



**Upper Tribunal
(Immigration and Asylum Chamber)**

Appeal Number: DA/00058/2018

THE IMMIGRATION ACTS

Heard at Field House

On 29 April 2019

**Decision &
Promulgated
On 3 May 2019**

Reasons

Before

UPPER TRIBUNAL JUDGE BLUM

Between

SECRETARY OF STATE FOR THE HOME DEPARTMENT

and

**PEDRO [J]
(ANONYMITY DIRECTION NOT MADE)**

Appellant

Respondent

Representation:

For the Appellant: Ms S Jones, Home Office Presenting Officer

For the Respondent: Mr N Khan, of Susan Paul Solicitors

DECISION AND REASONS

1. The Secretary of State for the Home Department (hereafter SSHD) appeals against the decision of Judge of the First-tier Tribunal C Bennett (the judge) who, in a decision promulgated on 25 January 2019, allowed the appeal of Mr Pedro [J] (hereafter claimant) against the SSHD's decision of 18 December 2017 refusing to revoke a deportation order made against him on 4 August 2015 and implemented on 27 August 2015. The claimant had a right of appeal against the SSHD's decision by virtue of regulations 36 and 37(1)(d)

of the Immigration (European Economic Area) Regulations 2016 (the 2016 Regulations).

Background

2. I summarise the salient features of this appeal. The claimant is a national of Portugal who was born in 1996. He entered the UK in 2005 when he was 9 years old accompanying his parents and attended school. His mother died in childbirth in 2011 (and his brother was stillborn) because of medical negligence.
3. The claimant was convicted on 2 counts of robbery committed in November 2014 when he was 18 years old and a first-year university student and he received concurrent sentences of 28 months detention in a Young Offenders Institution on 4 February 2015. On 21 July 2015 the SSHD decided to make a deportation order against the claimant. Although representations had been made on his behalf and an appeal lodged against the decision to make the deportation order, the claimant withdrew his appeal on 13 August 2015 and he was removed to Portugal on 27 August 2015.
4. On 6 April 2017 the appellant's current solicitors made representations on his behalf seeking revocation of the deportation order. The representations set out how the claimant had been very traumatised by his mother's and brother's death in 2011, set out the claimant's circumstances in Portugal, and noted that the claimant was now married to [CJ] (a Portuguese national exercising treaty rights in the UK). On 30 November 2017 the claimant's wife gave birth to a son in the UK. The claimant's wife also resides with her daughter from a previous relationship. The wife's daughter has no contact with her biological father.
5. In refusing to revoke the deportation order the SSHD noted that the claimant had been encountered at Paris Immigration Control on 5 November 2016 attempting to board a train for the UK. The SSHD accepted that the claimant had not been involved in any further criminal activity but was not satisfied that sufficient time had passed to show that he no longer posed a risk of further offending. There was to be no evidence that he had adequately addressed the reasons for his offending behaviour or had undertaken any course or program. The SSHD was not satisfied there had been any material change in the claimant's circumstances.

The decision of the First-tier Tribunal

6. The judge considered a witness statement and an undated letter written by the claimant as well as written and oral evidence from the claimant's wife, father and brother. The judge additionally considered a bundle of documentary evidence including a pre-sentence report

prepared on 12 January 2015 and psychiatric reports prepared in 2013 and 2015, details relating to travel between Portugal and the UK by the claimant's wife, and other letters from family friends.

7. The judge set out the circumstances of the robbery convictions and the relevant legislative framework, and summarised the concerns identified by the SSHD in the December 2017 decision and the evidence from the witnesses. From [30] onwards the judge set out his findings of fact and his reasons in support of those findings. The judge reminded himself of the serious nature of the claimant's offending but concluded that he no longer represented a genuine, present and sufficiently serious threat affecting the fundamental interests of society, and that there had been a material change in the claimant's circumstances since the making of the deportation order. The judge found that the refusal to revoke the deportation order did not comply with the principle of proportionality and gave detailed reasons for this finding. The judge consequently allowed the appeal.

