



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: DA/00360/2019

THE IMMIGRATION ACTS

Heard at Field House
On 25 August 2020

Decision & Reasons Promulgated
On 27 August 2020

Before

UPPER TRIBUNAL JUDGE PITT

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

MR JAMAL ABDI
(ANONYMITY DIRECTION NOT MADE)

Respondent

Representation:

For the Appellant: Mr T Melvin, Senior Home Office Presenting Officer
For the Respondent: Ms A Radford, Counsel instructed by Turpin & Miller LLP

DECISION AND REASONS

1. This is an appeal against the decision issued on 9 January 2020 of First-tier Tribunal Judge Buckwell which allowed the appeal of Mr Abdi against deportation under the Immigration (European Economic Area) Regulations 2016 (the EEA Regulations).
2. For the purposes of this decision I refer to the Secretary of State for the Home Department as the respondent and to Mr Abdi as the appellant, reflecting their positions before the First-tier Tribunal.

3. The appellant is a national of Norway, born on 21 November 1998.
4. The appellant came to the UK in approximately 2004 at the age of 6 with his family. On 20 August 2015 he was cautioned for battery. On 9 July 2018 he was convicted of attempted robbery and threatening a person with a blade/sharply pointed odd article. He was sentenced on the same date to four years' detention in a Young Offenders' Institution (YOI) on the first count and to eighteen months' detention to run concurrently for the second count.
5. After these convictions the respondent commenced deportation proceedings against the appellant. A deportation order was signed on 25 March 2019. On 29 July 2019 the appellant was served with a decision informing him as to the respondent's reasons for deporting him.
6. The appellant appealed against the decision to deport him and his appeal came before First-tier Tribunal Judge Buckwell on 17 December 2019 at Hendon Magistrates' Court. As above, the First-tier Tribunal Judge allowed the appeal. The respondent challenged that decision and the First-tier Tribunal granted permission to appeal to the Upper Tribunal on 10 February 2020. Thus the matter comes before me.
7. The First-tier Tribunal Judge set out the respondent's decision to deport in paragraphs 6 to 24 of the decision. The evidence and submissions from the hearing are set out in paragraphs 29 to 84 of the decision. In paragraphs 85 to 88 the judge sets out the law which he applied to the evidence before him. The self-directions there set out are correct and not challenged by the respondent. The judge's reasons for allowing the appeal are set out in paragraphs 89 to 106.
8. The First-tier Tribunal Judge began his findings by taking into account the sentencing remarks of the Crown Court Judge; see paragraph 90. He indicated in paragraph 90 that "I have taken careful account thereof" and notes that it was the appellant who was the member of the team who carried out the robbery, that it was he who wore a mask and produced a knife. He also notes that the appellant pleaded not guilty.
9. The judge goes on in paragraph 91 to assess the OASys report which was before him. He takes into account that the appellant "was assessed at a medium risk in the community to the public and otherwise at a low risk". That is an accurate summary of the risk assessment contained in the OASys Report. The judge goes on in the same paragraph to note the Multi-Agency Public Protection Arrangements (MAPPA) assessment for the appellant was for category 2 because he had displayed violence and because of the length of his sentence.
10. In paragraphs 92 and 93 the judge finds that the appellant is entitled only to the lowest level of protection under the EEA Regulations as he could not show that his parents had been exercising treaty rights for at least five continuous years during his childhood and he did not qualify in his own right.

11. In paragraph 95 the judge considered the appellant's adjudications whilst he was in the Youth Offender Institute as follows:

"95. I do find it relevant that the Appellant has been subject to a significant number of adjudications whilst serving his sentence. Having dealt with a very significant number of deportation appeals relating to foreign citizens, in my experience it is unusual to find such a lengthy list applying to an individual Appellant.

96. The adjudications against the Appellant are of concern. Although there is a low risk of reoffending, if that was to occur the risk of harm to the public is nevertheless medium. Based on the history of the main offence committed by the Appellant I can appreciate the reasoning which led to that assessment. The adjudications continued until June this year. Although a decision may be taken on preventative grounds I am, notwithstanding the concerns which I have expressed, significantly influenced by the overall assessment that the Appellant presents as a low risk".

12. In paragraphs 97 and 98 the judge considered the evidence of the appellant's mother from whom he heard oral evidence. He stated:

"97. I do not believe that the Appellant's mother was other than straightforward in giving evidence. I do not accept the suggested criticism of her made by Mr Okoro. She is playing her part in her community and she has employment. I found her to be a very respectful person although of course she has been extremely worried by the behaviour of the Appellant. I suspect that within her own community she has felt very embarrassed by his actions.

