IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2022-003159
First-tier Tribunal No:
DA/00014/2022

THE IMMIGRATION ACTS

Decision & Reasons Issued:
On the 28 April 2023

Before

UPPER TRIBUNAL JUDGE NORTON-TAYLOR

Between

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

JAMES FRANCO MATOS
(NO ANONYMITY DIRECTION MADE)

Respondent

Representation:
For the Appellant: Mr S Whitwell, Senior Presenting Officer
For the Respondent: Mr S Khan, Counsel, instructed by AQ Archers Solicitors

Heard at Field House on 15 March 2023

DECISION AND REASONS

1. I shall refer to the parties as they were before the First-tier Tribunal: the Secretary of State is once against "the Respondent" and Mr Matos is "the Appellant".

2. The Respondent appeals with permission against the decision of First-tier Tribunal Judge Isaacs, promulgated on 1 June 2022, by which she allowed the Appellant's appeal against the Respondent's decision to make a deportation order in the context of the Appellant being a citizen of Portugal and thus an EEA national. The Appellant was born in the United Kingdom and had resided in this country ever since.

3. Relevant to these particular proceedings is the fact that the Appellant had received three criminal convictions, in June 2017, March 2018 and February 2020, the last of which related to an offence of wounding with intent to inflict grievous bodily harm, for which he was sentenced to four years' imprisonment. The

Respondent's decision which led to the appeal before the judge was made on 13 January 2022.

4. The judge summarised the relevant background and the submissions made on behalf of the parties, briefly stated a number of relevant facts, and then set out the relevant the legal framework within which he was considering the appeal. This included regulation 27 of the Immigration (European Economic Area) Regulations 2016 and it is to be noted that the parties had agreed correctly that the Appellant was entitled to the highest level of protection under those Regulations, namely that imperative grounds of public security had to be shown by the Respondent. The judge also made reference to Schedule 1 to the 2016 Regulations, which set out a number of public policy and public security considerations.

5. From paragraph 46 onwards, the judge carried out her assessment and stated her conclusions. She took account of, in particular, the last offence and what the sentencing judge had to say about that. She had regard to the OASys report from April 2020, together with a recent and detailed letter from the Appellant's Offender Manager from May 2022. The judge assessed evidence received from the Appellant and witnesses which she considered to be credible. The judge took the view that the Appellant had shown that his behaviour and attitude had changed since committing the last offence. The judge found as a fact that the Appellant was no longer carrying a weapon with him and no longer smoked cannabis. She accepted evidence from family members that the Appellant had matured and, bringing all relevant matters together, found at paragraph 53 that:

> "I find that on the balance of probabilities the risk of the Appellant committing a further offence has diminished since April 2020 when the OASys report assessed the risk. I do not find on the balance of probabilities that the Appellant does pose a genuine, present and sufficiently serious threat affecting one of the fundamental interests of society, even allowing for the fact that the threat does not need to be imminent. I find the decision to deport the Appellant is not proportionate. I find that there are no imperative grounds of public security to deport the Appellant under Regulation 27 of the EEA Regulations 2016."

6. Unhappy with the judge's decision, the Respondent sought permission from the First-tier Tribunal. Permission was refused in the first instance, with the relevant judge regarding the ground as drafted as amounting to nothing more than a disagreement with the assessment of, and conclusions on, the evidence. The same grounds were then put forward on renewal and permission was granted by the Upper Tribunal by a decision sealed on 7 October 2022. I set out the Respondent's grounds in the full here:

> "1. It is submitted that there is insufficient evidence that the appellant has adequately addressed the reasons for his offending behaviour. The OASys assessment found that the appellant posed a medium risk of re-offending and there was a high risk of harm to the public and a known adult. The nature of the risk is physical violence which could result in death. The risk includes the use of weapons, fear of violence and associated psychological harm. Circumstances likely to increase the risk are associating with pro-criminal peers and should he become involved in a confrontational situation particularly if he is in possession of a weapon. The most recent letter from the probation service dated May 2022 had concerns about the appellant's

current address. The social circle the appellant moves in the may have changed but he is still in contact with two friends who his college had previously deemed to be gang associates. There is no evidence that his family had previously been able to stop his criminality. It is therefore considered that the potential exists for the appellant to commit further offences in the future.

2. [The judge] believes the appellant no longer carries a knife or smokes cannabis without, it is respectfully submitted, giving adequate consideration to the fact that he has lied previously to the police and to the probation officer.

3. It is respectfully submitted that [the judge] fails to adequately consider that the appellant is only recently released on 14 February 2022, under the threat of deportation. It is submitted that it is too soon to find he is no longer a threat.

4. It is respectfully submitted that the appellant's offending history is in itself strongly indicative of a propensity to re-offend and that the potential consequences of re-offending are serious…

5. Reliance is placed on the case of Tsakouridis… Which confirmed that the definition of 'imperative grounds of public security' should not be restricted to attacks on the state but can also include serious criminality.

6. Paragraph 7 of the Schedule concerns the fundamental interests of society… It is respectfully submitted that [the judge] has failed to engage with the Schedule.

7. In respect of rehabilitation… It is submitted that there are no obstacles to reintegration and that there is no reason why the appellant could not undertake his rehabilitation in Portugal. The evidence suggests that the appellant's main support network is all Portuguese and support outside this community is limited to his friends. Therefore, he is not completely alien to Portugal, the language is spoken at home, his mother and father gave evidence at appeal in Portuguese, and he has visited the country. Treatment is available in Portugal for the appellant's diagnosis. Furthermore, the appellant has lived away from his parents both at his aunt and uncle's house and in a hostel."

