



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

Appeal Number: DA/00240/2019 (P)

THE IMMIGRATION ACTS

**Decision under Rule 34
Without a hearing
10th September 2020**

**Decision & Reasons Promulgated
On 15th September 2020**

Before

UPPER TRIBUNAL JUDGE COKER

Between

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

And

LLOYD JUNIOR MORGAN

Respondent

DETERMINATION AND REASONS

1. FtT Judge N M Paul allowed Mr Morgan's appeal against the refusal of his human rights claim for reasons set out in a decision promulgated on 11th December 2019. Permission to appeal was granted by FtT Judge Grant Hutchison on 15th January 2020. Directions for the further conduct of the appeal were sent on 2nd April and 30th July 2020 and, in the circumstances surrounding COVID 19, provision was made for the question of whether there was an error of law and if so whether the decision of the FtT judge should be set aside to be determined on the papers.
2. Both parties complied with the directions; both parties agreed to the issue of error of law being determined on the papers. The SSHD relied upon the grounds of appeal and Mr Morgan, through his representatives relied upon the Rule 24 response.

3. I am satisfied that the submissions made on behalf of the appellant and the respondent together with the papers before me¹ are sufficient to enable me to be able to take a decision on whether there is an error of law in the decision of the FtT and if so whether the decision should be set aside, on the papers and without hearing oral submissions.

Background

4. Mr Morgan, a Jamaican citizen was issued with an EEA permanent residence card on 5th February 2010. The index offence is dated 13th April 2012 when Mr Morgan was convicted of wounding with intent to do grievous bodily harm and conspiracy to rob. He was sentenced to 12 months' imprisonment on 16th April 2019.

FtT decision

5. The FtT set out the evidence and correct legal framework. He addressed the Offender Management Report and the OASys report, gave special attention to the fact that Mr Morgan had only been out of custody for 12 months and is on licence until 2024. The judge considered Mr Morgan's family circumstances and expressed an opinion on his character and the impact that detention had on him.

Grounds of appeal.

6. The SSHD relied upon three grounds of appeal.

Ground 1

7. The SSHD submitted that the judge's reliance on the Offender Managers report (which was based upon the OASys report) without taking into consideration the lack of expressed responsibility for his crime, his continued attempt to minimise his involvement in the robbery, the use of a weapon and the serious injuries to the victim amounted to an error of law in determining the proportionality of the decision.
8. This submission by the SSHD has been taken out of the context of the decision as a whole. The judge has placed weight upon the OASys report but, as he is required, he undertook a full assessment of all of the evidence that was before him in reaching his conclusion.
9. The judge sets out the evidence and gives detailed reasons why he considers and places the weight he does on the evidence. He heard oral evidence. Although the SSHD may not agree with the decision reached by the judge it was a decision that was open to the judge on the evidence and his reasoned analysis of that evidence. The judge has not erred in law in his proportionality assessment, as submitted by the SSHD.

¹ (a) the respondent's bundle; (b) the bundle filed on behalf of the appellant and skeleton argument; (c) the decision of FtT Judge Paul; (d) The application for permission to appeal; and (e) the grant of permission to appeal.

Ground 2

10. The SSHD submits the judge failed to consider the seriousness of the consequences of re-offending and that the seriousness of the offence itself is indicative that the potential consequences of re-offending are serious.
11. Plainly if Mr Morgan were to re-offend then the potential consequences of that re-offending are serious. The judge was plainly aware that Mr Morgan had been convicted of a 'most serious offence'. But the judge considered the possibility of re-offending and the one very serious event he had been involved with and the sustainable reasoned finding by the judge of Mr Morgan's committed wish to avoid being in such a situation again, avoiding a bad peer group and being tempted by pack of money were all matters he was able to take into account. The judge did this and provided sustainable and adequate reasons for his conclusions. There is no error of law by the judge. Merely because the potential consequences are serious does not mean that such should be considered in isolation; it is a factor and a factor considered in the round by the judge.

Ground 3

12. The SSHD submits the judge has failed to consider the binding jurisprudence to the effect that the existence of a propensity to commit further crime and/or that past conduct may alone constitute the necessary threat to the public policy requirement.
13. The judge considered Mr Morgan's circumstances at the date of hearing and at the date of the offence. The circumstances that gave rise to a conviction may well be evidence of personal conduct that constitutes a present threat but in this case the judge carefully considered the circumstances then, the circumstances on the date of hearing not merely in terms of Mr Morgan's expressed wishes but in the context of the whole of the evidence.
14. The findings by the judge were detailed and sustainably reasoned. There is no error of law.

Conclusion

15. The three grounds relied upon by the SSHD are in essence a disagreement with the final decision of the FtT judge who carefully considered and analysed the evidence before him in order to determine whether Mr Morgan presented as a genuine present and sufficiently serious threat. The finding reached by the judge was open to the judge and was adequately reasoned and took account of all of the evidence before him.
16. There is no error of law by the FtT judge such that the decision is to be set aside to be remade.

Decision:

The making of the decision of the First-tier Tribunal did not involve the making of an error on a point of law.

I do not set aside the decision; the decision of the FtT judge allowing the appeal stands.

Jane Coker
Upper Tribunal Judge Coker

Date: 10th September 2020