Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: DA/00604/2016

THE IMMIGRATION ACTS

Heard at Field House	**Determination Promulgated**
On 20 July 2017	**On 25 July 2017**

Before

UPPER TRIBUNAL JUDGE KEKIĆ

Between

GLEZIER PALMER-LUIS
(ANONYMITY ORDER NOT MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr T D H Hodson of Elder Rahimi Solicitors
For the Respondent: Mr P Armstrong, Senior Home Office Presenting Officer

DETERMINATION AND REASONS

1. This challenge is brought by the respondent in respect of the decision of First-tier Tribunal Judge J Robertson to allow this appeal against a deportation order made on 1 December 2016 under 19(3)(b) of the EEA Regulations 2006. For ease of reference, I continue to refer to the parties as they were before the First-tier Tribunal.

2. The appellant is a Portuguese national, originally from Angola, born on 25 July 1989. He entered the UK in February 2008 aged 18.

Although the judge records that he came with his mother and brother, the skeleton argument of 3 December 2017 (*sic*) and the appellant's own statement maintain that he came here to join them. On 15 June 2009 was issued with a registration certificate as a dependant. There is no documentary evidence that he has ever worked in the UK.

3. The appellant first came to the attention of the British police on 16 March 2010 whether he was cautioned for battery. Between 19 May 2011 and 16 July 2015, he amassed a number of convictions; two for affray, two failures to comply with community orders, resisting or obstructing a constable, driving offences and, finally, violent disorder. The last, index, offence resulted in a two-year prison sentence and the activation of a previous nine month suspended sentence to run consecutively. The sentence expiry date is 14 April 2018.

4. The appeal came before Judge J Robertson at Birmingham on 3 March 2017. She found that the appellant was now remorseful after his imprisonment, that his actions were impulsive rather than pre-meditated, that he had family support and that he presented a low risk to the public. The appeal was allowed.

5. On 5 June 2017, First-tier Tribunal E B Grant granted permission to appeal to the respondent on the basis that the judge had arguably given inadequate reasons for her findings and erred in her conclusion that the appellant did not present a genuine present and sufficiently serious threat to the public.

The Hearing

6. The appellant was present at the hearing before me on 20 July 2017. I renewed his bail and then heard submissions from the parties.

7. Mr Armstrong submitted that Judge Grant had considered the respondent's grounds to be arguable. He relied on the history of the appellant's offending and pointed out the escalation in violence over a period of five years, submitting that both pointed to the danger the appellant presented to the public. Mr Armstrong submitted that the judge had failed to explain why she found that the appellant did not present a danger to the public given his history and that she had erred in placing weight on factors she found went in his favour including the fact that his actions were impulsive rather than pre-meditated. Mr Armstrong submitted that the appellant's repeated offending demonstrated a lack of remorse and disregard for the laws of the UK. There was insufficient evidence that the appellant had dealt with his offending behaviour and his excuses for his actions did not suggest that he had accepted responsibility for them. If his violence was impulse based, that made it even more dangerous as it indicated a short temper. The appellant had committed all his crimes

as an adult. He had spent his formative years in Portugal and the judge found he had no health or disabilities and would be able to work there. In the circumstances, he could be expected to return. The determination was flawed because the judge had failed to explain why a violent person with a history of re-offending was not a danger to the public.

8. Mr Hodson relied on his helpful Rule 24 response. He submitted there was no hint of misdirection by the judge and the respondent's grounds were essentially a disagreement with the outcome of the appeal. Past convictions did not, in themselves, provide justification for removal and the complaint that insufficient weight was given by the judge to the offences was misconceived. The issue was whether the appellant presented a genuine, present, sufficiently serious threat to the public and that was properly addressed by the judge in her determination. She had not overlooked any factors and had considered his offending history. The finding that the appellant's actions were impulsive accorded with the remarks of the sentencing judge and were open to her to make. The convictions were only relevant if they pointed to a future risk. The judge considered the OASys reports, the oral and documentary evidence and concluded that the appellant had shown remorse and realised that he behaviour had to change. His family provided him with support. There were also supporting letters from others who had had contact with him whilst he was in prison. The judge could not be faulted for her assessment. The determination should stand.

9. Mr Armstrong responded. He submitted that the grounds were arguable as indicated in the grant of permission. The second OASys report was based on the appellant's own assertions but he had shown no empathy for his victims. He had thrown a concrete block at a security guard with the intention of inflicting harm. He had shown no remorse until he had been imprisoned. There was insufficient reasoning as to why he would not re-offend. His assertions of remorse had to be considered in light of the fact that he had an upcoming appeal against deportation.

10. At the conclusion of the hearing I reserved my determination, which I now give.

Findings and conclusions

11. The judge found that the appellant had not resided in the UK with the EEA national in accordance with the Regulations for a continuous period of five years and so was not entitled to permanent residency status. Neither party has challenged that conclusion and, despite the representations made by the appellant's former solicitors about his employment, no evidence of that was placed before the judge. The issue, then, is whether deportation is justified on grounds of public

policy or public security, taking into account the principles set out in reg. 21(5). These are set out in the respondent's decision letter at paragraph 22 and reproduced below:

- The decision must comply with the principle of proportionality
- The decision must be based exclusively on the personal conduct of the person concerned
- The personal conduct of the person concerned must represent a genuine, present and sufficiently serious threat affecting one of the fundamental interests of society
- Matters isolated from the particulars of the case or which relate to considerations of general prevention do not justify the decision
- The person's previous criminal convictions do not in themselves justify the decision.

