



Upper Tribunal  
(Immigration and Asylum Chamber)

Appeal Number: DA/00092/2018

**THE IMMIGRATION ACTS**

Heard at Glasgow  
On 2 August 2018

Determination issued  
On 10 August 2018

Before

UPPER TRIBUNAL JUDGE MACLEMAN

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

TOMAS URBONAVICIUS

Respondent

Representation

For the Appellant: Mrs M O'Brien, Senior Home Office Presenting Officer

For the Respondent: Mrs F Farrell, of Peter G Farrell, Solicitors

**DETERMINATION AND REASONS**

1. Parties are as above, but the rest of this determination refers to them as they were in the FtT.
2. FtT Judge Doyle allowed the appellant's appeal against deportation by a decision promulgated on 18 April 2018.
3. The SSHD's grounds of appeal to the UT are as attached to the application for permission filed with the FtT, dated 18 April 2018.

4. Mrs O'Brien accepted that the grounds might read in parts as insistence on the case put to the FtT. However, she argued that at bottom they identified an essential error of legal approach. The application of the principles of regulation 27 (5), set out at paragraph 26 of the respondent's decision, did not "stand alone" but was "strongly signposted" by schedule 1 to the regulations, identifying the fundamental interests of society to which the appellant's offending behaviour was a threat, quoted in the respondent's decision at paragraph 27 (a) - (g) and applied at paragraphs 28 - 32. The judge failed to refer to the schedule and in effect did not apply it. He overlooked in particular (f), the fundamental interest of society in combating the effects of persistent offending. Failure to consider and apply the schedule was such an error that the decision should be set aside. It was inherent in the grounds that they challenged the judge's "no risk" finding as perverse. It was accepted that the grounds failed to specify the result sought. The outcome should be reversed. Alternatively, there might need to be further hearing of evidence, but that would be limited, and could take place in the UT.
5. Mrs Farrell submitted that the judge in his findings of fact at paragraph 9 covered all relevant matters to be derived not only from the regulations but from schedule 1, being the substance of the case before him. Absence of specific citation was irrelevant. The grounds were only insistence on matters of fact and disagreement, founding for example on the non-attendance of the appellant's wife and child when the judge had accepted this was because they lived hundreds of miles from the hearing venue (which was in turn due to the respondent detaining the appellant at a place far from his home area). To say that convictions for dishonesty cast doubt on the evidence of the appellant (paragraph 4 of the grounds) was only to repeat the case put to the FtT. There was no error of law by the FtT in resolving that case and its decision should stand.
6. I reserved my decision.
7. Although Mrs O'Brien made valiant efforts to extract a proposition of error on a point of law from the grounds, I prefer the submission by Mrs Farrell that in substance they are only re-argument of the facts.
8. One passage in the decision did give rise to concern, although not specifically targeted in the grounds. At paragraph 10 (k) the judge says, "... even after hearing the evidence I still know nothing of the public policy which the respondent says justifies deportation". However, treating the decision fairly and as a whole, that should be read not as showing that the judge did not see the legal framework which was clearly before him, which would be a surprising admission. Rather, this is an indication that on the facts as he found them to be, public policy considerations, including schedule 1, did not in this case justify deportation.
9. The judge's analysis was that the appellant had relatively late in life and for specific reasons "had a brief but intense period of criminal behaviour at summary level which has culminated in a period of custodial rehabilitation" - 10 (g). The judge obviously thought that rehabilitation was ongoing and effective, and that is the main

reason for his decision. That might not have been the conclusion which all judges would have reached but it lies within reason. So far as the grounds dispute it, they are only disagreement. Standing that conclusion on the facts, the outcome is well within the scope of the law.

10. The SSHD's grounds, as amplified in submissions, have not shown that the making of the decision of the First-tier Tribunal involved the making of an error on a point of law, such that it should be set aside.
11. The decision of the FtT shall stand.
12. No anonymity direction has been requested or made.

A handwritten signature in black ink, reading "Hugh Macleman". The signature is written in a cursive style with a large, stylized initial 'H'.

2 August 2018  
Upper Tribunal Judge Macleman