The Grounds of Appeal

8. The grounds are twofold. The 1st ground contends that the judge materially misdirected himself in law. The particularisation of the 1st ground essentially contends that the claimant had not taken responsibility for his actions and had blamed his offending on the death of his mother, and that the judge erred in finding that the claimant did not present a genuine, present and sufficiently serious threat to the fundamental interests of society. Reference was made to the absence of any courses undertaken by the claimant and the inadequacy of the claimant's income in Portugal, suggesting that he may reoffend for financial gain. The Grounds contend that there was no updated medical evidence to demonstrate that the claimant had dealt with his mental health problems and that the judge failed to adequately consider an attempt by the claimant to re-enter the UK in November 2016. The SSHD additionally relied on further alleged attempts by the claimant to enter the UK after the promulgation of the judge's decision.
9. The 2nd ground contends that the judge failed "to give adequate findings on a material matter." This ground asserts that the judge was not entitled to find that there was a parental relationship between the claimant and his son because, in an undated letter, the claimant admitted to only being with his son on 3 or 4 occasions. The SSHD criticises the judge's finding that it would be in the best interests of the claimant's son and stepdaughter (the daughter of his wife) to remain in the UK to have regular contact with their close relatives. The grounds then contended that the judge's proportionality assessment contained legal errors because the claimant spoke Portuguese and was familiar with Portuguese culture because the inevitable consequence of deportation was separation of families. In

support of this latter proposition that the SSHD relied on Court of Appeal decisions relating to non—EEA deportation cases.

10. Although permission to appeal to the Upper Tribunal was refused by the First-tier Tribunal, Upper Tribunal Judge Kebede granted permission on 26 March 2019 stating that there was arguable merit in the assertion that the judge's conclusion that there had been a material change in the claimant's circumstances, was inconsistent with findings that he had otherwise made and was not supported by the evidence. Judge Kebede also found there was "some" arguable merit in the 2nd ground.
11. In her oral submissions and the 'error of law' hearing Ms Jones relied on the grounds and submitted that the judge was not entitled to find that the claimant had a genuine parental relationship with his son and that the judge gave in at good reasons.

Discussion

12. There is no merit whatsoever in the SSHD's submission that the judge materially misdirected himself in law. Having invited Ms Jones to draw my attention to the alleged misdirection in the determination she was unable to do so. To her credit Ms Jones accepted that she could not identify any misdirection in law as to the applicable legal test. In his decision the judge set out the relevant legal provisions in a comprehensive manner ([10] to [15]) and correctly directed himself as to the burden and balance of proof [17]. The judge set out the provisions of Reg 34 noting the need to be satisfied that there was a material change in the claimant's circumstances that justified the making of the deportation order, and that the claimant needed to demonstrate that the criteria for making the deportation order as set out in Reg 23(6) and Reg 27 were no longer satisfied. The judge was acutely aware of the need to show that the claimant's personal conduct represented a genuine, present and sufficiently serious threat affecting one of the fundamental interests of society, and that the maintenance of the deportation decision had to comply with the principle of proportionality. The judge set out the relevant provisions in Schedule 1 to the 2016 Regulations identifying factors relevant to "the fundamental interests of society" and noted the need to take into account the best interests of children. Then at [37] and [38] the judge again reminded himself of the need to be satisfied of a material change in circumstances and set out in considerable detail the numerous reasons why he was satisfied the claimant no longer represented a genuine, present and sufficiently serious threat affecting any of the fundamental interests of society. These included, inter alia, the conclusions of the Probation Officer that the claimant was at low risk of re-offending, that a supervision requirement was not appropriate as they had been no previous offending and his offending was not associated with drug or alcohol dependency, the

opinion of the Probation Officer that the claimant bitterly regretted what he had done and found his experience of prison to be salutary, that he had not committed any subsequent offences, that the offending had to be considered in the context of his mental health, that it was now over 7 years since the death of his mother and over 4 years since his offending, and that he now had stability through his marriage and the birth of his son. The judge found that the claimant had learned from his period of imprisonment and his deportation and that he was highly sensitive to the consequences of any further criminal behaviour. These were conclusions rationally open to the judge on the evidence before him.

13. The grounds are simply wrong in so far as they suggest that the claimant sought to deflect responsibility for his offending behaviour and attribute it to the death of his mother. When one fully considers the claimant's witness statement it becomes apparent that the claimant was setting out the context in which his offending occurred. At paragraph 5 he stated, "I am not trying to justify what I did. I deeply regret and am remorseful as regards the issue concerning my conviction in 2014." The judge gave detailed consideration to the conclusions contained in the two Consultant Psychiatrist reports and the Probation Officer's report which indicated that, at the time he committed the robberies, the claimant was suffering from a moderately severe depressive episode and a prolonged grief reaction. The judge was unarguably entitled to consider the circumstances surrounding the claimant's offending when determining whether he still constituted a present and sufficiently serious threat.
14. The judge adequately addressed the absence of any course or programme undertaken by the claimant to address his offending. The judge was demonstrably aware of the absence of such evidence (see, for example, [20], [22 (d)], [33], [37]). At [25] the judge recorded the view of the Probation Officer that the claimant's offending was not related to alcohol or drug misuse but rather to his unresolved grief issues relating to his mother's death, and the Probation Officer's opinion that a supervision requirement was not appropriate. At [37(e)] the judge accepted that the claimant had not undertaken any courses with a view to addressing the reasons for his offending behaviour but was satisfied that the passage of time and the claimant having formed the relationship with his wife and having become a father and a substitute father had given him a focus to his life such that he no longer needed to undertake any course or "rehabilitative work." In so concluding the judge took into account relevant considerations and made a finding rationally open to him on the evidence. The grounds contend that the claimant's income from his part-time work in Portugal is inadequate, but the Probation Offices report concluded that the claimant's offending was not financially motivated. The judge, in any event, took full account of the claimant's financial circumstances.

