Upper Tribunal
(Immigration and Asylum Chamber) **Appeal Number: DA/00582/2016**

THE IMMIGRATION ACTS

Heard at : UTIAC Birmingham	**Decision and Reasons Promulgated**
On 18 July 2017	**On 24 July 2017**

Before

UPPER TRIBUNAL JUDGE KEBEDE

Between

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

YASSINE MOUELHI

Respondent

Representation:

For the Appellant: Mr D Mills, Senior Home Office Presenting Officer
For the Respondent: Mr M Singh of One Immigration

DECISION AND REASONS

1. This is an appeal by the Secretary of State for the Home Department against the decision of the First-tier Tribunal allowing Mr Mouelhi's appeal against the decision to deport him from the United Kingdom pursuant to Regulation 19(3)(b) and Regulation 21 of the Immigration (European Economic Area) Regulations 2006 ("the EEA Regulations").

2. For the purposes of this decision, I shall hereinafter refer to the Secretary of State as the respondent and Mr Mouelhi as the appellant, reflecting their positions as they were in the appeal before the First-tier Tribunal.

3. The appellant is a citizen of France, born on 18 December 1996. He claims to have entered the UK on 1 June 2009 with his mother and siblings, at the age of 12 years, and to have remained here since that time. He first came to the attention of the UK authorities on

12 November 2014 when he was arrested for robbery. On 7 September 2015 he was convicted of robbery and on 14 October 2015 he was sentenced to two years detention in a young offenders institution.

4. On 26 October 2015 the appellant was served with a notice of liability to deportation and was asked to give reasons why he should not be deported. The appellant responded by way of written representations in December 2015. On 10 October 2016 the respondent made a decision to deport the appellant on grounds of public policy in accordance with regulations 19(3)(b) and 21 of the EEA Regulations and issued a deportation order. A supplementary decision was made on 1 December 2016 on the basis of further evidence produced by the appellant as to his length of residence in the UK.

5. In her first decision, the respondent considered that the appellant had not acquired a permanent right of residence under the 2006 Regulations and therefore considered whether his deportation was justified on grounds of public policy or public security. The respondent referred to the index offence which involved the appellant and two co-defendants robbing their victim of two mobile telephones, £100 cash and a bus pass, at the college which they attended. The appellant had told his Offender Manager that the robbery occurred during a fight and that he admitted to searching the victim's pockets but denied taking any items or assaulting the victim. The respondent noted that the Offender Manager had concluded, in the OASys assessment that the appellant posed a low risk of re-offending but a medium risk of harm to a known adult and prisoners, in particular known adults that he felt were disrespectful to him and individuals that he disliked. The Offender Manager had also noted in the OASys assessment that on 9 November 2015 the appellant and two other inmates were involved in an assault on a detainee at the young offenders unit, which included the use of a flask as a weapon, and that the appellant had received an adjudication as a result. The respondent had regard to the comments of the sentencing judge in regard to the index offence, where it was noted that the assault was a joint enterprise. The respondent noted that the appellant had provided no evidence of having completed any victim awareness or other courses that could reduce the risk of re-offending in the future. The respondent therefore concluded that the appellant had a propensity to re-offend and that he represented a genuine, present and sufficiently serious threat to the public justifying his deportation on grounds of public policy. It was concluded further that his deportation to France would not prejudice the prospects of his rehabilitation and that his deportation would be proportionate and justified. The respondent went on to consider Article 8, noting that the appellant did not have partner or children for the purposes of paragraph 399(a) and (b) of the immigration rules and considering that he could not meet the requirements of paragraph 399A as he had not been lawfully resident in the UK for half his life, that he was not socially and culturally integrated in the UK and that there were no very significant obstacles to his integration into France. It was not considered that there were any very compelling circumstances for the purposes of paragraph 398. The respondent accordingly concluded that the appellant's deportation would not breach his human rights.

6. In her supplementary decision of 1 December 2016 the respondent accepted that the appellant had been resident in the UK in accordance with the 2006 regulations for a continuous period of five years and that he had acquired a permanent right of residence in

the UK. However the decision to deport him was maintained on the basis that it was considered that his deportation was justified on serious grounds of public policy owing to the seriousness of the offence.

