



IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2024-001035

First-tier Tribunal No: DA/00100/2022

THE IMMIGRATION ACTS

Decision & Reasons Issued:
On 5th June 2024

Before

UPPER TRIBUNAL JUDGE LANE
DEPUTY UPPER TRIBUNAL JUDGE HUTCHINSON

Between

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

And

Mr I B G L
(ANONYMITY ORDER MADE)

Respondent

Representation:

For the Appellant: Ms Ahmed, Senior Home Office Presenting Officer
For the Respondent: Mr Slatter of Counsel instructed by TMC Solicitors

Heard at Field House on 22 May 2024

Order Regarding Anonymity

Pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008, [the appellant] (and/or any member of his family, expert, witness or other person the Tribunal considers should not be identified) is granted anonymity.

No-one shall publish or reveal any information, including the name or address of the appellant, likely to lead members of the public to identify the appellant (and/or other person). Failure to comply with this order could amount to a contempt of court.

DECISION AND REASONS

Introduction

1. Although the appellant in this case is the Secretary of State, we refer to the parties as they were before the First-tier Tribunal, where Mr I B G L was the appellant.
2. The appellant is a citizen of Spain born on 23 September 1996. The appellant stated that he came to the UK at the age of 11 and has been in the UK since and that he lives with his mother and his brother. The appellant also indicated that he has a niece born on 11 May 2016, whom he claims to have bonded with, when she visits (she lives with her mother). The appellant was convicted on 19 April 2021 for supplying class A drugs, heroin and crack cocaine. He was sentenced to 3 years imprisonment. The respondent, on 28 October 2022 decided to make a deportation appeal. The appellant appealed and the appeal was allowed by First-tier Tribunal Judge Farrelly ('the judge') on 1 March 2024 after a hearing on 6 February 2024.
3. The respondent appealed. Permission to appeal was granted by Deputy Upper Tribunal Judge Monson, on the basis that it was arguable that the First-tier judge had erred in law by failing to give adequate reasons for finding that the appellant did not present as a current threat to public order, as a result of focusing exclusively on points in his favour arising from the OASys Report and on a comment by the Sentencing Judge that prior to his index offence, he was 'relatively lightly convicted' and in not engaging with (a) the fact that the Sentencing Judge went on to say that the enormity of the appellant's index offending arising from his association with a violent organised crime group ('OCG') overwhelmed his relatively good character hitherto, and (b) that the OASys assessment of a low risk of reoffending was predicated on, among other things, the appellant having positive peer associations, whereas further involvement with an OCG was likely to increase the risk.
4. The matter came before us to determine whether the First-tier Tribunal had erred in law, and if so whether any such error was material and thus whether the decision should be set aside.

Submissions - Error of Law

5. In the grounds of appeal and in oral submission by Ms Ahmed it is argued, in short summary, for the Secretary of State as follows.
6. The judge found that the appellant, despite arriving in the UK in the 2007, had not acquired a permanent right of residence as he has not exercised treaty rights in the UK for a period of five years and he had not obtained derivative rights from his parents. The judge found therefore that the appellant benefitted only from the lowest level of protection.
7. At paragraph [30] the judge found that the appellant was not 'a current threat to public order'. It was argued that the judge had misdirected himself in law or in the alternative that he had failed to make a

reasoned finding that the appellant's deportation is not justified for reasons of public policy, public health or public security as set out at Regulation 23 of the Immigration (European Economic Area) Regulations 2016 ('EEA Regulations 2016'). Neither had the judge made a finding that the appellant does not pose a genuine, present and sufficiently serious threat to the fundamental interests of society with reference to Schedule 1 of the EEA Regulations 2016.

