



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

Appeal Number: DA/00817/2014

THE IMMIGRATION ACTS

Heard at Field House

On 19 October 2015

**Decision & Reasons
Promulgated**

On 2 November 2015

Before

UPPER TRIBUNAL JUDGE STOREY

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

**MR FRANCESCO PERTICARARI
(ANONYMITY DIRECTION NOT MADE)**

Claimant

Representation:

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

For the Claimant: Ms V Mascord, Lawrence Lupin Solicitors

DECISION AND REASONS

1. On 24 November 2014 First-tier Tribunal Judge Canavan allowed the appeal of the claimant, a citizen of Italy, against a decision by the Secretary of State dated 22 April 2014 to remove him under Regulation 19 of the 2006 Immigration (European Economic Area) Regulations.
2. The claimant was born in March 1992. He entered the UK in August 2011. He commenced a two year course in music computing. He worked on a fruit stall while he was studying and in September 2012 set up his own fruit supply business. He also bought a flat in Brighton with financial assistance from his family. Having completed his music course, he began a relationship with his current partner, Mr Quinn. On 22 October 2013 he was convicted on two counts of possession with intent to supply a class A

drug (MDMA) and a class C drug (Ketamine). He was sentenced to 30 months' imprisonment. His conditional release date was February 2015.

3. In making her decision the Secretary of State noticed that there was no evidence from the claimant to show he had undertaken rehabilitative work in custody. In the absence of an improvement in the claimant's personal and financial circumstances since his conviction, the Secretary of State considered it was likely that he would reoffend.
4. After hearing from the claimant, his partner and his partner's mother and after receiving further documentary evidence, the judge allowed the appeal. The Secretary of State's grounds essentially raise the following points.
5. First of all it is submitted that the judge failed to note that it was the claimant's choice to offend for his own financial benefit, which was far worse than offending to fund a drug habit. Secondly it was submitted that the judge erred in finding that the claimant was a low risk of reoffending because his circumstances had not materially altered. He wished to return to his study and would therefore incur debt to pay his fees. Thirdly it was alleged that the judge erred in that having found the claimant had not integrated into the UK (his residence having been extremely short) she should have found he could not be said to have rehabilitated here, whereas in Italy he would have family support as he had in the past. Fourth the judge was said to have erred in treating as a significant factor the claimant's (same-sex) relationship which was of short duration, did not involve cohabitation and in relation to which it had not been shown that there were any reasons why the couple could not live in Italy.

My Assessment

6. It is convenient to take these grounds out of turn. As regards the third ground, which concerned integration and rehabilitation, I consider that it is made out insofar as it was a given fact that this claimant had not acquired permanent residence. Applying the Court of Appeal guidance in **Secretary of State for the Home Department v Dumliauskas & Ors** [2015] EWCA Civ 145 and the recent Upper Tribunal decision on **MC(Essa principles recast)** [2015] UKUT 520 (IAC) it was not open to the judge to attach any significant weight to the factors of rehabilitation or integration. It is true that before the judge there was now evidence that the claimant had done rehabilitative work in prison, but that did not merit any significant weight being given to such activity.
7. However, the judge's decision can only be said to be materially wrong if she was incorrect to conclude under Regulation 21 that there was no genuine, present and sufficiently serious threat to fundamental interests of society.
8. The same point goes for the Secretary of State's fourth ground regarding the weight attached by the judge to the claimant's (same-sex) relationship. In any event the judge's decision at paragraph 20 made clear that this was not a central factor and was only taken into account in relation to overall proportionality.

9. As regards the first ground, I consider it rests on a misreading of the judge's findings. The judge did not find that the claimant had offended for his own financial benefit outside the context of his drug use. It is clear that the thrust of the judge's analysis in paragraphs 16 and 17 is that 1) the claimant did not commit his offences for financial motivation except in relation to his drug use. At paragraph 16 the judge noted that he brought larger quantities of drugs to cover his own drug use and he only sold excess drugs to his friends and associates. That was the only financial motivation. At paragraph 16 the judge made a clear finding that the claimant had no financial incentive in that he had always been able to support himself and was capable of earning money through employment and entrepreneurial enterprises and had financial support from his family in Italy. As regards the second ground, which challenges the judge's assessment that the claimant was a low risk of reoffending, this does no more than express disagreement with such findings. There was ample evidence before the judge to establish 1) that he was at low risk of reoffending; 2) that he was motivated and capable of addressing his offending behaviour; 3) that he had kept clean of drugs in prison; and 4) that he was genuinely remorseful.
10. The respondent's grounds come down therefore to this. Was the judge entitled to find that there was no propensity to reoffend and no genuine, present and sufficiently serious threat to fundamental interests of society?
11. In my judgment the clear answer to this question can only be that the judge was so entitled. The judge had correctly identified the legal test she had to apply at paragraph 14. She had then applied this test to the evidence before her. She had carefully weighed this evidence and reached entirely sustainable conclusions.
12. For the above reasons I conclude that the Secretary of State's grounds must fail. Accordingly the decision of the First-tier Tribunal Judge shall stand.

Notice of Decision

The Secretary of State's appeal is dismissed. The decision of the First-tier Tribunal judge shall stand.

No anonymity direction is made.

Signed

Date: 29 October 2015

Dr H H Storey, Judge of the Upper Tribunal