



IAC-FH-NL-V1

**Upper Tribunal
(Immigration and Asylum Chamber)**

Appeal Number: DA/00109/2015

THE IMMIGRATION ACTS

**Heard at Field House
On 21st October 2015**

**Decision & Reasons Promulgated
On 27th October 2015**

Before

UPPER TRIBUNAL JUDGE LINDSLEY

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

**MISS YANA CHUBENKOVA
(ANONYMITY DIRECTION NOT MADE)**

Respondent

Representation:

For the Appellant: Mr S Kandola, Home Office Presenting Officer

For the Respondent: Mr T Bobb of Counsel instructed by Aylish Alexander Solicitors

DECISION AND REASONS

1. The claimant is a citizen of Bulgaria born on 13th May 1986. She came to the United Kingdom on 9th January 2008. Her criminal record begins in July 2012. She was initially cautioned for harassment and then went on to have further convictions for breaching a non-molestation order, battery, failure to surrender to custody and disorderly behaviour. She was administratively removed to Bulgaria on 21st July 2013. She returned to the UK however and was convicted of more criminal offences including

assault occasioning actual bodily harm, assault and breach of non-molestation orders and sentenced to a total of seventeen months' imprisonment on 22nd August 2014.

2. The claimant was served with notice of liability to deport on 15th December 2014 and the decision to make a deportation order including certification under Section 24AA of the Immigration (EEA) Regulations 2006 was made on 23rd January 2015. There was a further Home Office letter sent responding to representations on 3rd March 2015. She lodged an appeal against the decision to deport on 7 April 2015; and judicial review proceedings regarding her certification under Section 24AA of the EEA Regulations were commenced on 10th April 2015. On 1st July 2015 Judge of the First-tier Tribunal Hodgkinson promulgated a decision allowing the claimant's appeal under the Immigration (EEA) Regulations 2006 (henceforth the 2006 Regulations), however on 28th August 2015 Upper Tribunal Judge Warr granted permission for the Secretary of State to appeal that decision.
3. The matter comes before me to decide whether the First-tier Tribunal erred in law.

Submissions - Grounds

4. In summary the Secretary of State's grounds contend that the reasoning at paragraphs 42, 43, 45 and 46 of the decision of the First-tier Tribunal that the appellant does not present a genuine, present and sufficiently serious threat to the fundamental interests of society is not sufficient, and does not have adequate regard to the evidence before the Tribunal. The reason for this is it is said that there is a lack of consideration of the OASys Report which states the claimant poses a high risk to known adults. There is also said to be contradictory findings in the course of the decision about whether the appellant accepts responsibility for her criminal behaviour; it is argued that it is logically questionable whether her booked programme of rehabilitation is a good indicator as to whether she poses a future threat in the light of the fact it was arranged by her parents; it is also said to be an error for the First-tier Tribunal to have considered a positive factor that the claimant currently has no contact with her previous victims as this is not of central relevance when she is said to pose a risk to all known adults and not simply these victims.
5. Mr Kandola added a further submission orally that the First-tier Tribunal had failed to have proper regard to material evidence affecting the risk assessment as the OASys Report had not been considered in full. The claimant's problems were clearly not simply derived from her alcoholism but also from other matters regarding her anger management and problem solving abilities. The Betel UK Programme which she intends to enter if allowed to remain in the UK would address her alcoholism but there was no evidence before the Tribunal that this programme would have assisted her in other necessary ways.

6. Mr Bobb, representing the claimant, submitted that if the OASys Report was read as a whole then it was clear alcohol was underlying her other problems and that the Betel UK project would indeed address any additional or related problems as the programme was a community based one in which underlying issues beyond addiction were given consideration and support. It was also clear the claimant had herself emailed Betel UK and shown a commitment to going there even if her parents had initiated the contact. The involvement of her parents was not a sign of the claimant's lack of commitment given that she was in prison and did not have access to sending emails freely at the point of initiation of contact with Betel. It was relevant that the claimant had severed her contact with known adults who had previously been victims, and lawful that this evidence was taken into account, as this was relevant to the OASys analysis of her offending behaviour and the risks of re-offending which must start with all current known adults who have been victims.

Conclusions

7. The First-tier Tribunal considered the OASys Report in full and the findings section of the decision sets out an accurate summary of the key points of that report at paragraphs 38 and 39 of the decision. The First-tier Tribunal was clearly aware that the report had found she was in complete denial about her own culpability and focused on blaming her partners. The First-tier Tribunal was also aware that the report states that at the time it was written that the appellant posed a high risk to known adults whilst being a low risk to others and assessed her risk of reconviction as being a medium one.
8. The First-tier Tribunal also sets out an accurate summary of the situation with regards the possible eighteen months' residential placement with Betel UK Organisation which addresses alcohol dependency. It is clear that there are quite probably similar programmes in Bulgaria from paragraph 43 of the decision and the arrangement with Betel UK was set up with the help of the claimant's parents, with contact first being established in October 2014 by the claimant's mother as is set out at paragraph 14 of the decision.
9. The First-tier Tribunal's decision is made in the awareness that the evidence of the Tribunal was that the claimant took some responsibility for her offending although she still places some significant blame on her former partners - see paragraph 46 of the decision of the Tribunal.
10. Whilst the OASys Report does, as Mr Kandola points out, raise issues of the appellant's anger management and problem-solving the evidence provided by the claimant to the First-tier Tribunal regarding Betel UK is that they also deal with problems regarding character, work skills and responsibility. It is clear that the programme involves working and living in a community whilst being monitored at all times. It cannot be said that the finding of the First-tier Tribunal that Betel UK would address and

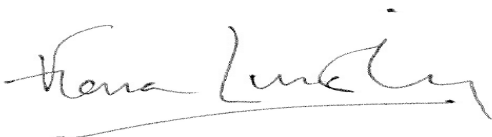
reduce the risk of offending is not rational when regard is had to the evidence before them.

11. It cannot therefore be argued that the First-tier Tribunal did not accurately and fairly appreciate the evidence before them. It is also clear that the First-tier Tribunal asked the correct legal question: whether the appellant currently poses a genuine, present and sufficiently serious threat affecting one of the fundamental interests of society as set out at Regulation 21(5) (c) of the 2006 Regulations and also appreciated that the appellant had not attained any permanent right of residence in the UK.
12. The Tribunal finds at paragraph 46 in its conclusions that the appellant does not pose a genuine, present and sufficiently serious threat as it accepts evidence that the offending of the appellant has been driven in part at least by alcohol (which is also accepted by the Secretary of State) and that she will be going immediately from custody to the Betel Programme (the credibility of which was not in doubt – see paragraph 40 of the decision). The Betel Programme will take the appellant physically away from known adults and address her behaviour relating to alcohol, thus building on her current abstinence and undertake a structured work programme over a period of eighteen months (see paragraph 41 of the decision). This combined with the oral evidence, indicating an acceptance of at least some responsibility for offending, was found to mean that the test for deportation at Regulation 21(5)(c) of the 2006 Regulations was not met.
13. I conclude that the decision of the First-tier Tribunal is not irrational, did not fail to take into account material evidence and cannot be said to be insufficiently reasoned.

Notice of Decision

- (1) The making of the decision of the First-tier Tribunal did not involve the making of an error of law on a point of law.
- (2) The decision of the First-tier Tribunal allowing the appeal is upheld.

No anonymity direction is made.



Signed

Date 26th October 2015

Upper Tribunal Judge Lindsley