Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: DA/00503/2018

THE IMMIGRATION ACTS

Heard at the Royal Courts of Justice	**Decision & Reasons Promulgated**
On 4 March 2019	**On 05 April 2019**

Before

UPPER TRIBUNAL JUDGE PERKINS

Between

LUKAS [H]
(anonymity direction not made**)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellant: Ms G Brown, Counsel, instructed by Duncan Lewis Solicitors
For the Respondent: Mr S Whitwell, Senior Home Office Presenting Officer

DECISION AND REASONS

1. This is an appeal against the decision of the First-tier Tribunal dismissing the appeal of the appellant against a decision of the respondent to deport him. The decision to deport was on 12 July 2018.

2. The appellant is an EEA national, being a citizen of the Czech Republic. He has a poor criminal record and it is clear that his insistence on taking forbidden drugs is at the core of his difficulties.

3. As an EEA national he may well be entitled to a high degree of protection against removal and it is essential that there are clear findings about his residence in the United Kingdom and any consequent degree of protection that follows.

4. The First-tier Tribunal's finding is extremely clear. The judge says at paragraph 13:

> "I find that the appellant has not shown to the required standard that he has been continually resident in the UK for over five years as either an individual exercising treaty rights or as a dependant of his mother whilst she was considered to be habitually resident here."

5. He then directed himself that the next thing to determine was whether the appellant's removal was justified on public policy grounds and he concluded that it was justified.

6. The grounds of appeal supporting the application were not drawn by Ms Brown. They can, I find, be divided sensibly into criticisms of the primary findings of fact and criticisms of the application of the law.

7. Ground 2 complains that there is a failure to consider the evidence in the round on the balance of probabilities and concludes with the assertion that the First-tier Tribunal Judge "failed to give any findings on the three live witness evidence" that the appellant has lived in the United Kingdom for a long continuous period.

8. That, on the face of it, is a very severe criticism but it loses its sting when the Decision is considered in more detail. It is quite clear from reading he Decision that the judge did not believe the evidence of the appellant.

9. Oral evidence was also given two other witnesses. They were the appellant's sister, [Ms MG], who lives in Blackpool, and a [Mr DG] who lives in Halifax and who is a family friend.

10. The statement from Ms [G] confirms that the appellant arrived in the United Kingdom in 2002 and that he visited "home" in 2014 to obtain an identity card when he stayed for about three weeks. The witness says "to my knowledge the appellant has returned to Czech only one time for his ID since 2004". The witness then explained that "all our family is now in the UK" and that the appellant has "been in the UK since he was a child and should be allowed to remain".

11. In his statement Mr [G] says that he was aware that the appellant had visited the Czech Republic in 2014 "for his ID" and that he did not like it. This is of very limited evidential value. It does not purport to say that the appellant only visited the Czech Republic on the occasion identified and, taken at its highest, as far as I can see adds nothing material to the appellant's case.

12. The statement of Ms [G] is more detailed. She asserts unequivocally that she was living with the appellant and their mother at the material time and to her knowledge the appellant has only returned once to the Czech Republic. It does not follow from this evidence that the appellant's claim to higher protection is made out. It is

possible that the appellant left the United Kingdom and went somewhere other than the Czech Republic, but there is nothing to support such a finding.

13. It is quite clear from paragraph 31 of the Decision that the First-tier Tribunal Judge heard evidence from Ms [S], Ms [G] and Mr [G]. It is also quite plain that to the extent that they said the appellant had been in the United Kingdom for many years save for one visit to the Czech Republic he did not believe them. I have to ask myself if it is an error of law not to have given more express consideration to the evidence and the reasons for disbelieving them.

14. In the case of Mr [G] there is no difficulty. The evidence was only of peripheral value because it did not claim to rule out other visits.

15. Ms [G] did make such a claim and should have been in a position to have given reliable evidence on the point. However the judge said at paragraph 31(8) of his Decision that he found the when the appellant returned to the Czech Republic in September 2014 he was planning a prolonged stay and that is why he committed criminal offences to make his life more comfortable.

16. There were also unsigned witness statements from the appellant's mother who did not attend to give evidence and from the mother of one of his children who was never expected to attend. Given that their statements are unsigned the judge clearly cannot be criticised for not making much of them. Indeed it is arguable that they were of no evidential value whatsoever in the form in which they were presented.

17. I have decided that the First-tier Tribunal Judge did not err by ignoring the witnesses. He considered the witnesses and did not believe them. He did not err by not giving a full detailed explanation. Read carefully the point of the decision is that the evidence of the appellant's conduct so undermined the claimed short visit that he rejected that evidence.

18. I do not accept the judge erred in not giving more reasons for rejecting the evidence of Ms [G]. There is no material deficiency at all in not saying more about the other witnesses because they did not deal with this point.

19. The grounds further criticise the First-tier Tribunal Judge for not making more detailed findings and this point is picked up in Ms Brown's helpful skeleton argument on which she based her oral submissions. The difficulty for the appellant is that although I can accept that the judge might have been wrong, or at least a open to criticism, for glossing over points in finding that the appellant had spent "months out of school" without recognising that for much of that time he would have been on school holiday, I cannot, notwithstanding Ms Brown's considerable assistance, piece together from the documents enough independent evidence to show there were no substantial gaps in his record of school attendance or employment or availability for employment.

20. The short point is that the First-tier Tribunal was entitled to conclude from the gaps in the evidence not only that the oral evidence was not reliable, but that the appellant

had not lived in the United Kingdom exercising treaty rights for long enough to acquire more than the minimum level of protection. There is no independent evidence that he was in school throughout the required period or that he was working throughout the required period (this has never been his case) or that he was at least looking for work.

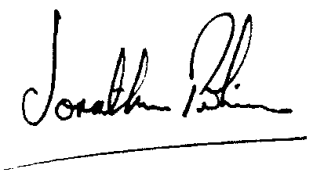
21. Whilst it is easy to criticise the judge the appellant would do well to remember that the burden of proof was on him. If he had a good case he should have made it clear. He was represented. He could have decided, with the help of his advisors, when precisely he lived in the United Kingdom, and then produced witness statements to set out and support his case. He could have produced a schedule cross-referencing the claims in the witness statement to the documentary evidence which clearly tends to show that he was available in the United Kingdom for *some* of the time he says he was there and that he was at school for *some* of the time that he claims. If he tabulated his evidence in that way it would have been much easier for the judge to have seen precisely what periods are not confirmed by independent evidence and whether the oral evidence was unacceptable on its own or whether it was not reliable unless supplemented.

22. I do not agree that the criticisms of the judge are well-founded. The First-tier Tribunal Judge has found clear gaps in the evidence about the appellant's stay in the United Kingdom and has found himself not satisfied that the appellant has been in the United Kingdom as he claims and with it his entitlement to higher degrees of protection collapses.

23. Once it is seen that the appellant has not established any high degree of protection as an EEA national there is no room to criticise the decision. The appellant has been to prison on three occasions for serious offences. Although he has two children it seems he has no contact with one and only skimpy contact with another of a kind that could be easily reproduced by electronic means. Further the appellant was in trouble as recently as April 2018. There is no error in the judge's conclusion that he remains a risk and a present risk to the United Kingdom.

24. In short although Ms Brown went to a great deal of trouble to draw attention to possible deficiencies in the First-tier Tribunal's decision, I am unpersuaded that there is any material error of law and I dismiss the appellant's appeal.

Signed
Jonathan Perkins
Judge of the Upper Tribunal



Dated 3 April 2019