IAC-FH-CK-V1

Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: DA/00021/2015

THE IMMIGRATION ACTS

Heard at Field House	**Decision & Reasons Promulgated**
On 25 June 2015	**On 8 July 2015**

Before

THE HONOURABLE MR JUSTICE DOVE
UPPER TRIBUNAL JUDGE ESHUN

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

MR AYMAN AWAD
(ANONYMITY DIRECTION NOT MADE)

Respondent

Representation:
For the Appellant: Mr S Whitwell, Home Office Presenting Officer
For the Respondent: Mr M K Hasan, Kalam Solicitors

DECISION AND REASONS

1. This is an appeal against a determination which was promulgated on 10 April 2015 by First-tier Tribunal Judge Adio. Permission to appeal was granted by Immigration Judge Andrew on 5 May 2015.

2. The circumstances of the appeal are as follows. The respondent is an Italian citizen born on 26 August 1992. He came to the UK on 15 March 2013 and very shortly thereafter came to the attention of the authorities.

It appears from the subsequent decision letter dated 12 March 2014 that he found himself in trouble with the police in the following ways and on the following occasions. On 21 July 2013 he was given a police caution for theft in the form of shoplifting. 7 August 2013 he was convicted at East London Magistrates' Court of failing to attend a follow-up assessment following a test for class A drugs and given a conditional discharge for twelve months. We note that this is the start certainly in the formal record of him finding himself in trouble with the police as a result of being associated with class A drugs. Subsequent to this on 14 November 2013 he was convicted at Snaresbrook Crown Court of making false representations to make gain for himself or another and cause loss, possession of heroin, a class A drug, theft and shoplifting, possession of an offensive weapon in a public place, assault occasioning actual bodily harm and threatening with an offensive weapon in a public place together with breach of his twelve month conditional discharge which had been imposed on 7 August 2013. Several of those offences occurred whilst the respondent was on bail. He was after this conviction served with a notice of liability to deportation on 26 February 2014.

3. As part and parcel of the process of considering the suitability or appropriateness of a decision for deportation a request was made to the National Probation Service on 20 February 2014 for information in relation to the respondent's risk in relation to future offending. It was identified that he was at MAPPA level 2. There was also an assessment within Section 5 of that document which drew on the pre-sentence report which was dated 3 January 2014 and which had been prepared for the purpose of sentencing the respondent. In that pre-sentence report it was noted that within the first year the respondent had a low risk of reconviction rated at 46% and then a medium risk of reconviction after four years of 64% when his circumstances had been scored by the offender group reconviction score tool available to the probation officer preparing that report.

4. In particular the officer preparing the report went on to make observations about the respondent's risk:

> "Having assessed the facts of this case, my interview with the defendant and the fact he is not a heavily convicted young man, I have assessed the risk of serious harm he poses to the public as being medium at this time.
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> Mr Awad stated he is currently on a 5ml methadone script, having started on 45ml when first remanded into custody some six months ago. If he can maintain abstinence from illegal drugs his risk will decrease however if he begins to use again his risk could increase potentially significantly so. There is little at this time to suggest however that he would carry out a similar act in the future. Given all the information addressed, it is my assessment that the dangerousness threshold has not been met at this time."

5. Acting upon and informed by that material, the appellant reached a decision in relation to deportation the reasons for which were provided in a letter dated 12 March 2014. In paragraph 18 of that decision the following is recorded:

> "18. As a result of the nature of your offences you have been assessed as a being subject to the medium level of Multi-Agency Public Protection Arrangements (MAPPA level 2), the purpose of which is the protection of the public. The fact that you are appropriate to be monitored under risk management strategies is an indication that you are viewed as posing a continuing risk to the public for a minimum of five years from the date of your sentencing with the requirement to report regularly to the police and abide by certain other restrictions. It is also accepted that the nature of your offence may not be the only contributing factor to your rating it may also be influenced by factors such as mental health problems, ongoing issues with drugs and alcohol, accommodation issues or maintained contact with other known offenders. These factors are likely to have a direct impact on your propensity to reoffend and this is why the strategy for managing you as a MAPPA 2 nominal involves agencies which may be able to provide support in these areas."