12. Thus, whilst the offence(s) needs to be serious, there must also be a risk of re-offending for an appellant to be considered a genuine, present and sufficiently serious threat. Essentially the respondent's complaint is that in the light of the appellant's criminality and conduct, the judge failed to adequately reason why she concluded there was no such threat.

13. Mr Hodson took me through all the judge's references to the serious nature of the appellant's offending and I do not dispute that she has set out his background at length in her determination along with the respondent's case (at paragraphs 5, 7, 24-27). She also set out the oral evidence and summarised the written statements and the submissions made. The issue is what she then did with that information.

14. The judge made several findings against the appellant which weighed heavily on the respondent's side. She found that the index offence was a serious crime which occurred against a history of violent offences. She found that he had repeatedly shown a disregard for the law and continued with his anti-social behaviour with no apparent consideration for the consequences. He failed to comply with the requirements of a community order (in fact there were two) and ignored the opportunity to reform granted to him in 2014 when he was given a suspended sentence. His girlfriend's miscarriage in August 2013 did not excuse or justify his actions. There was no objective evidence of rehabilitation. His family had been ineffectual in influencing him in the past.

15. For the appellant, the judge found that his offences (she does not specify which) were based on impulse rather than being premeditated. The more recent OASys report assessed him as low risk in the community. The appellant had said he was remorseful and

accepted responsibility for his behaviour. His family were supportive. He had stayed out of trouble since his release although that had been a short time. He had matured and was better able to deal with his emotions. There were letters of support which spoke positively of his behaviour and attitude.

16. Looking at the factors the judge found in favour of deportation and against it, it is difficult to see how she concluded that the appellant did not represent a threat to the public. No evidence was called as to the appellant's previous offences and convictions for affray or his caution for battery so it is difficult to see how it can be said that his "offences" (in the plural) were impulse based. It may be seen from the first OASys report that the appellant had been responsible for head butting a member of the public in an unprovoked attack, for threatening a member of the Probation Service, for fighting outside a nightclub (on an occasion apart from the index offence) and for fighting with a girlfriend and another. These incidents were not addressed by the appellant in his witness statements or his oral evidence and indeed his testimony conflicts with the evidence in certain respects. For example, he seeks to pass off the driving offence as *"clipping the side of a car"* without realising what he had done but fails to mention that he had been driving whilst disqualified and without insurance (see first OASys report). When claiming that he was protecting a friend who was being stamped on by a security guard outside the night club on the occasion of the index offence, he did not explain why the sentencing judge should have stated that the CCTV footage showed that the security staff who came under attack had done *"absolutely nothing to provoke the incident"*. What the appellant's pattern of offending does appear to show is that he is a person without self-control who has a violent temper and a short fuse. In the context of what the judge acknowledged as very serious violent and anti-social behaviour and a repeated disregard for the law and for others, how impulsive behaviour was a factor to be considered in the appellant's favour is unexplained.

17. The evidence the judge referred to as supporting the appellant's change of heart essentially amounts to assertions by the appellant, his girlfriend, his mother and brother. There is no independent evidence to show a change in behaviour and, as the judge noted, the appellant had only been out of prison for a month at the date of the hearing. The timing of the assertions should also have been considered, as pointed out by Mr Armstrong. It is said there were no courses in prison to help him rehabilitate but there was no independent evidence to confirm that. The letter from the probation officer is silent on the issue of future behaviour. The undated letters from two prison staff refer to cleanliness and timely locking up but there is also mention by one of the two officers to a proven adjudication in prison and a failure to turn up for work on several

occasions. The appellant's brother claimed that *"social links"* led the appellant astray but the appellant's own evidence is silent on this and provides no details as to whether he still retains contact with those it is said were a bad influence on him. None of these matters have been examined by the judge and she fails to explain what aspects of the supporting letters she found to be persuasive. Most simply focus on his skills as a personal trainer.

18. The judge accepts that the appellant is remorseful but does not adequately explain why she believes his assertions when previous convictions did nothing to alter his behaviour and when his family clearly had no influence on him. There is also no finding on the issue of the appellant's alcohol abuse (see first OASys report) or what, if anything, he has done to address that in terms of rehabilitation. None of the evidence makes any reference at all to whether the appellant has dealt with his alcohol problem. The judge accepts that he had found work but no documentary evidence of that (such as the offer of employment) was before her.

19. The appellant made various assertions that he had learnt to control his emotions and change his behaviour but no details were given as to how this had been done. The respondent is entitled to expect a judge who accepts a change in the behaviour of a repeat offender will give sufficient reasons for doing so. Having considered the determination and the evidence at length and with the utmost care, I must concur with the respondent that the judge's reasoning is inadequate on the crucial issue of why she concluded that despite the appellant's history he was no longer a genuine, present and sufficiently serious threat to the community.

20. For all these reasons, I conclude that the judge made errors of law such that her decision must be set aside and re-made by another judge of that Tribunal.

21. Decision

22. The First-tier Tribunal made errors of law. The decision is set aside and shall be re-made afresh by another judge of the First-tier Tribunal at a date to be arranged.

Signed

Upper Tribunal Judge

Date: 21 July 2017