Upper Tribunal
(Immigration and Asylum Chamber) **Appeal Number: UI-2022-001858**
(DA/00212/2020)

THE IMMIGRATION ACTS

Heard at Birmingham Civil Justice Centre
On the 8 November 2022

Decision & Reasons Promulgated
On the 23 November 2022

Before

UPPER TRIBUNAL JUDGE KEBEDE

Between

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

ALTIN CECO

Respondent

Representation:
For the Appellant: Mr C Williams, Senior Home Office Presenting Officer
For the Respondent: Mr M Azmi, instructed by Wright Justice Solicitors

DECISION AND REASONS

1. This is an appeal by the Secretary of State for the Home Department against the decision of the First-tier Tribunal allowing Mr Ceco's appeal against a decision to deport him from the United Kingdom under the Immigration (European Economic Area) Regulations 2016 ("the EEA Regulations").

2. For the purposes of this decision, I shall hereinafter refer to the Secretary of State as the respondent and Mr Ceco as the appellant, reflecting their positions as they were in the appeal before the First-tier Tribunal.

Immigration History

3. The appellant is a citizen of Albania, born on 24 July 1978. He entered the United Kingdom illegally on 24 April 2000 and applied for asylum. His claim was refused on 1 November 2001 and his appeal against that decision was dismissed on 1 May 2003. He became appeal rights exhausted on 15 March 2003. In the meantime, on 1 November 2002, he was convicted of using a false instrument and sentenced to one year's imprisonment.

4. On 11 October 2006 the appellant applied for indefinite leave to remain as a spouse, but his application was refused on 4 January 2007. His appeal against that decision was dismissed on 7 March 2007 and he became appeal rights exhausted on 4 May 2007. He was next encountered by immigration services on 6 June 2007 when he was discovered working and was served with papers as an overstayer and put on reporting conditions, with which he complied. On 17 July 2007 he voluntarily departed from the UK.

5. On 19 July 2007 the appellant applied for entry clearance as the spouse of a British citizen and was issued with a visa valid from 7 September 2007 until 7 September 2009. He re-entered the UK on 19 September 2007. His leave was curtailed on 10 November 2008 when his wife informed the Home Office that the marriage had broken down. The appellant successfully appealed against the curtailment decision and applied for a residence card as an EU family member subsequent to his marriage to an EU citizen. He was granted a residence card on 9 June 2011 as a family member of an EEA national, valid until 9 June 2016, and was subsequently issued with a further permanent residence card on 22 December 2016, valid until 26 December 2026.

6. On 5 June 2017 the appellant was convicted of conspiracy to possess a Class A controlled drug (cocaine) with intent to supply and he was sentenced to 7 years and 8 months imprisonment. On 24 February 2018 he was notified of his liability to deportation. Following a review of his immigration case and owing to the fact that he had previously been granted a permanent residence card as the family member of an EEA national, a further liability to deportation decision was served on him on 27 April 2018. He made written representations in response on 30 October 2018.

Deportation Decision

7. On 15 June 2020 the respondent made a decision to make a deportation order against the appellant on grounds of public policy, in accordance with regulation 23(6)(b) and regulation 27 of the EEA Regulations 2016.

8. In that decision the respondent accepted that the appellant was a family member of an EEA national and that, as such, he qualified for consideration under the EEA Regulations 2016. The respondent accepted further that the

appellant had resided in the UK in accordance with the EEA Regulations for a continuous period of five years and that he had therefore acquired a permanent right of residence. The respondent went on to consider whether the appellant's deportation was justified on serious grounds of public policy and, due to the nature and seriousness of his offence, concluded that he represented a genuine, present and sufficiently serious threat of harm to the public. The respondent considered that the appellant posed a high risk of re-offending, irrespective of an OASys report concluding that he posed a low risk of harm and a low risk of re-offending and concluded that it was imperative that he be deported form the UK in order to preserve the safety and security of those resident here. The respondent considered that the decision to deport the appellant to Albania was proportionate, noting that his partner and three children had moved to the Czech Republic whilst he was in prison, and concluded that deportation would not prejudice the prospects of his rehabilitation.

