



IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM
CHAMBER

Case No: UI-2024-004795

First-tier Tribunal No: EU/51426/2023

THE IMMIGRATION ACTS

Decision & Reasons Issued:

On 15th of January 2025

Before

UPPER TRIBUNAL JUDGE OWENS
DEPUTY UPPER TRIBUNAL JUDGE LOKE

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

ANIL GIYRIQI

Respondent

Representation:

For the Appellant: Ms Isherwood, Senior Home Office Presenting Officer

For the Respondent: Mr Aslam, Counsel instructed by M R Solicitors LLP

Heard at Field House on Tuesday 17 December 2024

DECISION AND REASONS

BACKGROUND

1. The Secretary of State appeals against the decision of First-tier Tribunal Judge Farmer dated 11 September 2024 (“the Decision”) allowing the appeal of Mr Giyriqi against the decision of the Secretary of State dated 27 February 2023 refusing his application under the European Union Settlement Scheme (‘EUSS’) made on 27 December 2020.

2. The Secretary of State refused the application on the basis that Mr Giyriqi was subject to a deportation order under the EU Regulations 2016 which is mandatory under EU15 of Appendix EU, on the basis that deportation is justified under Regulation 27 of the EU Regulations 2016.
3. In the Decision, the Judge found the Appellant was entitled to the basic level of protection under the Regulation 27. The Judge placed weight on the medical report of Dr Sarah Heke and found that the Appellant's mental health was stable in the United Kingdom where he had the support of his family, and that it would deteriorate were he removed to Albania. The Judge found the Appellant was remorseful and was doing what he could to rehabilitate himself. The Judge found that there was a low risk of reoffending. The Judge took into account the principles of proportionality in Regulation 27(5) and found he did not pose a sufficiently serious threat to public policy, public security or health and that the decision to deport him was not proportionate.
4. The Secretary of State appeals the Decision claiming that the Judge failed to give any reasons or adequate reasons on material matters, or making perverse or irrational findings on material matters. Under this general heading the Secretary of State pleads four grounds as follows:

Ground 1: the Judge did not provide adequate reasons why Mr Giyriqi did not present a risk to public policy, security or health.

Ground 2: The Judge relied on the expert report of Dr Heke, who relied on the support given by family, despite the fact this had been the case when Mr Giyriqi had committed crimes. Furthermore, the Judge did not consider the fact Mr Giyriqi had persisted in smoking cannabis.

Ground 3: The Judge failed to consider the fact that Mr Giyriqi had employment, which was illegal given he did not have lawful leave to remain in the United Kingdom, or to consider how he could be legally employed given he continued to smoke cannabis.

Ground 4: This ground appeared to be a repeat of the previous grounds.

5. Permission to appeal was granted by Judge Murray on 17 October 2024 who stated:

It is arguable that in assessing the risk of re-offending the FTTJ failed to provide adequate reasons for the reasons set out by the Respondent in the grounds and summarised above. It is also arguable that the FTTJ failed to give adequate reasons for attaching 'full weight' to the expert's report.

6. The appeal comes before us in order to decide whether there is an error of law. If we determine that the Decision does contain an error of law, we then need to decide whether to set aside the Decision in consequence. If we set the Decision aside, we must then either re-make the decision or remit the appeal to the First-tier Tribunal to do so.
7. We had before us a bundle running to 185 pages (pdf) ([B/xx]) containing the documents relevant to the appeal before us, and the Appellant's and Respondent's bundles before the First-tier Tribunal. There has been a Rule 24 Reply from those instructed by Mr Giyriqi at B/23.
8. Having heard from Ms Isherwood and Mr Aslam, we indicated we would reserve our decision and provide that in writing, which we now turn to do.