7. The appellant appealed against that decision and his appeal was heard on 21 March 2016 by First-tier Tribunal Judge Obhi. Judge Obhi heard from the appellant and his mother and sister. She found that the appellant came within Regulation 21(3) and that there were serious grounds of public policy in his case. She then went on to consider Regulation 21(5) and (6) and the prospect of rehabilitation, in line with the guidance in Essa v Secretary of State for the Home Department (EEA: rehabilitation/integration) Netherlands [2013] UKUT 316, and concluded that it was not proportionate to deport the appellant. She accordingly allowed the appeal under the EEA Regulations.

8. The Secretary of State sought permission to appeal to the Upper Tribunal on the grounds of failure to take account of the seriousness of the appellant's offence and inadequate reasoning as to why his deportation was not justified.

9. Permission to appeal was initially refused, but was subsequently granted in the Upper Tribunal on 25 May 2017.

Appeal hearing and submissions

10. At the hearing before me, Mr Mills clarified the grounds of challenge, submitting that the judge had erred by taking integration and better prospects of rehabilitation in the UK as being determinative of proportionality, contrary to the guidance in case law. He relied in particular upon the decisions in Bossade (ss.117A-D-interrelationship with Rules) [2015] UKUT 415, MC (Essa principles recast) Portugal [2015] UKUT 520 and Essa. Mr Mills submitted that the judge's findings were that the appellant was not well-advanced in rehabilitation and that he was only partially integrated into the UK, and therefore those matters could not be determinative of the proportionality assessment.

11. Mr Singh submitted that the judge had undertaken a full and proper proportionality balancing exercise and that her decision was not inconsistent with the guidance in the cases relied on by Mr Mills.

Consideration and findings

12. Mr Mills accepted that, in so far as the respondent's grounds of challenge appeared to suggest that the judge went straight on to considering proportionality without first considering the seriousness of the threat posed by the appellant, the grounds were misconceived. Clearly the judge did not proceed straight to a consideration of proportionality, but she commenced by considering the nature and seriousness of the threat posed by the appellant and concluded, at [37], that he posed a serious risk of harm and that he fell within Regulation 21(3). It was only after having reached that conclusion that she then went on to consider proportionality. Accordingly there was no error of law in her approach in that respect, as Mr Mills conceded.

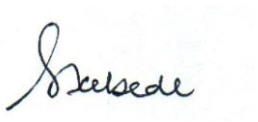
13. The challenge pursued by Mr Mills was in regard to the judge's findings on proportionality. His submission was that the judge accorded too much weight to the appellant's rehabilitation and integration, when her findings had otherwise been to the effect that he was only partially integrated and that he was not well-advanced in rehabilitation. However I cannot agree with Mr Mills. Rather than treating the appellant's integration and rehabilitation as determinative of the proportionality assessment, as Mr Mills submitted that she did, it seems to me that the judge did no more than take these matters into account as part of her overall proportionality assessment, as she was required to do. The judge accorded limited weight to the appellant's integration, as she considered that there was only an element of social and cultural integration due to his offending. When considering rehabilitation the judge had regard to the guidance in Essa and, far from according too much weight to the prospects of rehabilitation, her findings were if anything neutral, taking account of the lack of rehabilitative work undertaken by the appellant in the UK but also giving consideration to his family ties and responsibilities in the UK and his lack of ties in France. The judge's findings, and the weight that she attached to such matters, appears to me to have been entirely appropriate in the circumstances and on the evidence available.

14. At [39] and [40] the judge plainly considered all factors relevant to proportionality, having already given full and careful consideration to the level of risk the appellant posed. She considered the nature and seriousness of the offence and the judge's sentencing remarks, the appellant's age at the time of offending, his level of involvement in the offending, his lack of offending history and his family and other ties to the UK and France, as well as the questions of integration and rehabilitation. It seems to me that she was entitled to accord the weight that she did to the relevant factors and that there was nothing in her approach to these factors that was inconsistent with the guidance in Bossade, MC and Essa.

15. Accordingly it seems to me that there was nothing erroneous in the judge's approach, that she gave full and proper consideration to all relevant matters and provided full and cogent reasons for making the findings that she did. It was entirely open to her on the evidence before her to conclude that the appellant's deportation would not be proportionate. The judge made no errors of law requiring the decision to be set aside.

DECISION

16. The Secretary of State's appeal is accordingly dismissed. The making of the decision of the First-tier Tribunal did not involve an error on a point of law, such that the decision has to be set aside. I do not set aside the decision. The decision to allow Mr Mouelhi's deportation appeal therefore stands.

Signed: 

Upper Tribunal Judge Kebede Date: 19 July 2017