8. It was submitted that the judge had failed to have adequate regard to the fact that the length of time since the appellant's release from prison was insufficient to demonstrate that the appellant would not return to offending, at paragraph [28], particularly as there was no finding that the reasons for that offending were no longer extant. The reason for the offending was said to have been a debt owed by the appellant resulting from the theft of a scooter that he had borrowed from the leader of a neighbourhood gang, however there was no finding that the debt had been repaid, such that the appellant would not be motivated to reoffend, nor that the appellant no longer associates with those who are said to have demanded his involvement in criminal activities in order to repay that debt. There was no finding that he is rehabilitated, nor that rehabilitation may not take place in Spain.
9. It was submitted that there were no identifiable protective factors that would prevent the appellant from reoffending in the future. The judge noted that the appellant was integrated in his own community at paragraph [28], however there was no finding that he is integrated into wider UK society. In making this finding the judge seems not to have had regard to Schedule 1 of the EEA Regulations 2016:

"2. An EEA national or the family member of an EEA national having extensive familial and societal links with persons of the same nationality or language does not amount to integration in the United Kingdom; a significant degree of wider cultural and societal integration must be present before a person may be regarded as integrated in the United Kingdom."
10. At [29] the judge notes that while the appellant has Spanish nationality, he has no connections with Spain as he was born in Ecuador. It was argued that the judge failed to consider that the appellant is a young man, with no reported health problems who has some work experience which will assist him to find employment. When the appellant arrived in the UK he struggled with the English language, so evidently he spoke Spanish at that time and there is no finding that he cannot now speak Spanish to such a level as to assist him to find employment in Spain. It was therefore submitted that the appellant's deportation is proportionate.
11. In their Rule 24 response and in oral submissions by Mr Slatter for the appellant before the First-tier Tribunal, it is argued, in short summary as follows.

12. It was submitted at the First-tier Tribunal that a genuine, present and sufficiently serious threat, as required by regulation 27(5)(c), was not made out and that a forward looking assessment of the risk of reoffending by the time of the decision in the instant case would result in the conclusion that the Respondent represented a “lower than low” risk of reoffending.
13. The judge was entitled to find that it had not been shown that the “sufficiently present threat” test had been met, and that the judge gave reasons for doing so, including the following:
 - (i) Lack of previous serious offending.
 - (ii) Impressive evidence from the Respondent’s partner and her provision of stability for the Appellant.
 - (iii) Passage of time since the index offence and absence of negative behaviour since.
 - (iv) Low risk of reoffending according to the OASys report.
14. It was submitted that the judge was entitled to place significant weight upon the OASys report, and the fact that the author of that report found the risk of reoffending to be low. The Respondent submits that the question of weight to be attached to evidence is a matter for the judge and that it would be rarely appropriate for the Upper Tribunal to interfere with that aspect of the judge’s decision (*Bedfordshire Housing Association v Khan* 2007 EWCA Civ 1445 at paragraph [16], per Tuckey LJ).
15. Whilst the judge’s decision finds that the Respondent did not “present as a current threat to public order”, rather than a finding that the Respondent did not “represent a genuine, present and sufficiently serious threat affecting one of the fundamental interests of society”, it was submitted that this was not a material difference, and that ‘infelicities in expression’ by the judge are not sufficient in themselves to infer an error of law.
16. It was submitted that the decision demonstrated that the judge had properly considered the contents of the OASys report, and the judge was plainly aware of the appellant before the First tier Tribunal’s connection to organised crime and the risk of reoffending in that context. It was disputed that the judge failed to make a “reasoned finding” that the Respondent’s deportation was not justified as claimed. It was argued that the judge made a finding that the “sufficiently serious threat” test was not met.. The judge had regard to the length of time since the Respondent’s offending and release. The absence of further specific findings does not support the Secretary of State’s contention that the finding as to threat was not reasoned. The Respondent’s partner was identified as a protective factor against offending as was his family. The judge’s findings as to integration were part of the assessment of risk; they are not an independent discrete finding as to integration as a barrier to deportation and so not relevant

in assessing the lawfulness of the FTTJ's approach to the "sufficiently serious threat" test.