7. I shall address these grounds in turn, below.

8. At the hearing, Mr Whitwell valiantly attempted to support the grounds as drafted, with additional concise oral submissions. He was quite properly aware of the constraints placed by the grounds and did not seek to stray beyond them, but urged me to find that there were indeed errors in the judge's decision. In particular, he submitted that the judge: (a) failed to engage with, or provide adequate reasons in relation to, a number of matters set out in the OASys report; (b) failed to take any or any proper account of the two previous convictions when making her overall assessment; (c) failed to to factor in the fact that the Appellant had previously lied when assessing his credibility; and (d) had failed to properly engage with the considerations set out in Schedule 1.

9. In response, Mr Khan submitted that the grounds amounted to nothing more than a disagreement with findings of the judge who had heard oral evidence and

had taken a cumulative view of all the materials before her. The conclusions reached, he submitted, been open to her, and there were no material errors of law.

10. I conclude that there are indeed no material errors of law in the judge's decision.

11. I remind myself of the need to exercise appropriate restraint before interfering with the decision of the First-tier Tribunal and this is particularly so where the judge has considered not simply a range of documentary sources, but also live evidence from an individual and in this case witnesses. Further, this was a case which involved a holistic assessment of the evidence and a weighing up of all relevant considerations within the context of what was accepted to be a high threshold to be met by the Respondent, namely the need to show imperative grounds.

12. The grounds of appeal, in my view, read almost entirely as though they were submissions that could or should have been made (or indeed were made) to the First-tier Tribunal and their wording is indicative of nothing more than a series of disagreements with the judge's decision.

13. The very first sentence of paragraph 1 of the grounds is an example of this: "It is submitted that there is insufficient evidence that the Appellant has adequately addressed the reasons for his offending behaviour". Whilst the Respondent may have taken the view that there was insufficient evidence, the judge had clearly considered a range of sources including the sentencing remarks, the OASys report, a detailed and much more recent letter from the Offender Manager, live evidence from the Appellant, and live (and unchallenged) evidence from witnesses. All of this was, in my judgment, taken into account as it should have been - weighing up points for and against the Appellant.

14. In respect of paragraph 2 of the grounds, the judge made the finding in relation to the carrying of a knife and the cessation of smoking cannabis having considered the range of evidence to which I have already referred. There is simply no merit to the assertion that she failed to give adequate consideration to the fact that he had lied previously. The judge acknowledged the fact that the Appellant had lied when first arrested in relation to the wounding offence. It is there on the face of the decision: paragraph 47.

15. In respect of paragraph 3 of the grounds, it is simply a submission and nothing more than what is on any view just a disagreement. I note that at paragraph 39 the judge stated in terms that the Appellant had been released from custody in February 2022 and it is, in my view, unarguable that the judge had failed to adequately consider this particular point. Indeed, when one looks at paragraph 51, the judge stated in terms that "I accept that it is only a short period since the Appellant left custody."

16. Paragraph 4 of the grounds is again nothing more than a disagreement, as with the first sentence of paragraph 1 of the grounds. It is simply an expression of the Respondent's view that the offending history "is in itself strongly indicative of a propensity to reoffend". The judge's assessment, reaching a contrary conclusion, was based on the entirety of the evidence before her. Reasons were given for why the favourable assessment was arrived at and these related once again to consideration of all of the evidence including that from witnesses and the

Offender Manager's report from May 2022. There was quite clearly no obligation on the judge to provide reasons for reasons.

17. In respect of the Schedule 1 issue raised in paragraphs 6 and 7 of the grounds and relied on by Mr Whitwell at the hearing, the judge set out that Schedule in her decision and referred back to it at paragraph 53. I am satisfied that the judge had the relevant considerations in mind. It would take something clear on the face of the decision to convince me that, notwithstanding her reference to the Schedule, she had simply left it out of her mind when undertaking her detailed assessment. There are no such contraindications in this particular case.

18. To the extent that any perversity challenge was sought to be made (although not expressly stated in the grounds), it would have no merit whatsoever and the judge's decision was plainly open to her on a rational view of the evidence as a whole.

19. Mr Whitwell had relied on the apparent absence of specific reference to the two previous offences in the assessment section of the judge's decision, but in addition to these offences being noted earlier on in the decision, they are in fact again referred to at paragraph 48. It is close to being inconceivable that the judge would not have had had the relevant history in mind when carrying out her overall assessment and I remind myself that not each and every point raised by a party need be set out in a decision.

20. Whilst the OASys report was not set out or analysed in great detail in the relevant assessment section, the judge was quite clearly well aware of it and, in any event, that was one item of evidence amongst a number of others.

21. Overall, there are no errors of law in the judge's decision. Indeed, in my view the grounds of appeal have no merit at all.

22. As a postscript, I have been made aware that in November 2022 (approximately five months after the judge's decision was promulgated), the Appellant has been convicted of a further offence involving possession of a bladed article in public. I have not taken that into account in these proceedings. It is of course open to the Respondent to take whatever action she deems appropriate in due course, but for now the Respondent's appeal to the Upper Tribunal is dismissed and the decision of the First-tier Tribunal stands.

Notice of Decision

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

The decision of the First-tier Tribunal shall stand.

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

H Norton-Taylor
Judge of the Upper Tribunal
Immigration and Asylum Chamber

Dated: 20 March 2023