9. As for Article 8, the respondent accepted that the appellant had a genuine and subsisting relationship with his three children prior to going to prison but noted that his partner and children were not British citizens and were no longer living in the UK. The respondent did not accept that the appellant had been lawfully resident for most of his life and did not accept that he was socially and culturally integrated in the UK or that there would be very significant obstacles to his integration in Albania. The respondent considered that the exceptions to deportations on family and private life grounds were therefore not met and that there were no very compelling circumstances outweighing the public interest in the appellant's deportation.

Appeal to the First-tier Tribunal

10. The appellant appealed against that decision and his appeal was heard by Judge Mehta in the First-tier Tribunal on 10 February 2022. In a decision promulgated on 2 March 2022 the judge allowed the appeal under the EEA Regulations, concluding that the appellant presented as a low risk of re-offending and that his removal from the UK was not justified on public policy grounds as he did not pose a sufficiently serious threat to the fundamental interests of society.

11. Permission to appeal was sought by the Secretary of State on the grounds that the judge had failed to give adequate reasons for his findings on material matters including his finding that the appellant was a credible witness and that there was no propensity to reoffend; and that the judge had failed to have adequate regard to the provisions of Schedule 1 of the EEA Regulations 2016 and had failed correctly to apply paragraph 3 of Schedule 1.

12. Permission to appeal was refused in the First-tier Tribunal but was subsequently granted on a renewed application in the Upper Tribunal. The matter then came before me for a hearing.

Hearing and submissions.

13. Both parties made submissions before me.

14. Mr Williams submitted that the judge did not address Schedule 1, paragraph 3 of the EEA Regulations, whereby he was bound to consider that the longer the sentence, the greater was the likelihood that the appellant's continued presence in the United Kingdom represented a genuine, present and sufficiently serious threat affecting the fundamental interests of society, and that the judge's mention at [27(i)] that he did not underestimate the seriousness of the appellant's conviction was not enough. Mr Williams submitted further that the judge at [27(ii)] relied upon the OASys assessment of the appellant as a low risk of re-offending but the Home Office Presenting Officer at the hearing had made the point that the author of the OASys report was unaware of the appellant's previous conviction; that the judge referred at [27(iv)] to courses undertaken by the appellant in prison, but did not explain how that assisted in his rehabilitation; that the judge relied at [27(v)] upon the appellant being under supervision by the probation services but did not consider that he still had ongoing deportation proceedings or that he had not been tested when unsupervised; that at [27(vi)] the judge did not say why he found the appellant credible, and in so doing failed to take account of his previous conviction for dishonesty and the adverse credibility findings made by the previous Tribunal; and that the judge, in the same paragraph, relied upon the fact that the appellant had the support of family and friends but did not say why that was a preventative factor when such support was previously available at the time he was offending. Mr Williams submitted that the judge had therefore given inadequate reasons for his conclusions.

15. Mr Azmi submitted, with regard to the point taken about the judge's positive credibility findings, that the decision of the previous Tribunal in 2003 had been a papers case and that the Tribunal had made very general credibility findings based on the papers rather than on any aspect of the appellant's own evidence. He submitted that Judge Mehta had made clear credibility findings at [27(vi)] after a thorough cross-examination and had appropriately dealt with the issue of credibility. As for the assertion that the judge had failed to consider Schedule 1 of the EEA Regulations 2016, that was not the case as he had set out the correct legal framework at [21] and had referred to the fundamental interests of society at [26], he had considered the seriousness of the appellant's offending and the evidence of the risk of reoffending and was fully aware of the appellant's previous conviction but recognised that it had occurred many years ago. Mr Azmi submitted that, taken as a whole, the judge had dealt with all relevant matters and the respondent's grounds were mere disagreement.

Discussion and findings

16. Mr Azmi accepted that the judge's decision lacked detail, but he submitted that the findings and reasons were nevertheless sufficient. However, I cannot agree. Whilst the brevity of a decision is not a necessary reflection of an inadequacy of reasoning, it seems to me that it was in this case. The judge's reasons for concluding that the appellant did not pose a risk to society, as set

out in six sub-paragraphs at [27] of the decision, are extremely brief and lack any proper reasoning.