98. I therefore give weight to the views expressed by the mother of the Appellant. I believe that she and her family members can now appropriately influence the Appellant and I find that that reduces the level of concern that might otherwise be present and which might support an adverse decision for the Appellant based on preventative grounds".

13. In paragraphs 99 and 100 the judge considered the appellant's rehabilitation:

"99. The actions of the Appellant lead me to find that he is rehabilitating himself. I have expressed my concerns about the adjudications but the Appellant was free of those for nearly a six month period prior to the hearing. I accept that he does not partake in cannabis now. He has the opportunity when on release on licence, with appropriate support, to make something of himself. His aunt (so-called in cultural terms, which I accept), has a worthwhile post which he can take up on a voluntary basis. That would certainly be of benefit and would enable him to continue his rehabilitation.

100. In contrast, if the Appellant were required to go to Norway he would arrive some sixteen years after he was last in the country. I accept the evidence mainly given by his mother, that there are no family member contacts in Norway, or ties, which would sensibly aid him on return to Norway. Whilst he is a citizen of that country, in reality that means little more than his entitlement to hold a Norwegian passport. The Appellant would not have support and he does not speak Norwegian. I accept that very many people in Norway speak English, but of course it is not the first language. I believe the Appellant would find himself

in significant difficulties as to integration and for such reasons the proportionality of the removal decision must be questionable”.

14. The judge then concludes that on balance the decision to deport the appellant was not proportionate. He makes it clear in paragraphs 102 and 106 that any further offending would have the potential to lead to a different outcome.
15. The respondent’s grounds argue in paragraph 4 that the First-tier Tribunal Judge was “significantly influenced by the ‘low’ risk of reoffending assessed in the OASys Report, without giving the same due consideration to the ‘medium’ risk of serious harm if he were to do so”. I can see no merit in that argument given that the First-tier Tribunal Judge considered the OASys Report accurately in paragraph 91, as set out above. He was clearly aware and “noted” on the face of the decision that he was aware that the appellant was assessed at medium risk in the community and otherwise at low risk. It is not arguable that he erred in law or took a perverse approach to the OASys assessment. He took into account the MAPPA category 2 assessment. As above, he took into account the sentencing remarks of the Crown Court Judge. It is not arguable that he did not place sufficient weight on the adjudications given what he says at paragraphs 95, 96 and 99. Where the judge considered the material evidence concerning the appellant’s criminal history, behaviour in prison and risk of reoffending and gave rational reasons for the findings he made, no error of law is shown.
16. In paragraph 5 of the grounds the respondent argues that the judge erred in his approach to the evidence given by the appellant’s mother. In my view, the respondent’s objections to the judge’s approach are merely disagreement. The judge heard from the mother, was entitled to form a view of her as a witness and explained clearly why he accepted her evidence and placed weight on it. His approach was lawful.
17. The grounds also object to the judge placing weight on the appellant’s rehabilitation where his adjudications continued after he had completed courses in detention. Firstly, the judge does not place any positive weight in his assessment on the appellant having taken courses in detention. Secondly, it is unarguable that he takes full account of the adjudications given what is said in paragraphs 95, 96 and 99. The judge provided clear and rational reasons for concluding that the appellant was rehabilitating in the UK where he would have difficulty doing so in Norway. Again, no error of law is shown.
18. It is therefore my view that the First-tier Tribunal Judge took a correct approach under the EEA Regulations to the assessment of whether the appellant constituted a genuine, present and sufficiently serious risk to the interests of the UK and whether, that being so, his deportation would be proportionate. He took into account the material evidence on the offending, the sentence, the sentencing remarks, the professional risk assessment in the OASys Report, the appellant’s adjudications and his wider circumstances. All of these were factors for the judge to weigh which he did with care and clarity and without there being any aspect of those considerations which could be said to be irrational or perverse. I therefore do not find that the decision under the EEA Regulations shows error. Where that is so and that aspect of

the decision of the First-tier Tribunal must be upheld, it is unnecessary to address further the respondent's challenge to the judge's findings under Article 8 ECHR.

Notice of Decision

The decision of the First-tier Tribunal does not disclose an error on a point of law and shall stand.

Signed: *S Pitt*
Upper Tribunal Judge Pitt

Date: 25 August 2020

