Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: DA/00486/2019 (V)

THE IMMIGRATION ACTS

Heard remotely by *Skype for Business*	**Decision & Reasons Promulgated**
On 22 September 2020	**On 28 September 2020**

Before

UPPER TRIBUNAL JUDGE NORTON-TAYLOR

Between

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

MANUEL DIAS MESTRE DA SILVA
(ANONYMITY DIRECTION NOT MADE)

Respondent

Representation:
For the appellant: Ms S Cunha, Senior Home Office Presenting Officer
For the respondent: In person

DECISION AND REASONS

Introduction

1. For ease of reference, I shall refer to the appellant as the Secretary of State and to the respondent as Mr Da Silva.

2. The hearing in this matter was conducted remotely using *Skype for Business*, with the Upper Tribunal sitting at Field House. Aside from a couple of minor technical glitches during the course of the hearing, the proceedings ran smoothly, and I was satisfied that both Ms Cunha and Mr

Da Silva were able to follow what was being said and present their own submissions clearly.

3. This is an appeal by the Secretary of State against the decision of First-tier Tribunal Judge Wilding ("the judge"), promulgated on 19 December 2019, in which he dismissed Mr Da Silva's appeal against the respondent's decision to make a deportation order under the Immigration (European Economic Area) Regulations 2016, as amended.

4. Mr Da Silva is a citizen of Portugal, born in 1995. He came to the United Kingdom with his mother at the age of 15 and has resided here ever since. In the period 2016 and 2017, Mr Da Silva accrued convictions connected to the supply and possession of Class A, Class B, and Class C drugs. In March 2018, he was sentenced for a total of 43 months' imprisonment.

5. In making her decision, the Secretary of State accepted that Mr Da Silva had acquired a permanent right of residence in United Kingdom. She went on to conclude that the nature of the offending disclosed serious grounds of public policy for Mr Da Silva's deportation, and that, having regard to all relevant circumstances, he represented a genuine, present, and sufficiently serious threat to the fundamental interests of society, and that deportation would be proportionate.

The judge's decision

6. In what is a concise decision, the judge made the following essential findings:

i. the evidence of Mr Da Silva, his brother and mother, was all entirely credible;
ii. the Secretary of State had been able to show that there were "serious" grounds of public policy in this case;
iii. whilst weight was placed on the OASys report, the evidence from Mr Da Silva, his brother and mother, and a drugs rehabilitation organisation called Arch, showed there was no genuine risk that Mr Da Silva would re-offend;
iv. as a result, the Secretary of State had failed to demonstrate that there was a genuine, present, and sufficiently serious threat to the fundamental interests of society;
v. in light of that finding, the judge did not consider it necessary to go on and undertake a full proportionality exercise. The absence of a genuine risk of reoffending rendered the Secretary of State's decision disproportionate in any event.

7. The appeal was duly allowed.

The grounds of appeal and grant of permission

8. The Secretary of State's grounds of appeal assert that the judge failed to provide adequate reasons and failed to have regard to relevant considerations. He had failed to take proper account of the OASys report,

which classed Mr Da Silva as posing a medium risk of serious harm to the public were he to re-offend. He had failed to take account of the sentencing remarks and any issues relating to a lack of employment when considering the risk of re-offending. In relying on the evidence from Mr Da Silva and his family members, the judge failed to take into account the apparent fact that they have been unable to prevent the previous offending, that there was no corroborative evidence about Mr Da Silva being drug-free, and that the evidence presented was "self-serving" and partial. Finally, it is said that the judge failed to take account of the short time period between Mr Da Silva being released from immigration detention and the hearing.

9. Permission to appeal was granted by First-tier Tribunal Judge Appleyard on 20 January 2020.

The hearing before me

10. Ms Cunha withdrew a particular aspect of the grounds of appeal at the outset. In respect of Mr Da Silva being drug-free, it was wrong to have asserted that the judge failed to make any reference to evidence on this point: such evidence had come from Mr Da Silva himself and the Arch organisation, and this had been referred to by the judge in paragraph 16 of his decision.

11. Ms Cunha relied on the Upper Tribunal decision in Vasconcelos (risk-rehabilitation) [2013] UKUT 00378 (IAC), at paragraphs 39-40, in respect of the issue of the risk of re-offending and serious harm. The judge had failed to deal with what level the OASys report had classified Mr Da Silva as presenting. The judge had also failed to deal with the motivation lying behind the previous offending. She submitted that the judge had failed to explain what had changed between the family members being unable to prevent the offending and the situation now. There are no reasons as to why the family could "guarantee" that Mr Da Silva would not re-offend.