17. Turning firstly to [27(i)], the judge commented that he did not underestimate the seriousness of the appellant's conviction and he referred to his previous conviction as being some time ago. Mr Azmi submitted that that, taken together with the judge setting out the legal framework at [21] and referring to the fundamental interests of society at [25] and [26], was sufficient to demonstrate that he had had regard to the requirements in Schedule 1 of the EEA Regulations. I do not agree. As the grounds assert, there was nothing in the judge's decision to demonstrate that he gave any consideration to the requirements in Schedule 1 and, in particular, there was no indication that he applied paragraph 3 of Schedule 1 by considering the greater likelihood of the appellant's continued presence representing a genuine, present and sufficiently serious threat owing to the length of his sentence.

18. At [27(iv)] the judge took into account the courses the appellant had completed in custody, but as Mr Williams submitted, he provided no details of the nature of the courses and gave no explanation as to how, or in what way, undertaking the courses assisted his rehabilitation. At [27(v)] the judge relied upon the appellant being under the supervision of his probation officer as a positive factor in demonstrating a low risk of re-offending but failed to consider the alternative view, as expressed in the grounds at [1], that the appellant had not yet been tested when not under the threat of deportation and under licence. At the end of [27(vi)] the judge gave weight to the support the appellant had from family and friends, but as Mr Williams submitted, failed to explain how that reduced the risk of re-offending when the same family and friends had failed to prevent him from offending previously.

19. As for the finding at [27(vi)] that the appellant was a credible witness, I agree with the point made by Judge Gill in granting permission, that it was not possible for the respondent to know why he reached that conclusion, particularly since he did not summarise the evidence before him and gave no details of the account provided by the appellant in oral evidence. Further, as the respondent asserted in the grounds, it seems that in reaching his positive credibility findings, the judge failed to take into account the fact that the appellant had previously been convicted for an offence involving dishonesty and also failed to have regard to the adverse credibility findings made against him by a previous tribunal in 2003. Indeed, it is the case that two previous tribunals had found the appellant's evidence to lack credibility. Judge Wiseman, in a decision promulgated on 1 May 2003, noted references by the respondent in the refusal letter to discrepancies and inconsistencies in the appellant's evidence and made a finding that the appellant's account of a blood feud between his family and another lacked credibility. Mr Azmi sought to dismiss the adverse credibility findings on the grounds that the hearing was on the papers without oral evidence from the appellant and that the adverse findings were general in nature. However, the adverse findings arose from the appellant's own account given at his interview and in his statements and made specific references to that evidence and, as such, were plainly material to an overall assessment of the reliability of his evidence. Further, Judge Phillips, in a

decision promulgated on 7 March 2007 (contained in the respondent's appeal bundle before Judge Mehta), did not accept the appellant and his sponsor at the hearing to be credible witnesses, noting various discrepancies and inconsistencies in their evidence. There is simply no indication in Judge Mehta's decision that he considered any of that history when assessing the appellant's credibility.

20. In light of the above and given the paucity of reasoning at [27], I agree entirely with the respondent that the judge's reasons for concluding that the appellant did not pose a risk to society were inadequate and were materially flawed. The judge's reliance upon the OASys assessment at [27(ii)] was not a sufficient basis on its own to conclude that the appellant posed no ongoing threat, when considered together with the flawed reasoning in the remainder of that paragraph. The judge's decision as a whole is inadequately reasoned and is accordingly unsustainable and I therefore set it aside in its entirety. The errors are such that none of the findings and conclusions can be preserved and accordingly the appropriate course is for the matter to be remitted to the First-tier Tribunal to be heard afresh.

DECISION

21. The making of the decision of the First-tier Tribunal involved the making of an error on a point of law. The Secretary of State's appeal is allowed, and the judge's decision is set aside.

22. The appeal is remitted to the First-tier Tribunal pursuant to section 12(2)(b)(i) of the Tribunals, Courts and Enforcement Act 2007 and Practice Statement 7.2(b), to be heard *de novo*, before any judge aside from Judge Mehta.

Signed: S Kebede
Upper Tribunal Judge Kebede Dated: 9 November 2022