



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: EA/01305/2017

THE IMMIGRATION ACTS

Heard at Bradford
On 14 August 2018

Decision Promulgated
On 23 August 2018

Before

UPPER TRIBUNAL JUDGE PLIMMER

Between

TAULENT KAMOLLI

and

Appellant

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the appellant: Mr Hussain, Counsel

For the respondent: Mrs Peterson, Senior Home Office Presenting Officer

DECISION AND REASONS

1. This is an appeal against a decision of the First-tier Tribunal ('FTT') dated 30 October 2017, in which it dismissed the appellant's appeal, having found that the respondent was entitled to deport him pursuant to the Immigration (European Economic Area) Regulations 2016 ('the 2016 Regs').

Background

2. The appellant is a citizen of Albania. He married a citizen of Poland in 2006 and they have two children I shall refer to as A (born in 2007) and B (born in February 2013). He has another child with a different mother, who I shall refer to as C (born in November 2013).
3. The appellant was issued with an EEA family permit on the basis of his marriage on 15 May 2006 and entered the UK on 19 May 2006. On 23 November 2013 he was issued with an EEA permanent residence card.
4. The appellant has three convictions: driving over the limit for which he was fined in 2007; possessing a dangerous dog out of control for which he was also fined in 2015, and; production of cannabis and possession of cocaine for which he was sentenced to 18 months imprisonment from 12 July 2016. When released from prison on 20 April 2017 he returned to the matrimonial home with his wife, A and B. However, his wife left the address with A and B in July 2017 having discovered that whilst in prison the appellant was visited by C and her mother.
5. In light of the 2016 offence, on 11 July 2016, a notice of liability to deportation was served upon the appellant. His permanent residence card was revoked on 20 December 2016. In a decision dated 1 March 2017 the respondent made a deportation order against the appellant. The respondent accepted that the claimant had acquired a permanent right of residence but had not resided in the UK for a continuous period of 10 years and therefore assessed whether his deportation was justified on serious grounds of public policy or public security ('serious grounds').

FTT

6. At [30] the FTT concluded that the serious grounds threshold had been met and dismissed the appeal. The FTT did not consider whether the appellant was entitled to benefit from the enhanced level of protection i.e. that his removal must be justified on imperative grounds of public security ('imperative grounds').

Grounds of appeal / Hearing

7. Mr Hussain sought to initially place reliance upon three grounds of appeal but focussed his attention on ground 3. The three grounds are as follows. First, there was a failure to address the best interests of the children. Secondly, the FTT made an irrational risk of reoffending assessment unsupported by the evidence. Thirdly, the FTT erred in law in applying the serious grounds test instead of the imperative grounds test.

8. Permission to appeal was refused on ground 3 and only granted on grounds 1 and 2.
9. At the beginning of the hearing Mr Hussain applied to renew the application for permission to appeal on ground 3. As I pointed out, this has not been done in accordance with the relevant rules and the application was made very late. I nevertheless heard from Mr Hussain. Unfortunately, he struggled to explain the relevant legal framework relevant to determining who is able to benefit from imperative grounds. He initially said that he no longer wished to renew the application to renew under ground 3. When I enquired whether he had fully considered B v Land Badem-Wurttemberg and SSHD v Vomero (Directive 2004/38/EC), Joined Cases C-316/16 and C-424/16 (which was referred to in the grounds of appeal he had drafted) he asked for further time, which I provided. After reflection, Mr Hussain renewed the application to rely upon ground 3.
10. Mrs Peterson realistically and practically accepted that whilst the application to renew ground 3 was not made properly or clearly, she was not prejudiced by it and agreed with my summary of the proper approach in light of the AG's opinion in Vomero. This can be summarised as follows:
 - (i) The acquisition of permanent residence is a pre-requisite to qualify for enhanced protection.
 - (ii) The 'previous ten years' residence required for enhanced protection must be continuous, subject to reasonable absences.
 - (iii) Imprisonment allows doubt to be cast on integrative links but should not be excluded from the calculation of the 10-year period.
 - (iv) The expression 'the previous ten years' must be interpreted as referring to a continuous period, calculated by looking back from the precise time when the question of expulsion arises, that includes any periods of absence or imprisonment, provided that none of those periods of absence or imprisonment has had the effect of breaking the integrative links with the host Member State.
 - (v) The overall assessment of integrative links cannot be confined solely to the criteria of long-lasting settlement in the host Member State and the absence of any link with the Member State of origin. That assessment must instead take account of all the relevant factors of the individual case and must take place at the time when the authorities are ruling on the expulsion decision.
11. Mrs Peterson accepted that the relevant legal framework has undoubtedly been complex but it is now sufficiently clear that the 10-year residency necessary for the grant of enhanced protection in Article 28(3)(a) must be calculated by counting back from the date of the decision ordering that person's expulsion and imprisonment does not break continuity provided that integrative links are not broken – see regulation 3 of the 2016 Regs, MG v SSHD (Case C-400/12),

[2014] 2 CMLR 40, Warsame v SSHD [2016] EWCA Civ 16, SSHD v Vomero [2016] UKSC 49, and the AG's recent opinion in Vomero (supra).

12. Mrs Peterson accepted that in this case that would mean counting back from the deportation order dated 1 March 2017 and that prima facie this appellant had the requisite 10 years because he arrived in the UK in May 2006. In these circumstances, she accepted that the FTT erred in law in not addressing imperative grounds and in particular whether in light of all consider all the relevant circumstances, integrative links could be said to be broken by the imprisonment in 2016 and 2017.
13. Both representatives agreed that given the need to make up to date findings on the imperative grounds issue the matter should be remitted. Both representatives also agreed that there was no error of law in the FTT's findings of fact, given the limitations of the evidence available: the appellant's wife did not provide any updating evidence and the risk assessment report pre-dated the break-up of the family. Those findings of fact are therefore preserved in so far as they relate to the evidence available to the FTT at the time. Mr Hussain informed me that there is substantial updating evidence now available.

Remedy

14. For the avoidance of doubt I grant permission to rely upon ground 3 and allow the appeal on this basis. Both representatives agreed with that course.
15. I have had regard to para 7.2 of the relevant *Senior President's Practice Statement* and the nature and extent of the factual findings required in remaking the decision, and I have decided that this is an appropriate case to remit to the FTT but that it should be heard by FTT Judge Kelly, who made the initial decision. This is because completely fresh findings of fact in relation to the appellant's integrative links are necessary but the findings that have already been made require updating in light of further evidence.
16. Judge Kelly has already made factual findings accepted by Mr Hussain to be uninfected by any error of law (given the limited materials available). The FTT has however omitted to count back from 1 March 2017 and omitted to assess integrative links, in light of the period of imprisonment. It would be proportionate for the same FTT to consider these issues and make any further findings of fact in light of the updated relevant evidence.

Decision

1. The FTT decision contains a material error of law and is set aside.
2. The appeal is remitted to the same FTT (Judge Kelly).

Directions

- (1) The appellant shall file and serve one comprehensive indexed and paginated bundle, 28 days before hearing.
- (2) The appellant shall file and serve a skeleton argument, cross-referencing to the bundle, 21 days before hearing.
- (3) The respondent shall file and serve a position statement responding to the skeleton argument 7 days before the hearing.

Signed: *UTJ Plimmer*

Ms M. Plimmer
Judge of the Upper Tribunal

Date:
15 August 2018