Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: DA/00080/2019

THE IMMIGRATION ACTS

Heard at Field House
On 6 December 2019

Decision & Reasons Promulgated
On 13 December 2019

Before

UPPER TRIBUNAL JUDGE KEKIĆ

Between

TRIBHUVAN DINESH
(ANONYMITY ORDER NOT MADE)

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellant: Mr G Symes, of Counsel, instructed by Ronald Fletcher and Co.
For the Respondent: Ms I Vijiwala, Senior Home Office Presenting Officer

DETERMINATION AND REASONS

1. This appeal comes before me following the grant of permission to appeal by Upper Tribunal Judge Allen on 1 November 2019 in respect of the determination of First-tier Tribunal Judge Veloso, promulgated on 18 July 2019 following a hearing at Hatton Cross on 18 June 2019.

2. The appellant is a Portuguese national of Indian ethnicity born on 8 March 1999. He claims to have entered the UK in October 2014. He

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was issued with a residence card under the EEA Regulations on 26 January 2017 but thereafter received three convictions for offences involving violence and for failing to comply with the requirements of a community order. A deportation order was signed on 21 November 2018.

3. Judge Veloso heard oral evidence from the appellant, his parents and his sister but found that their evidence was internally inconsistent and also at odds with one another's accounts with respect to what the appellant had done here since his arrival, where he had been living, whether he had lived continuously with them as a family, whether he or his family had travelled to Portugal and whether he had relatives in Portugal or India. She found that the appellant had not accepted responsibility for his actions and had taken no steps to address his offending behaviour. She considered that rehabilitation would be available for him in Portugal. She concluded that he had not completed five years' residence in the UK and that his continued presence represented a genuine and sufficiently serious threat affecting the fundamentals interests of society. As a decision had been made on human rights by the respondent, the judge also proceeded to consider article 8 but found that there were no very significant obstacles to the appellant's integration into Portugal and no compelling circumstances. Accordingly, the appeal was dismissed.

4. The grounds for permission to appeal essentially argue that the judge failed to carry out an adequate proportionality assessment, that she failed to take account of matters relating to the offending (although these are not specified), matters relating to the health and economic situation of the appellant and matters relating to rehabilitation. It is maintained that there is a high threshold for the respondent to satisfy in such cases and that consideration of the suitability of deportation or the availability of other less onerous alternatives is absent from the determination.

5. The grounds also argue that the judge erred in considering article 8 factors and the provisions of ss. 117A-D, matters found to be beyond the court's jurisdiction in EEA appeals.

The Hearing

6. Mr Symes relied upon the grounds in his submissions at the hearing on 6 December 2019. He submitted that the judge did not mention proportionality until paragraph 53 and that was after findings had already been made. He referred to the matters the judge was said not to have considered (as at paragraph 4 above) and relied on Essa (EEA: rehabilitation/integration) [2013] UKUT 00316 (IAC). Reliance on an unreported case was withdrawn. He submitted that the judge had also erred in looking at article 8 which was not appropriate

although he accepted that was not his strongest point. He submitted that an immediate re-hearing would not be appropriate because there were five witnesses. He sought a de novo hearing before the First-tier Tribunal.

7. In response, Ms Vijiwala submitted that the grounds were no more than a disagreement with the judge's decision. Contrary to what was argued, the judge had considered the appellant's health, age, personal circumstances and the offence at paragraph 51; paragraph 53 contained her conclusion after consideration of those matters and after findings had been made. She had also given consideration to the availability of rehabilitation in Portugal. She noted that the appellant had taken no steps to rehabilitate himself in the UK or to address his behaviour and his further offending was taken into account (at 24 and 27). His economic situation was considered at paragraph 50. Adverse credibility findings were made in respect of all the witnesses. The judge found that there were connections to Portugal, that the appellant's grandfather had lived there, that his father had been too and that the appellant could go there and his family could assist him.

8. It was submitted that the judge addressed article 8 because it had been considered by the Secretary of State. Ms Vijiwala argued that usually there were no removal directions in EEA cases and so the consideration of article 8 was unnecessary but as this was a deportation case, removal was a pertinent issue. The judge was right to consider article 8. No challenge had been made to those findings; only the fact that she had considered article 8 was criticised. In any event, that ground was immaterial as the judge had fully considered the case under the EEA Regulations.

9. Mr Symes replied. He submitted that whilst the judge had considered rehabilitation in Portugal, she had not taken account of the steps towards rehabilitation taken in the UK. When I asked what those steps were, Mr Symes said the appellant had stopped drinking. He submitted that the appellant had shown remorse in that he had felt bad about what how his actions had affected his family. It did not matter that he had not referred to the victims in his expressions of remorse. The determination failed to engage with the evidence and the efforts at rehabilitation. The decision should be set aside and the matter remitted to the First-tier Tribunal for a fresh decision to be made.

10. That completed submissions. At the conclusion of the hearing, I reserved my determination which I now give with reasons.

Discussion and Conclusions

11. I have considered all the evidence before me and have had regard to the submissions made. I reach my decision only after having considered the evidence as a whole.

