



**Upper Tribunal
(Immigration and Asylum Chamber)** Appeal Number: DA/00083/2020

THE IMMIGRATION ACTS

Determined without a hearing

On 7 June 2022

Decision & Reasons

Promulgated

On 15 June 2022

Before

UPPER TRIBUNAL JUDGE OWENS

Between

**TAMYTHA LEE HOPKINS
(ANONYMITY ORDER NOT MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

DECISION AND REASONS

1. The appellant appeals with permission against the decision of First-tier Tribunal Judge Fox sent on 28 March 2021 dismissing the appellant's appeal against the decision to deport the appellant pursuant to Regulation 23(6)(b) and Regulation 27 of the Immigration (EEA) Regulations 2016. ("the Regulations").
2. The appellant has permanent residence in the UK. She was convicted of wounding with intent at Laganside Crown Court and was sentenced to 2 years and 3 months imprisonment followed by 2 years and three months on licence.
3. The judge dismissed the appeal.
4. The grounds asserted that the judge misdirected himself in law by failing to apply the correct test of "serious grounds of public policy". The judge failed to make adequate findings in respect of whether

the appellant poses a genuine, present and sufficiently serious risk to one of the fundamental interests in society, failed to take into account the reclassification of the appellant from category 2 to category 1 and taking into account the public interest in deportation as a measure of general deterrence rather than looking at the personal conduct of the appellant. The grounds also argued that the appellant would have significant difficulties integrating into life in the USA where she has not lived for over ten years and due to her pre-existing medical conditions.

5. In the grant of permission this Tribunal issued directions indicating that the preliminary view of the Tribunal is that the decision contained several errors of law sufficient to set aside the decision and remit the appeal to the First-tier Tribunal for a de novo hearing without holding an oral hearing at the Upper Tribunal. The parties were given the opportunity to object to this course of action.
6. On 11 August 2021 the respondent indicated that the Secretary of State does not resist the course of action proposed in the directions. It is accepted by the Secretary of State that the decision is materially flawed because it does not contain clear findings in respect of Regulation 27(5)(c) of the Regulations. The appellant did not respond to directions objecting to this course of action. It is manifest from the grounds of appeal that the appellant believes the decision to be flawed and that it should be set aside.
7. In these circumstances I am satisfied that both parties are in agreement that the decision contains a material error of law and that it is fair and in the interests of justice to determine the error of law decision without an oral hearing in accordance with rule 34 of the Tribunal Procedure (Upper Tribunal) Rules 2008.
8. The decision is flawed by the judge's failure to make clear findings in respect of Regulation 27(5) of the Regulations, in particular by a failure to make findings as to whether the appellant poses a genuine, present and sufficiently serious threat to a fundamental interest of society, by taking into account irrelevant factors such as the public interest in general deterrence in what is an EEA appeal, and failing to take into account the appellant's reclassification from category 1 to category 2.
9. Given the extent of the findings needed, both parties are agreed that it is appropriate to remit the appeal to be heard de novo.

Notice of Decision

10. The decision of the First-tier Tribunal involved the making of an error of law.

11. The decision of the First-tier Tribunal is set aside, and the findings of the First-tier Tribunal are set aside in their entirety.
12. The appeal is remitted to the First-tier Tribunal to be heard de novo by a judge other than First-tier Tribunal Judge Fox.

Signed

Date: 7 June 2022

R J Owens
Upper Tribunal Judge Owens