6. The decision went on to record the seriousness with which the crimes for which he had been sentenced in the Crown Court was regarded by the sentencing judge. It also went on to note that the nature of those offences together with the respondent's association at the time of his offending with illicit drugs rendered him a higher risk individual and further that there was little evidence noted in the letter of him undertaking work to engage with his addiction. As a result, in paragraph 28 of the letter the following conclusion was reached:

> "It is noted that you would not have the same access to drugs/alcohol whilst in prison as you would have in the community. There is a lack of evidence that you have overcome your drug addiction and it is believed that you are likely to revert to using drugs upon your release from prison which would, in turn, increase the risk of you reoffending and continuing to pose a risk of harm to the public, or a section of the public."

In the light of that conclusion the appellant reached the view that the necessary conditions to which we shall turn shortly have been satisfied so as to justify a decision that the respondent should be deported.

7. The respondent appealed against the deportation decision and, as we have noted, the appeal was heard by First-tier Tribunal Judge Adio at a hearing at Hatton Cross on 26 March 2015. The judge set out the submissions and the evidence which he had heard and noted that the issue which was in particular raised was the question of whether or not in the light of that material as assessed at the date of the hearing the requirements of Regulations 19 and 21 of the Immigration (EEA) Regulations 2006 had been satisfied. In particular the concern of the appellant was to satisfy the judge that the respondent presented a "genuine, present and sufficiently serious threat" so as to justify the deportation decision and satisfy the additional requirements of proportionality.

8. The conclusions which the judge reached in his determination were as follows. Firstly he concluded that he was satisfied that at the time when

the decision was made in view of the "appalling behaviour" of the respondent the decision to make a deportation order was entirely justified. He, however, then went on to consider the state of the evidence as it was presented to him in the hearing. His conclusions, which it is necessary to set out at some length, were as follows:

> "27. The appellant has moved on from where he was at the date of sentencing and at the date of decision. I have taken into account the evidence from him that he has been clean now for three and a half months. There is a letter from Drug Intervention Programme dated 16 March 2015. Initially the appellant's drug treatment engagement had been quite sporadic, however from September 2014 the appellant has engaged with their services and has been a lot more positive. He had been prescribed methadone of his own will on a voluntary basis prior to attending the programme. It was noted that he also disclosed his drug use to his parents who have been very supportive with an attempt to seek and engage with treatment services. His project worker states that in his opinion he feels that it will be detrimental to the appellant's recovery if he were to be removed from the UK where he has been living and receiving a great amount of support from treatment services and his family.
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> 28. I also accept the submissions of Mr Hasan going through the patient record. He has been administered with methadone on a regular basis and his mental condition was described as stable. On 23 February 2015 the patient record shows that the appellant wished to come off methadone refusing to take further doses. It was noted that he was relaxed, made good rapport and eye contact. The sentencing judge remarks that the spree of criminal activity committed by the appellant was when he was seriously in the thrall of a drug habit. I find on the records before me that the appellant has now realised that the illegal drugs he has been taking have been detrimental to his lifestyle and will have personal consequences on him and his family. I have taken into account the letter from the appellant stating that he wishes to be given another chance and wants to be there for his family and keep his family ties. I have also taken into account the plea from his sister which states how angry she became on realising that her brother was addicted to drugs.
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> 29. I have taken into account the letter from the appellant's parents. The OASys Report described him as having a risk of serious harm to the public to medium level but assessed that the dangerousness threshold has not been met at the time. However, that situation has changed significantly with the appellant not taking drugs and coming off of methadone. I find that this to a large extent means of him not being any danger to the public.
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> 31. Taking into account all the circumstances of this case I find that the appellant's present conduct does not represent a genuine, present and sufficiently serious threat affecting one of the fundamental interests of society. My conclusion is reached largely on the significant change the appellant has made in his life. The main reason why the appellant was involved in the offences was due to his drug addiction. I find that his rehabilitation will be helped being around his parents and also seeking support from the services that have helped him come off drug-taking. I find that the appellant himself realises his own mistakes and wants to