DISCUSSION

9. In relation to Ground 1, Ms Isherwood made a number of submissions.
10. Ms Isherwood submitted that the Judge erred in placing full weight on Dr Heke's report dated 9 August 2024. Ms Isherwood stated that the Judge did not consider Dr Heke's letter of 22 December 2020 in which she stated she was *'writing in my professional capacity to support his application to be able to stay in the UK'*, which indicated Dr Heke was not independent. Ms Isherwood further submitted that the updated report was only based on an hour and thirty minutes consultation with Mr Giyriqi, and the only material before Dr Heke was the decision letter.
11. Dr Heke's letter of 22 December 2020 was expressly referred to at [18] and [20] of the Secretary of State's decision letter of 1 March 2023 at B/93, and no complaint at all regarding Dr Heke's expertise, independence or conclusions was made. Similarly, the Secretary of State's review dated 8 August 2024 at B/77 failed to raise any challenge.
12. We note at [15] of the Decision, the Judge stated *'I have considered all the evidence before me, including statements and letters in support in the bundle and other supporting material including passages I may not have specifically mentioned.'* Specifically, and in relation to Dr Heke, the Judge stated at [20]:

The appellant has suffered from mental health problems over the years, he raised these in his asylum claim in 2018 and he relies on the expert clinical psychology report of Dr Sarah Heke. **It is not suggested by the respondent that she is not a recognised expert or that I should attach limited weight to her report.**

(bold added)

13. We note at this juncture that the above arguments forwarded orally to us regarding Dr Heke's evidence were not particularised in the grounds of appeal. Ms Isherwood sought to include them under Ground 1, and there was no objection made by Mr Aslam. The point is, the first time any such challenge has been made to Dr Heke's evidence was in oral submissions before us. Plainly the Judge cannot be criticised for making an error when the matter was not placed in issue before her. Furthermore, in the absence of any submissions to the contrary, the Judge was entitled to consider the evidence of Dr Heke and form the view that weight could be attached to it.
14. Furthermore, we are not satisfied that there is sufficient evidence to indicate that Dr Heke was not independent, or that there were flaws that ought to have been glaringly obvious to the Judge nonetheless. The first paragraph of the letter of 22 December 2020 at B/154 details Dr Heke's expertise, and notwithstanding her indication of support, she also made it clear she was writing in her professional capacity. Section 1 of the report of 9 August 2024 at B/47 repeats her expertise and para 1.2 affirms her awareness of her professional responsibilities with reference to the relevant Practice Direction.
15. The letter of 22 December 2020 indicated that Dr Heke had been seeing Mr Giyriqi fortnightly for the last four months. The report of 9 August 2024 referred to a further assessment on 4 June 2024 for a duration of an hour and a half. The contact Dr Heke had with Mr Giyriqi was not minimal in the circumstances. At 1.4.1 Dr Heke stated '*I have been provided with the bundle of documents, which confirm I have read: Notice of Refusal by the Home Office dated 27 February 2023.*' In our view, on the face of it this does not indicate that the only document that was before Dr Heke was the refusal letter. Rather, it confirms that the refusal letter was among the documents that was before Dr Heke.
16. Under Ground 1, Ms Isherwood also sought to argue that the Judge failed to consider the fact that the Mr Giyriqi was not taking treatment or medication for his mental health issues, despite blaming his criminality upon his mental health. Firstly, again there is no evidence that this submission was made to the Judge. Secondly, Dr Heke considers this at 5.2.1 of her report and finds medication would not have a significant impact on Mr Giyriqi, stating:

On consideration of his prognosis in regards to his current treatment, Anil informed me that he is not currently prescribed any medication, and whilst he is now presenting with symptoms of depression, **I do not believe that medication will have a significant effect as his mood is currently related to the stress of his current situation and so is unlikely to be alleviated with medication.**

(bold added)

17. Thirdly, at [20] the Judge noted '*the appellant's case is put on the basis that his mental health is stable in the United Kingdom because he has the considerable support of his mother and his brother.*' At [24] the Judge further stated:

I am satisfied that the relatively positive current position of the appellant's mental health is largely to do with the high level of support he receives from his family, and of course his own motivation to turn his life around.

