



Upper Tribunal  
(Immigration and Asylum Chamber)

Appeal Number: IA/45463/2014

THE IMMIGRATION ACTS

Heard at Field House  
On 30 November 2017

Decision & Reasons Promulgated  
On 5 December 2017

Before

DEPUTY UPPER TRIBUNAL JUDGE MCCLURE  
THE HONOURABLE LORD MATTHEWS  
SITTING AS AN UPPER TRIBUNAL JUDGE

Between

MS MAGALIE BAMU  
(ANONYMITY DIRECTION NOT MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: None

For the Respondent: Mr P Duffy, Senior Home Office Presenting Officer

DECISION AND REASONS

1. The Appellant, Magalie Bamu, date of birth 21<sup>st</sup> February 1983, is a citizen of France. This an appeal by the Appellant against the decision of Designated First-tier Tribunal Judge Woodcraft promulgated on 23<sup>rd</sup> February 2015 whereby the judge dismissed the Appellant's appeal against the decision of the Respondent to make a deportation order against the Appellant under the Immigration (EEA) Regulations 2006.
2. This case was listed on a previous occasion and was directed to await the outcome of the decision of the Court of Justice of the European Union in the case of E v Subdelegación del Gobierno en Álava as the case raised the same point with regard

to the interpretation of the treaty, directives and regulations. By a decision issued on 13 July 2017 the CJEU had issued a decision on the points raised in the Grounds of Appeal.

3. Firstly, we deal with the circumstances of making the deportation order. The Appellant and her partner Eric Bikubi were convicted of murder of the 15 year old brother of the Appellant and of two counts of assault occasioning actual bodily harm against the Appellant's sisters, one aged 20 at the time of the assault, and the other a child aged 11 at the time of the assault. It appears all the three victims had been staying as guests with the Appellant and her partner over the Christmas period. The Appellant and her partner concluded that the three victims were witches and determined to exorcise the victims. They subjected the victims to sustained beatings extended over a period of two days, forcing the victims to confess that they were witches. The victims were beaten with various objects. The victims confessed to being witches in the hope that the beatings would stop but to no avail. The Appellant joined in the assault both verbally and by encouraging Mr Bikubi to carry out the attacks. There is in the decision an extract from the judge's sentencing remarks describing the injuries that the Appellant's brother had suffered. It is evident that it is merely an extract and does not recount the full extent of the beatings and injuries. The extract reads as follows:

"The beatings inflicted on Kristy grew worse. His ear was torn with a pair of pliers. ... Two of Kristy's teeth were broken by Bikubi using a hammer and forcing the iron weightlifting bar into his mouth. There is some evidence that [the Appellant] forced that iron bar into his mouth. One broken tooth was found on the bathroom floor the other was found in the throat of the victim, the post mortem found a metal screw in the intestines. ... On your own admission Magalie Bamu you used a curtain pole as a weapon to strike Kristy and it was used with enough whether by you or by Bikubi to cause it to be bent. Several telephone calls were made by both of you to your parents Magalie Bamu in Paris. You told them that Kristy, Kelly and P were witches and had confessed that they were. Your astonished parents asked to speak to the children who in fear agreed that they were witches and tried by talking nonsense to convey all was not well. On Christmas morning the final assaults took place. Bikubi smashed a sack full of heavy marbles on Kristy's head using both hands to do so. The assault must have taken some time and was severe enough to cause swelling and injury to Kristy's brain. Kristy was taken into the bathroom and made to get into the bath. At some point in his weakened state Kristy sank beneath the water and drowned. When the Appellant did call the ambulance she said that Kristy had drowned himself. When the police and ambulance arrived Bikubi told a pack of lies. The Appellant heard those lies and did not attempt in any way to contradict them. Her brother and sisters who did not speak English were unable to explain until a French speaking paramedic and interpreter were found."

4. The judge was in no doubt that the murder involved a sadistic element and that the Appellant and her co-defendant had brutalised and physically abused Kristy until eventually he died after a course of prolonged torture over a period of two days.

There were certain aggravating features within the incident as well. Two of the victims were of vulnerable ages and there was an abuse of a position of trust.

5. Designated Judge Woodcraft dismissed the Appellant's appeal being satisfied that the Appellant constituted a genuine and present threat to the fundamental interests of the society and was satisfied on all the evidence that the decision was proportionate in terms of the EEA Treaty and Regulations and also that it did not breach any rights under the European Convention on Human Rights specifically Article 3 or Article 8.
6. The first point taken with the Grounds of Appeal is whether or not the Appellant constituted a present threat as required by the provisions of the EU Directives and the Immigration Regulations 2006. The relevant provision of the Directives is the second subparagraph of Article 27 of Directive 2004/38/EC. The relevant Article of the Directive provides:

“27(1) Subject to the provisions of this Chapter, Member States may restrict the freedom of movement and residence of Union citizens and their family members, irrespective of nationality, on grounds of public policy, public security or public health. These grounds shall not be invoked to serve economic ends.

(2) Measures taken on grounds of public policy or public security shall comply with the principle of proportionality and shall be based exclusively on the personal conduct of the individual concerned. Previous criminal convictions shall not in themselves constitute grounds for taking such measures.

The personal conduct of the individual concerned must represent a genuine, present and sufficiently serious threat affecting one of the fundamental interests of society. Justifications that are isolated from the particulars of the case or that rely on considerations of general prevention shall not be accepted.”

In passing we would note that Article 33(1) and (2) of the Directives also provides:

“33(1) Expulsion orders may not be issued by the host Member State as a penalty or legal consequence of a custodial penalty, unless they conform to the requirements of Articles 27, 28 and 29.