> make amends by contributing to his family and making a good living for himself. I therefore find on the totality of the evidence before me that the present decision does not comply with the principle of proportionality in view of the situation at the date of the hearing. I find that the appellant would not represent a genuine, present and sufficient serious threat affecting one of the fundamental interests of society. I am prepared to accept the submissions made by Mr Hasan and therefore have decided to allow the appeal."

9. The appellant's appeal against that decision proceeds on the basis of two grounds. Firstly that the Immigration Judge erred in concluding that there was no longer a "genuine, present and sufficiently serious threat". This, it is submitted, is a material misdirection of law and in the able and focused submissions made to us by Mr Whitwell was also developed in terms of a failure to take account of important material considerations or provide adequate reasons in relation to the material which was before the judge. The second ground, which is largely parasitic upon the first ground, is one related to proportionality. It is submitted that the judge's proportionality assessment was flawed on the basis that he had failed to properly appreciate that the respondent continued to represent a genuine, present and sufficiently serious threat.

10. In substance in his submissions Mr Whitwell identifies a number of features of the evidence that was before the judge which he submits the judge has failed to adequately grapple with and they were as follows. Firstly that the Immigration Judge failed to consider anything beyond the noted finding that at the time of the OASys analysis he was found to be a medium risk of reoffending. In addition to that there were other matters which should have informed the judge's assessment. Mr Whitwell submitted that he should have taken stronger account of the fact that the respondent was still on methadone at the time when the hearing occurred and indeed that not long prior to the hearing that use of methadone had increased appreciably. He also points out that it was only recently that the respondent had confessed to his parents about his addiction to drugs. Moreover, the judge did not address the fact that the respondent had been found to be at MAPPA level 2 which, as paragraph 18 of the decision noted, could be influenced not simply by the drug addiction, which the judge addressed, but also by other factors such as mental health issues, accommodation issues or association with known offenders which could contribute and had contributed to the MAPPA level 2 assessment.

11. Having considered those submissions carefully we are unable to accept them. It is clear to us that all of these factors were taken into account as part and parcel of the evidence before the judge. The issue upon which he relied in forming his assessment was the clear change which had occurred in the respondent as a result of him engaging with his drug addiction which, it is clear from the probation officer's report prepared for the sentencing exercise and relied upon by the appellant, was the principal causative factor in him finding himself with criminal associates and convicted of the kind of offences which we have set out above. It was

therefore entirely open to the judge to form the conclusion that he did, namely that now that there was clear evidence both that the respondent had engaged with seeking to overcome his addiction and also of support from his immediate family in that endeavour that the principal risk factor which had led to the justifiable conclusion at the time of the appellant's decision that the respondent was a genuine, present and sufficiently serious threat to justify deportation had been overcome and was no longer demonstrated. It was not necessary for the judge in forming the decision that he did to address each and every detail of the medical evidence or the other evidence from professionals engaged in the assessment of the respondent to adequately explain the decision which he reached. It is demonstrated by the extensive citation of the determination which we have set out above that in truth the judge went into some considerable detail to explain and justify why he had formed a different conclusion on the evidence that was available to him at the hearing to that which had been reached by the appellant at the time of the immigration decision to deport him.

12. It follows that we are unable to find substance in the submissions made under ground 1 and, as we have set out above, ground 2 is parasitic upon ground 1, that ground must fail also. For these reasons we dismiss this appeal.

Notice of Decision

The appeal brought by the Secretary of State is dismissed on all grounds.

Signed Date

Mr Justice Dove