the factual background as it related to the deportation order’s operation and, in the most generalised sense, the appellant did not meet the criteria for indefinite leave: [6] of the refusal decision. It self-evidently did not appear at all in the “Assessment of Threat” section, nor in the consideration of proportionality or rehabilitation. It is, in my view, somewhat remarkable that, if the re-entry issue was considered by the respondent to be “key” to the assessment of threat, it did not feature in the *relevant* parts of the refusal decision where the threat issue was addressed. It was clearly not raised in a review because there was no such review. Whilst I accept that the respondent’s representative would have relied on the refusal decision (as is the norm), in the absence of any supporting evidence I do not accept that the re-entry issue was specifically raised in oral submissions.

22. The way in which a party puts their case is important, as confirmed by Lata. Judges consider the cases before them on the basis of what is still essentially an adversarial system. It is incumbent on a party to put forward with sufficient clarity the core (the “key”) elements of their case first time round. Hearings before the First-tier Tribunal are not a “dress rehearsal”. In this case, I am not satisfied that the respondent did put forward the re-entry issue as an important aspect of his case in so far the



questions of threat and/or proportionality were concerned. It is also of note that the burden of demonstrating the alleged threat rested on the respondent.

23. Beyond this, I am in any event satisfied that the judge did have the re-entry issue in mind when considering the appeal. She mentioned it at [3] and, in the context of her detailed decision as a whole, it would be to say the least surprising if she had allowed it to slip her mind, as it were.
24. Bringing the above together, I am not satisfied that the re-entry issue played any significant - let alone a “key” - part in the respondent’s case.
25. I conclude that: (a) the judge had the point in her mind in any event and took it into account when making her threat assessment with reference to regulation 27 of the 2016 Regulations and did not err by failing to specifically mention it later in the decision, particularly given the lack of sufficiently clear identification of it by the respondent; or alternatively (b) if the judge did not take the re-entry issue into account, that was not an error of law because she was not required to address matters which did not form a clearly identified aspect of the respondent’s case as it related to the assessment of threat.
26. I turn to the second ground of appeal. To the large extent that it is predicated on the first ground, it fails for the reasons already set out. Further, I am far from satisfied that the issue relating to section 24(1)(a) of the 1971 Act was in any way raised in advance of, or at, the hearing before the judge. There is no evidential support for any assertion that it was. To my mind, the point seems only to have occurred to the respondent when consideration was given to drafting grounds of appeal. The judge did not err by failing to specifically address a point which, I am satisfied, was not in fact put to her. It was not an “obvious” point which

required consideration in any event, let alone one to which material weight should necessarily have been attributed.

27. Beyond that, it is clear to me that the judge dealt adequately with the issue of rehabilitation. She took account of a good deal of evidence and found the appellant to be credible for reasons which have not been challenged in any identifiable manner. As mentioned earlier in my decision, the majority of what is said under the second ground is nothing more than simple disagreement and/or statements of the respondent's views.

28. There are no material errors in the judge's decision and the respondent's appeal to the Upper Tribunal fails.

### **Anonymity**

29. No anonymity direction has been made so far in these proceedings and there is no basis on which I should make one now.

### **Notice of Decision**

**The making of the decision of the First-tier Tribunal did not involve the making of an error on a point of law and that decision stands.**

**H Norton-Taylor  
Judge of the Upper Tribunal  
Immigration and Asylum Chamber**

**Dated: 30 May 2024**