



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: DA/00593/2017

THE IMMIGRATION ACTS

Heard at Glasgow
On 20 June 2018

Decision & Reasons Promulgated
On 28 June 2018

Before

UPPER TRIBUNAL JUDGE DAWSON

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

ANDREI [P]
(ANONYMITY DIRECTION NOT MADE)

Respondent

Representation:

For the Appellant: Mr A Govan, Senior Presenting Officer

For the Respondent: Mr G Rea, Solicitor, Rea Law

DECISION AND REASONS

1. The Secretary of State has been granted permission to appeal the decision of First-tier Tribunal Judge A M S Green who for reasons given in his decision dated 18 January 2018 allowed the respondent's appeal under the Immigration (EEA) Regulations 2016 against a deportation order dated 3 October 2017.
2. The Secretary of State's reasons are set out in a detailed letter dated 3 October 2017. Under the heading of a Decision to make a Deportation Order, reference is made to the respondent's history of criminal offending and the Secretary of State's view that,

on the available evidence, he had a propensity to reoffend and that he represented a genuine, present and sufficiently serious threat to the public to justify his deportation on grounds of public policy.

3. The FtT Judge found the appellant did not present such a threat, that his removal was not justified and thus allowed the appeal.
4. There are three grounds of challenge:
 - (a) The first is that the First-tier Tribunal Judge had applied the wrong test in deciding the appellant had a permanent right of residence and, in any event, failed to give clear reasons why he reached that conclusion.
 - (b) The second is that the judge had failed to give clear reasons for finding the risk of reoffending was low.
 - (c) Finally, there was a failure to give clear reasons why the respondent should be regarded as integrated.
5. The grant of permission by First-tier Tribunal Judge Foudy rehearses the grounds of challenge and observed that the grounds disclosed an arguable error of law.
6. Judge Green set out with careful detail the reasons given by the Secretary of State for her decision and thereafter, following a direction as to the burden and standard of proof with reference to *Arranz (EEA Regulations – Deportation – Test)* [2017] UKUT 294, set out in his decision the substance of the respondent's witness statement and his oral testimony. In addition, he set out the substance of the witness statement of the respondent's partner, Ms Mair together with a record of her oral testimony. The further material relied on by the respondent is summarised and the judge thereafter recorded the comprehensive submissions on behalf of the Secretary of State and those made on the respondent's behalf. After directing himself as to the relevant provisions of the Immigration (European Economic Area) Regulations 2016, the judge gave the following conclusions at [22]:

“22. In following the considerations set out in Schedule 1 of the 2016 Regulations I note the following:

- (i) A EEA national having extensive familial and societal links with persons of the same nationality or language does not amount to integration in the United Kingdom. A significant degree of wider cultural and societal integration must be present before a person may be regarded as integrated in the United Kingdom. In this appeal, I have seen sufficient evidence that the Appellant meets this test. He has spent all his life in this country in a relationship with Ms Mair and he is clearly heavily involved with her family, as evidence by the witness statements and letters of support.
- (ii) Where an EEA national has received a custodial sentence, or is a persistent offender, the longer the sentence, or the more numerous the convictions, the greater the likelihood that the individual's continued presence in the United Kingdom represents a genuine, present and sufficiently serious threat affecting the fundamental interests of

society. In this case, the Appellant has been convicted twice for shoplifting and for failing to meet bail conditions. He was not sent to prison for the shoplifting and he was only admonished for the bail offences – the lowest possible sanction to be imposed. The last serious conviction was in February 2016. There are no other subsequent convictions other than the bail offences. I think that is significant in terms of any propensity to re-offend. It would seem to be low. He has stopped taking heroin and is on a methadone programme. Clearly this points to a young man trying to change his life for the better. His relationship with Ms Mair is longstanding and important to this process of change. I think that she can support him to help his rehabilitation and he appears to have a stronger network of friends and family (i.e. Ms Mair's family) in this country than in Romania. He came to this country with no criminal record. The evidence suggests little likelihood that the Appellant's continued presence in the United Kingdom represents a genuine, present and sufficiently serious threat affecting the fundamental interests of society.