18. Having heard the evidence, it was open to the Judge to attribute Mr Giyriqi's present stability to factors other than medication, particularly in circumstances where the expert report had concluded medication would have no significant effect. We are satisfied that Ground 1 is not made out and discloses no error of law.
19. Turning to Ground 2, Ms Isherwood submitted that Dr Heke had not considered the fact the Mr Giyriqi had been living with his mother, but had continued to re-offend, and that this error was repeated in the updated report of 9 August 2024. Ms Isherwood further submitted that the further driving offences of 17 June 2021 were not properly addressed in the later report.
20. Dr Heke was plainly aware of the 2021 conviction, and the discussion with Mr Giyriqi was referred to at para 3.2.2. Dr Heke's conclusions were based on the changes Dr Heke perceived Mr Giyriqi had made since. The Judge was also well aware of the 2021 conviction as referred to at [5] of the determination and expressly considered at [18] where the Judge noted that the offence was at that stage over three years old. The Judge also relied on the oral evidence of Mr Giyriqi and his mother at [21-23]. It was for the Judge to evaluate this evidence, and she was entitled to find the witnesses credible and persuasive.
21. With respect to Ground 2 Ms Isherwood further submitted that the Judge failed to consider the fact that Mr Giyriqi was continuing to smoke cannabis. The fact that Mr Giyriqi was still smoking cannabis was relayed to Dr Heke and this is summarised in relative detail at para 3.2.13 of her 2024 report at B/55. This summary indicated that Mr Giyriqi had drastically reduced his drug intake and had changed his relationship to drug use. The Judge made it clear at [21] that she had read the report and relied upon it. We remind ourselves that we can assume that the Judge has taken the whole of the evidence into her consideration unless there is a compelling reason to the contrary, and that it is not for us to reattribute weight to the different strands of evidence; Volpi and Volpi [2022] EWCA Civ 464. We are satisfied Ground 2 discloses no error of law.
22. With respect to Ground 3 it is submitted that the Judge noted the fact that Mr Giyriqi had not taken any rehabilitation courses but found that he had been employed. It was submitted that this employment was illegal and should have militated against Mr Giyriqi, rather than in his

favour. The Rule 24 response at [6] posits that Mr Giyriqi was likely to have been working legally as he referred to paying tax. When asked whether the Secretary of State submitted to the Judge that Mr Giyriqi was working illegally, Ms Isherwood stated she did not know. In the circumstances it does not appear to have been a proven fact before the Judge that Mr Giyriqi was working illegally, or even a matter that was raised before her. In the circumstances her failure to consider it cannot be said to be an error of law. The Judge was entitled to find Mr Giyriqi's evidence credible and that he had been occupying himself in a positive way.

23. With respect to Ground 3 it is also submitted that *'it is unclear how the appellant could be legally employed in the construction industry when he regularly consumes drugs that would affect his ability to safely operate machinery or undertake other labouring activities.'* It is not evident what error of law is being alleged here. At [22] the Judge referred to parts of Mr Giyriqi's evidence. There is nothing to indicate it was put ever to Mr Giyriqi in cross-examination that he worked illegally or was unable to operate machinery due to his drug use, or that such points were put to the Judge in submissions. We are satisfied that Ground 3 discloses no error of law.

24. With respect to Ground 4, it is difficult to see how this adds anything to the other three grounds. It appears to simply be a disagreement with the Judge's assessment and evaluation of the evidence. We highlight the principles outlined in [19-20] of UT (Sri Lanka) [2019] EWCA Civ 1095 which makes it plain we are not entitled to remake the Judge's Decision unless there is an error of law. We are satisfied that Ground 4 discloses no error of law.

CONCLUSION

25. For the reasons set out above, the Decision does not contain an error of law. We dismiss this appeal and uphold the Judge's decision allowing Mr Giyriqi's appeal.

NOTICE OF DECISION

The Secretary of State's appeal is dismissed. The decision of First-tier Tribunal Judge Farmer allowing Mr Giyriqi's appeal stands.

S Y Loke
Deputy Upper Tribunal Judge Loke
Deputy Judge of the Upper Tribunal
Immigration and Asylum Chamber

7 January 2025