12. I was entirely satisfied that Mr Da Silva understood precisely what was being said by the Secretary of State. He told me that the risk assessment in the OASys report had been conducted some months before he was actually released. He had in fact been entirely drug-free since he was sentenced in March 2018. He told me that he had never offended whilst living at the family home; he had in fact been living away with a girlfriend at the relevant time. He had been distanced from his family then, but since his release from immigration detention has been living with his brother. The brother provides him with all forms of support. Whilst Mr Da Silva did not have a job at the time of the hearing before the judge, he told me that he has been working full-time since mid-September of this year.

13. At the end of the hearing I reserved my decision.

Decision on error of law

14. I have concluded that there are no errors in the judge's decision such that it should be set aside.

15. I have already mentioned the conciseness of the decision. Whilst it might have been advisable to provide a little more detail, brevity is often commendable and, in the circumstances of this case, it does not of itself disclose any error of law.

16. The judge heard evidence from Mr Da Silva and his family members. It was plainly open to him to consider that evidence to be credible (it was variously described as "impressive" and "persuasive"). The reference in the grounds of appeal to this evidence being "self-serving" adds nothing to the Secretary of State's challenge. It could of course be said that *any* evidence emanating from an individual and/or family members would *always* be "self-serving" and thus undeserving of material (or indeed any) weight. That is plainly not the case.

17. It is clear that the judge had regard to the OASys report and the assessment of the risk of re-offending contained therein (see paragraphs 4 and 15 of his decision and page 7 of 46 of the report itself. The risk was stated as being "low"). The judge expressly stated that he was placing weight on the report. As a simple matter of fact, the judge was entitled to state that the risk assessment was expressed as "a percentage chance on a sliding scale". Although the categorisation of Mr Da Silva posing a "medium" risk of serious harm if he were to re-offend is not specifically referred to by the judge, this particular issue fell to be assessed in light of the analysis of the likelihood of Mr Da Silva re-offending in the first place.

18. This analysis was, I conclude, adequately undertaken by the judge. The credible evidence before him provided by Mr Da Silva and his family members satisfied the judge that: genuine remorse and self-reflection had occurred; there had been a reuniting of the family unit, with the support that that entailed; that previous problematic relationships with others, had been "cut off"; and that Mr De Silva had expressed a genuine resolve to remain drug-free. In paragraph 23, the judge recognised that the percentage scores set out in the OASys report were not at the lowest end of the sliding scale. They were, however, "tempered" by what was described as the "clear evidence" of Mr Da Silva and his family members in respect of the matters I have just referred to. All of these factors were relevant to the issue of the risk of re-offending, which in turn had an impact on the likelihood of Mr Da Silva posing a medium risk of serious harm to the public. In this regard, I note the definition of "medium risk of serious harm" set out in the OASys report at page 36 of 46. It is said that there are "identifiable indicators of risk of serious harm", with the individual having the "potential" to cause such harm. However, this would be "unlikely" unless there was a change of circumstances, which might include loss of accommodation, relationship breakdown, or drug misuse. In the present case, the judge had accepted the evidence that Mr Da Silva was drug-free, was committed to remaining so, and was living in a stable

environment with a close family member who was providing material support.

19. Ms Cunha did not suggest that Mr Da Silva had not in fact been residing with his brother since release from immigration detention in October 2019, nor did she refer me to any evidence showing that Mr Da Silva had been offending whilst living with other family members.

20. The judge did not specifically refer to the prospects of Mr Da Silva obtaining employment. However, this does not disclose any error in light of the judge's favourable credibility findings as to the support being provided by the brother at the material time. Whilst it forms no basis for my reasoning, it is of some note that Mr Da Silva has, I accept, now obtained full-time employment.

21. It is plain that the judge was aware of the fairly short period between Mr Da Silva being released from immigration detention and the hearing. It is simply not tenable to suggest that he had entirely left this out of his mind when assessing the relevant factors.

22. As regards the case of Vasconcelos, I note, paragraph 1 of the judicial headnote, which states:

> "In assessing whether and EEA national represents a current threat to public policy by reason of a risk of resumption of opportunistic offending, the Tribunal should consider any statistical assessment of re-offending provided by NOMS but is not bound by such data. If the overall assessment of the evidence supports the conclusion of continued risk."

23. The judge did consider the statistical assessment of re-offending, as contained in the OASys report. He also took account of other evidence before him, as he was fully entitled to do.

24. In summary, the judge was entitled to make the findings that he did and to draw the stated conclusions therefrom. His decision stands.

Anonymity

25. The First-tier Tribunal did not make an anonymity direction and there is no reason for me to do so. I do not make one.

Notice of Decision

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

27. The Secretary of State's appeal to the Upper Tribunal is dismissed.

28. The decision of the First-tier Tribunal stands.

Signed: H Norton-Taylor
Upper Tribunal Judge Norton-Taylor

Date: 23 September 2020