- (iii) I am required to give little weight to the Appellant's integration within the United Kingdom if this alleged integrating links were formed around the same time as the commission of a criminal offence. Based on his evidence and Ms Mair's evidence and the letters of support, I accept that the Appellant came to this country in 2012 to attend Billy Mair's funeral. He has permanent residence having lived here continuously for 5 years. He was sentenced in 2015 and 2016. On each occasion he either received community service or an admonition. Consequently, I give weight to his integration within the United Kingdom that he has achieved.
- (iv) The 2016 Regulations recognise that the removal from the United Kingdom of an EEA national who could provide substantive evidence of not demonstrating a threat (for example through demonstrating that the EEA national has successfully reformed or rehabilitated) is less likely to be proportionate. In this case, there is evidence that the Appellant has engaged in rehabilitation. He has stopped taking heroin. He is following a detox programme and he has not re-offended since his last conviction. He is in a stable and supportive relationship with Ms Mair. He wants to work and to contribute to society. I understand why he was unable to work previously given Ms Mair's family history and the level of support he gave to her. I also accept that his drug habit may have precluded him from working.
- (v) The fundamental interests of society in the United Kingdom include removing an EEA national with a conviction and maintaining public confidence in the ability of the relevant authorities to take such action. It also includes combating the effects of persistent offending and protecting the public. In this case, those interests are not served by removing the Appellant despite his convictions to maintain public confidence in the immigration authorities to take such action. The Appellant does not pose a threat to the public. He has not re-offended since 2016."

7. At the outset of the hearing I asked Mr Govan whether he relied on ground 1 since on my reading of the decision, I was unable to discern any error as alleged having noted paragraph [20] as follows:

“20. I am also reminded that under Regulation 23(6) of the 2016 Regulations, an EEA national who has entered the United Kingdom or the family member of such a national who has entered the United Kingdom may be removed if the Secretary of State has decided that the person’s removal is justified on the grounds of public policy, public security or public health in accordance with regulation 27. This is the ground upon which the Respondent relies.”
8. No indication was given by the judge that he had considered this case under the higher threshold required where permanent residence has been established. Mr Govan withdrew this ground. As to the second and third grounds, he clarified that neither was a rationality challenge but instead the complaint was an absence of reasons for the conclusions reached as to the risk of reoffending and whether he should be considered as a persistent offender together with a failure to give clear reasons why the respondent should be regarded as integrated. At the outset of the hearing I provided the parties with copies of the decisions of the Court of Appeal in *SSHD v Dumliauskas & Ors* [2015] EWCA Civ 145 and its more recent decision in *SC (Zimbabwe) v SSHD* [2018] EWCA Civ 929. In the former, Sir Stanley Burnton at [45] makes it clear that he was unable to accept the Secretary of State’s submission that the prospects of rehabilitation are irrelevant unless the offender has a permanent right of residence. In respect of the latter decision McCombe LJ endorses the approach taken by the Tribunal in its analysis of what is meant by a persistent offender. After giving the representatives time to consider these decisions I heard submissions.
9. Mr Govan re-characterised his ground by focussing on an asserted failure by the judge to have reasoned whether the respondent was a persistent offender. In my view this ground is not made good. At [22(ii)] the judge, as will be seen from the extract above, began his analysis by setting out the criteria where an EEA national has received a custodial sentence or is a persistent offender. He set out sustainable reasons why he considered there was a low risk of reoffending. It is correct that he did not express a finding whether the respondent was a persistent offender but it can be readily inferred from a fair reading of his decision that he did not consider the respondent was in this category. As candidly acknowledged by Mr Govan, in the light of absence of further offending and the nature of the offences committed it would have been rationally open to the judge to find that he was not a persistent offender. By the time his submissions reached ground 3, Mr Govan confirmed that this ground stood or fell with ground 2. In my view the judge gave sustainable and cogent reasons why he considered integration played a relevant role in this case in the light of all the circumstances.
10. I am satisfied that the judge did not materially err in his decision.

NOTICE OF DECISION

The appeal by the Secretary of State is dismissed.

No anonymity direction is made.

Signed

Date 27 June 2018

UTJ Dawson

Upper Tribunal Judge Dawson