



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

Appeal Number: DA/00169/2019

THE IMMIGRATION ACTS

**Heard at Royal Courts of Justice
On 14 October 2019**

**Decision & Reasons Promulgated
On 18 October 2019**

Before

UPPER TRIBUNAL JUDGE HANSON

Between

**PAULO [C]
(anonymity direction not made)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Ms Schon instructed by Bail for Immigration Detainees
(London)

For the Respondent: Ms J Isherwood Senior Home Office Presenting Officer

ERROR OF LAW FINDING AND REASONS

1. The appellant, a male citizen of Portugal born on 16 August 1983, appeals with permission a decision of First-Tribunal Judge M A Khan promulgated on 11 July 2019 in which the Judge dismissed the appellant's appeal against the respondent's decision to deport him to Portugal.

Discussion

2. Whilst brevity is often encouraged in decision writing it is still important for judges to ensure they focus on and deal with those aspects of an appeal relevant to their decision. It is important, for example, to ensure the correct factual and legal provisions are identified, that clear findings dealing with relevant issues are made, and that such findings are supported by adequate reasons.
3. In this appeal the Judge's conclusions are set out from [24] of the decision under challenge. At [27 - 31] the Judge sets out the operative part of his findings in the following terms:
 - "27. The appellant adopted his very short written statement and gave oral evidence. The appellant has been convicted on two occasions and the third concerns him not complying with a Magistrates Court order. The appellant seeks to explain his criminality by alleging conspiracy against him by the police and the Magistrates Courts that found him guilty and sentenced him. I find that the appellant is under some sort of illusion that the system is against him. The appellant simply does not understand his wrongdoings.
 28. The purpose of the Tribunal is not to go behind the appellant's criminal convictions, but it is clear to me that this appellant does not understand the gravity of his offending. There is no remorse or any feeling of guilt on his part for what he has done. For these circumstances, I find that there is a real risk that the appellant will continue to reoffend in the UK.
 29. Considering the appellant's age, state of health, family and economic situation, his length of residence in the United Kingdom, his social and cultural integration into the United Kingdom, I find that the appellant is extremely likely to repeat his criminal behaviour in the future.
 30. In the circumstances, the respondent has established that the appellant's deportation under Regulation 23 (6)(b) and Regulation 27 (5) and 27 (6) of the EEA Regulations, that the decisions to deport the appellant to the country of his origin, Portugal is proportionate.
 31. The appellant has two brothers living in the UK but there is no communication or contact with them since he was convicted of battery against them. His only other family consist of his 85-year father and two sisters, all of whom live in Portugal. The appellant has previously worked in a factory in Portugal and I find that the appellant will be able to secure employment on his return to Portugal."
4. Permission to appeal was sought by the appellant on a number of grounds and granted by another judge of the First-Tier Tribunal, the operative part of which is in the following terms:
 - "2. It is arguable that the Tribunal erred in;

- a. Failing to assess whether the Appellant represents a genuine present and sufficiently serious threat to the fundamental interests of society
 - b. It's assessment of the risk of reoffending
 - c. The proportionality assessment, in that little or no consideration is given to the findings made as to his private and family life in the UK in that assessment
 - d. Procedural unfairness. The Appellant's representative withdrew from representing him the day before the hearing. The Tribunal may not have been aware of the Appellants mental health difficulties which are apparent from the medical records now submitted. The matter proceeded in the absence of a legal representative and there is no reference to whether the Tribunal considered if an adjournment should be granted to enable the Appellant to secure representation. It is arguable that there may have been procedural unfairness."
5. In an EEA deportation appeal it is essential that the decision-maker makes clear findings on whether an appellant constitutes a genuine, present and sufficiently serious threat to the fundamental interests of society. There is arguable merit in the appellant's contention that although the Judge lists factors to be taken into account there is no clear reasoned finding in relation to this issue.
 6. There is also with an EEA deportation appeal the need to consider the proportionality of the decision in relation to which prospects of rehabilitation are ordinarily considered. There is no reference to any risk of reoffending reports, and it does not appear from the determination whether the issue of rehabilitation was discussed with the appellant.
 7. There is merit in the appellant's assertion the Judge confused and conflated the issue of reoffending with proportionality, with those matters listed at [29] being considered more in relation to risk of reoffending than the proportionality question.
 8. There is merit in the appellant's assertion the Judge failed to make findings of fact on whether the appellant's deportation would amount to a breach of article 8 ECHR or to provide adequate reasons to support the finding the appellant could secure employment without difficulty in Portugal, in light of the facts.
 9. Although many appellants who loose legal representation late in the day can properly be expected to represent themselves before a tribunal it is necessary for a judge to give proper consideration to whether, in the circumstances, it is appropriate in light of the overriding objectives and the principle of fairness to proceed in such a case. There is merit in the appellant's assertion that it is not clear from the determination whether the Judge considered whether the case could be justly determined in light of the appellant's lack of readiness and lack of documentary evidence submitted. It is also not clear from the decision what documents are actually before the Judge

as they are not listed. It is also not clear from the determination whether there was any evidence before the Judge relating to the appellant's health and it is not clear whether the appellant was asked whether he had any health issues. A simple investigation to ascertain whether the appellant was capable of representing himself or whether he should have been treated as a vulnerable witness might have disclosed the following:

- i. In November 2018, while in HMP Cardiff, the appellant was prescribed Mirtazapine, an antidepressant, and Propranolol to assist with anxiety.
 - ii. In March 2019 that the appellant believed that people were interfering with his food as a result of which he was referred to a medical practitioner
 - iii. A Rule 35 report dated 4 April 2019 stating '*I have concerns that the detainee may have been a victim of torture. This is a factual report*'.
 - iv. A letter of Detention Action dated 12 June 2019 stating that A '*says he suffers from nightmares, flashbacks and PTSD from abuse on his brothers between 2015 - 2017. It further states that, 'A consistent observation of our work with him over the past 5 months has been his lack of trust in distress at his ongoing detention*'.
 - v. A letter from Healthcare dated 28 June 2019 by Ms A Slade Smith, Practice Manager, stating the appellant had a Psychological Therapies Consultation on 25 June 2019 and that the doctor who carried out the consultation requested that the Mental Health Services become involved.
10. I find the cumulative effect of the failings disclosed in the determination, highlighted in the grant of permission to appeal, make the Judge's findings unsafe as it is not made out the appellant received a fair hearing or that the Judge considered and has made properly reason findings upon those matters relevant to the issues in this appeal. The appellant is an EEA national whose deportation will interfere with his right of free movement within the EU. This is not a domestic deportation case where different tests apply.
11. In light of the above concerns it was announced at the hearing that the decision of the Judge is infected by arguable legal error and shall be set aside. In light of the concerns arising there shall be no preserved findings. In accordance with the Presidential Guidance and the need for comprehensive findings of fact to be made at a fresh hearing in which the appellant's vulnerability and any other relevant issues can be considered, it is appropriate for this matter to be remitted to be reheard by another judge of the First-Tier Tribunal other than Judge M A Khan.

Decision

12. **Judge M A Khan materially erred in law. I set aside the decision of Judge M A Khan. I remit the appeal to Hatton Cross to be reheard by another judge nominated by the Resident Judge at a suitable venue.**

Anonymity.

13. The First-tier Tribunal did not make an order pursuant to rule 45(4)(i) of the Asylum and Immigration Tribunal (Procedure) Rules 2005.

I make no such order pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008.

Signed.....
Upper Tribunal Judge Hanson

Dated the 16 October 2019