Conclusions - Error of Law

17. The judge provided adequate reasons for finding that the appellant's deportation is not justified. The central tenet of the Secretary of State's challenge was founded on the fact that the judge, at [30], found that the appellant was not 'a current threat to public order', it being argued that the judge had failed to make a reasoned finding that the appellant's deportation was not justified for reasons of public policy, public health or public security; it further being argued that the judge had failed to make a finding that the appellant did not pose a genuine, present and sufficiently serious threat to the fundamental interests of society.
18. The judge's findings commence at paragraph [20] with the judge finding that the appellant was entitled to the lowest level of protection. The judge, having set out at paragraph [5] that under regulation 23 of the EEA Regulations 2016 that the respondent may deport a person on grounds of public policy, at paragraph [21] of his findings, noted that regulation 27(5) sets out relevant considerations for decisions taken on grounds of public policy and that in particular 'the personal conduct of the person must represent a genuine, present and sufficiently serious threat affecting the fundamental interests of society and that the threat does not need to be imminent. The judge noted that relevant considerations:

'are the person's state of health, their family and economic situation as well as their length of residence in the United Kingdom and integration as well as the extent of their links with their country of origin.'
19. The judge properly took into account, at [22] the respondent's concerns in relation to the severity of the threat posed by the appellant and the fact that offences relating to supplying controlled drugs have a serious and detrimental impact on addicts.
20. Having properly directed himself as to relevant tests, the judge made findings on the evidence including considering the OASys report. The judge concluded that the report suggested that the appellant was involved by the ringleader of a gang from whom he had borrowed an electric scooter and who subsequently involved the appellant in the drug conspiracy having sought to extort money from the appellant. The judge noted that the appellant was subsequently stabbed on two occasions when the debt attributable to the scooter (which had been stolen) was not repaid. The judge noted that the OASys report did not suggest that the appellant was the ringleader and considered the appellant's risk of reoffending to be low, with the judge finding the OAYys report generally to be positive towards the appellant.

21. The judge, at [28] considered the relevant factors including that prior to the incident that appellant had been in gainful employment for a sustained period. and the judge also attached weight to the evidence of the appellant's girlfriend with the judge considering that she would provide stabilisation. The judge was entitled to take into account this evidence of the appellant's integration in the UK which clearly extended beyond those of the 'same nationality or language' as envisaged in Schedule 1(2) of the EEA Regulations 2016.
22. The judge considered the appellant's previous offences which had been considered to be relatively light (a reference to the OASys report which described the appellant as 'lightly convicted' before the index offence). The judge also took into account, at [28], the passage of time since the offences and the absence of any negative behaviour since. Whilst the grounds argued that length of time since release is insufficient in itself to demonstrate that the appellant would not return to reoffending, that was not the judge's finding. The judge properly took into consideration the relevant factors, of which this was one.
23. The judge considered rehabilitation in the context of his findings in relation to the appellant's girlfriend and his good relationships with his family and he also considered that there was no evidence of any connection with Spain given that the appellant's family had originated in Ecuador, with the judge finding it unlikely that they would have any family or friends to help the appellant in Spain. Whilst the judge might have expressed these findings differently, it is clear to us from a holistic reading, that the judge was satisfied that the appellant's prospects of continued rehabilitation are significantly different and improved in the UK where his close family and support network is well established, as opposed to in Spain, where the judge made an evidence based finding that the appellant had no links.
24. Drawing all those findings together, the judge having properly considered all the relevant factors under the EEA Regulations 2016 concluded that he did not find it established 'that the appellant represents as a current threat to public order'.
25. Whilst Ms Ahmed argued that the judge had not properly analysed the evidence and made proper findings, she conceded that it would not be perverse on the facts of this case for the appeal to be allowed.
26. Whilst best practice would indicate that the judge ought to have used the words of the test (which he had set out at paragraphs [5] and [21]) rather than referring to a current threat to public order, there was no misdirection in law and the judge's reasoned findings from paragraph [20] onwards, demonstrate that the correct test was applied; having properly considered all the relevant factors, the judge was satisfied that the appellant's conduct did not represent a genuine, present and sufficiently serious threat and that the appellant's deportation was not justified for reasons of public policy, public health or public security. Those were findings open to the judge.

Decision:

1. The making of the decision of the First-tier Tribunal did not involve the making of an error on a point of law.
2. We do not set aside the decision

M M Hutchinson

Judge of the Upper Tribunal
Immigration and Asylum Chamber

Date 28 May 2024