12. The grounds and the submissions raise no matters that were disregarded by the judge in her determination. The outcome may not have been what the appellant was hoping for but that does not make mean that there are errors of law in the judge's decision. The complaint raised about the proportionality assessment is essentially a matter of format over substance in that the term 'proportionality' was not referred to earlier in the determination. There is no merit in that argument. It is plain that the judge was fully aware of her obligations under the Regulations (at 9-10) and that her reasoning and findings (at 15-54) show that she was assessing the proportionality of the decision. Had she not have been doing so, it is difficult to understand what the consideration of all the factors set out at length in those paragraphs was aimed at.

13. The grounds and Mr Symes' submissions complain that three matters were not considered by the judge. The first was matters relating to the offending. What these matters were has never been clarified. Other than this blanket assertion in the grounds, no specifics are given and Mr Symes did not address this at the hearing. The appellant's history of offending is set out at paragraph 2. This is further discussed at paragraphs 17, 19, 20, 21, 22, 23, 24, 26, 27 and 32. Without knowing what matters should have been included, I cannot find any merit in the first complaint. It is plain that the judge did have regard to the appellant’s offending.

14. The second complaint is that the judge failed to have regard to matters relating to the appellant's health, family and economic situation. That is wholly inaccurate. The appellant was born in March 1999 (at 1). There is nothing remarkable about the fact of his age. He is neither a minor nor elderly. His age was specifically taken into account, however, at paragraph 51. The judge also noted the issue of health, noting that no issues had been raised about his health (at 50). She found that he was healthy (at 51). The probation officer was also satisfied that there were no mental health issues (at 20). It is difficult to see what more could have been said in those circumstances. His family circumstances were dealt with at length, with the judge finding that the evidence of the appellant and his family members was significantly discrepant to the extent that they contradicted each other over whether or not they had always lived together in the UK, about the appellant's schooling, whether or not he had lived in Leicester and what he had been doing here. No explanations have been offered for the inconsistencies on such basic matters. For those reasons, the judge properly concluded that she could not be satisfied that the appellant had shown any established connections with his parents and siblings (at 47). There was no evidence called or placed before the judge as to the appellant's economic situation but it was a

matter she nevertheless considered (at 50-51). She found that he would be able to work.

15. The third complaint is that the judge did not consider the steps taken towards rehabilitation. This turns out to be one step; the claim of having stopped drinking. The judge noted that the appellant's attempt to blame all his offending on alcohol consumption, which he claimed was a problem for him, did not fit well with the evidence (at 17-23). She also, contrary to what is argued, did have regard to his claim to have stopped drinking (at 17, 23, 29, 30 and 31). She noted, however, that there was no supporting evidence of this claim such as the attendance of any AA meetings or any other group. It is unclear, therefore, what is meant by the submission that the appellant's steps towards rehabilitation in the UK were not considered. It is not suggested that his family could assist him in addressing his behavioural problems; indeed, they do not seem to have helped at all in the past. Nor is it maintained that the appellant has attended any groups or classes to address his offending. In fact, the judge found that he had continued to minimise his offending and had shown no remorse for the impact of his behaviour on his victims. Whilst Mr Symes argued that was immaterial, the judge was entitled to take it into account when assessing all the evidence. The evidence before the judge was of a man who had continued to offend over a number of years, who had shown little regard for the law; in fact, the second more violent assault he committed was at a time when he was the subject of a Community Order (at 27 and 32). The evidence of his ties and integration was weak and inconsistent. It was open to the judge, on the evidence, to conclude that the appellant's continued presence in the UK represented a genuine, present and sufficiently serious threat affecting the fundamental interests of society (at 53).

16. There was no obligation on the judge to consider other alternatives to deportation and indeed no submissions were made to her on that point.

17. The next ground was that the judge erred by considering article 8. It is plain that she did so because the respondent had made a human rights decision (at 55). Furthermore the appellant himself raised article 8 in his grounds of appeal against the respondent's decision. At paragraphs 10-15, it was maintained that the appellant has established a private and family life in the UK which should be assessed. In those circumstances, it is difficult to see how the judge can be criticised for doing exactly what the appellant asked for.

18. I have considered Amirteymour [2017] EWCA Civ 353 relied on in the grounds and in Mr Symes' submissions; however, that related to an appeal brought against the refusal of a derivative residence card. The issue there was whether a human rights challenge to removal could be brought where no s.120 notice had been served and where no decision to remove had been made. In this case, a s.120 notice was

served (page 6 of the decision letter of 14 November 2018) and, as Ms Vijiwala pointed out, the issue of removal was live. In any event, even if the judge erred in this regard, it is immaterial as she considered the matter under the EEA quite separately.

19. It follows, therefore, that the First-tier Tribunal Judge made no material errors of law and her decision stands.

Decision

20. The decision of the First-tier Tribunal stands. The appeal is dismissed.

Anonymity

21. The First-tier Tribunal did not make an anonymity order and no request for one was made to me.

Signed

Upper Tribunal Judge

Date: 9 December 2019