15. The grounds content that the judge erred in finding that there had been a material change in circumstances because there was no medical evidence that the claimant had dealt with his mental health problems. The judge however considered the medical evidence relating to the moderately severe depressive episode and prolonged grief reaction suffered by the claimant (at [25] and [26]) following the death of his mother, noted the conclusion of one Consultant Psychiatrist that the offending was “truly out of character”, and concluded that the claimant no longer suffered from either a grief reaction or a depressive episode given the length of time since the death of his mother and given that he was now married and had become a father and a substitute father to his wife’s daughter. At [37(d)] the judge stated, “common sense and experience tell that, over time, young men and young women get over the deaths of their parents, even though, in the immediate aftermath of the death, they may suffer from substantial depression will stop in these circumstances, I am not satisfied that [the claimant] continues to suffer from either a grief reaction or a depressive episode, let alone a moderately severe depressive episode or a prolonged grief reaction.” The judge provided cogent reasons in support of his conclusion and was rationally entitled to his conclusion.
16. Nor is there any merit in the SSHD’s contention that the judge failed to attach appropriate weight to the claimant’s attempt to re-enter the UK in November 2016, or that the judge’s findings were in any way inconsistent. The judge considered this incident in detail at [32]. At [37(h)] the judge properly found that the failure by the claimant to explain or express regret in respect of his attempt to enter the UK was a significant negative factor, but he noted that the incident occurred over 2 years previously and before the claimant’s son was born. The judge properly noted that there was no evidence of any subsequent attempt to breach the deportation order. The judge attached appropriate weight to the Paris incident and balanced that against his other findings and gave adequate reasons for concluding that the incident did not undermine the other evidence advanced on behalf of the claimant. The allegations of further attempts by the claimant to enter the United Kingdom after the promulgation of the judge’s decision are clearly immaterial in determining whether the judge’s decision contains an error on a point of law.
17. There is no merit in the submission that the claimant did not enjoy a parental relationship with his son. The author of the Grounds of Appeal appears to misinterpret the claimant’s evidence, as recorded by the judge. The Grounds content that the judge was not entitled to conclude that there was a genuine parental relationship because the claimant admitted he had only ‘been with’ his son on 3 or 4 occasions. This reference was contained in an undated letter written by the claimant. The Grounds do not refer to the evidence recorded

by the judge at [21] and [29] from the claimant's wife relating to her visits to Portugal with her son to see the claimant. These visits varied in duration from 3 days to one month and were confirmed by documents relating to the travel. Nor do the grounds refer to the evidence of the interaction between the claimant and his son, or the interaction between the claimant and his wife's daughter [21(d)]. Having regard to the decision in **SR (subsisting parental relationship - s117B(6)) Pakistan** [2018] UKUT 00334 (IAC) I have no doubt that the judge was rationally entitled to conclude that the claimant did have a parental relationship with his son.

18. At [36] the judge set out detailed reasons for concluding that the best interests of the claimant's child and his partner's daughter were that they live with both the claimant and their mother. The grounds content that there was no basis in law for the judge to conclude that it was in the best interests of the claimant's son and his wife's daughter to remain in regular contact with their close relatives in the UK. This is a somewhat bizarre assertion. The best interest assessment is a factual one that takes account of all relevant considerations. At [36(c)] the judge accepted that the immediate family of the claimant's wife lived in the UK and that his son's paternal relatives also lived in the UK and rationally concluded that, if the claimant's family lived together in the UK, there was a greater chance that the claimant and his wife would have the assistance of other members of their respective families and bringing up and looking after the children and that the children would see their grandparents and other members of their immediate families. This was an entirely logical conclusion.
19. In actuality the grounds are a disagreement with the judge's conclusion that the claimant did not constitute a genuine, present and sufficiently serious threat affecting one of the fundamental interests of society and that there had been a material change in his circumstances. The judge however gave detailed and legally sustainable reasons for his findings. The Grounds do not disclose any error on a point of law.

Notice of Decision

**The First-tier Tribunal does not contain any error of law.
The SSHD's appeal is dismissed.**

No anonymity direction is made.



1 May 2019

Signed

Date

Upper Tribunal Judge Blum