(2) If an expulsion order, as provided for in paragraph 1, is enforced more than two years after it was issued, the Member State shall check that the individual concerned is currently and genuinely a threat to public policy or public security and shall assess whether there has been any material change in the circumstances since the expulsion order was issued.”

The provisions within the Directive are reflected in the Regulations themselves, which is Regulation 21, sets out factors which have to be taken into account in assessing public policy considerations. Regulation 21 provides:

- “21. (1) In this regulation a “relevant decision” means an EEA decision taken on the grounds of public policy, public security or public health.
- (2) A relevant decision may not be taken to serve economic ends.
- (3) A relevant decision may not be taken in respect of a person with a permanent right of residence under regulation 15 except on serious grounds of public policy or public security.
- (4) A relevant decision may not be taken except on imperative grounds of public security in respect of an EEA national who—
- (a) has resided in the United Kingdom for a continuous period of at least ten years prior to the relevant decision; or
- (b) is under the age of 18, unless the relevant decision is necessary in his best interests, as provided for in the Convention on the Rights of the Child adopted by the General Assembly of the United Nations on 20th November 1989(11).
- (5) Where a relevant decision is taken on grounds of public policy or public security it shall, in addition to complying with the preceding paragraphs of this regulation, be taken in accordance with the following principles—
- (a) the decision must comply with the principle of proportionality;
- (b) the decision must be based exclusively on the personal conduct of the person concerned;
- (c) the personal conduct of the person concerned must represent a genuine, present and sufficiently serious threat affecting one of the fundamental interests of society;
- (d) matters isolated from the particulars of the case or which relate to considerations of general prevention do not justify the decision;
- (e) a person’s previous criminal convictions do not in themselves justify the decision.
- (6) Before taking a relevant decision on the grounds of public policy or public security in relation to a person who is resident in the United Kingdom the decision maker must take account of considerations such as the age, state of health, family and economic situation of the person, the person’s length of residence in the United Kingdom, the person’s social and cultural integration into the United Kingdom and the extent of the person’s links with his country of origin.”

7. The point under consideration in the present appeal is whether or not the Appellant being in custody she constituted a present threat to a fundamental interest of the United Kingdom. As identified in the case of E in the Court of Justice the point is being considered. In that case E had been convicted after a series of trials of abusing children and had been sentenced to six years' imprisonment. While he was considered to be a genuine threat to the fundamental interests of society given the nature of the convictions the issue was whether he was a present threat given that he was serving a sentence of imprisonment. At paragraph 12 of the decision the question under consideration was framed in terms that it was doubted whether E represents a genuine and present threat to the extent that he is in prison and still has a long sentence to serve. In the judgment however at paragraphs 23 and 24 it is made plain that the issue was that there must be in existence in the individual concerned a propensity to act in the same way in the future. The fact that the person was imprisoned at the time of the expulsion decision being made without that person having the prospect of being released for several years could not be regarded as relating to the personal conduct of the person concerned. Ultimately in paragraph 27 it was determined that the provision must be interpreted as meaning that the fact that a person is in prison at the time of the expulsion decision being adopted are made including the prospect of the person not being released in the near future did not exclude that his conduct represented a present and genuine threat to a fundamental interest in the society. That seems to determine the first point raised within the Grounds of Appeal.
8. Accordingly for the reasons set out we are satisfied that the judge properly approached the issue as to whether or not the Appellant constituted a genuine, present and sufficiently serious threat and there is no material error of law in the way that the judge approached that issue.
9. The second point taken in the Grounds of Appeal is that the judge has wrongly rejected the conclusion of the NOMS Report in the absence of contrary evidence. The judge had at paragraph 44 of the decision specifically considered the NOMS Report and pointed out that the document was in some sense curious and contradictory. The report concluded that there was a low risk of reoffending. The judge within the conclusions has pointed out that the offence of which the Appellant had been convicted was a specifically horrific offence involving torture and beatings over a period of two days. The judge pointed out that two of the victims were children and all of the victims were related to the Appellant. Yet rather than provide protection according to the verdict of the jury the Appellant had willingly participated in mistreating the victims in the most severe manner. The judge had noted also that the Appellant's belief that the family members were possessed of witchcraft had not been accepted. It was a delusion that could not be sustained. Having regard to the remarks of the Criminal Judge the Designated Judge found that this was a dangerous and irrational delusion on the part of the Appellant. That coupled with the fact that the Appellant had continued to deny her guilt was a serious cause of concern as far as the Designated Judge was concerned with dealing with the Appellant. With regard to working with the Appellant to reduce the risk of reoccurrence until such time as the Appellant accepted what she had done and faced the truth of it any concept of rehabilitation was difficult and it was difficult for meaningful

rehabilitation work to begin. The judge noted at no stage had the Appellant expressed any remorse or genuine remorse for what she had done. Nor had the Appellant displayed any insight into the effect of her behaviour on the two victims. It was in the light of those factors that the judge made the assessment with regard to the NOMS Report and whether or not the Appellant continued to present a danger.

10. The fact that little rehabilitative work has been carried out was understandable in the circumstance but the judge was entitled to conclude that there will be no interference with any rehabilitation work of the Appellant. In those circumstances also the judge was entitled to approach the recommendations and the conclusions of the NOMS Report in a critical manner. Given the very fact that no rehabilitation work had commenced, there had been no acknowledgement of the seriousness of the offence and no attempt at remorse. The judge has given ample reasons why there are factors in the case which lead one to conclude that despite the conclusions within the NOMS Report the Appellant represented a clear and present danger and continue to do so to a fundamental interest of society. There was sufficient evidential basis therefore for the judge to make the findings that he did. In that event we find that there is no material error of law in the way that the judge treated the NOMS Report. The appeal is therefore dismissed.

### **Notice of Decision**

The appeal is dismissed.

Signed

Date

Deputy Upper Tribunal Judge McClure