Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: UI-2022-003823
DA/00255/2020

THE IMMIGRATION ACTS

Heard at Field House	**Decision & Reasons Promulgated**
On 15 November 2022	**On 29 January 2023**

Before

THE HONOURABLE MRS JUSTICE THORNTON DBE
(SITTING AS A JUDGE OF THE UPPER TRIBUNAL)
UPPER TRIBUNAL JUDGE BRUCE

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

And

MR KLAUSI BEQIRI
(ANONYMITY DIRECTION NOT MADE)

Respondent

Representation:
For the Appellant: Ms Willocks-Briscoe, Senior Home Office Presenting Officer
For the Respondent: Mr Toal, instructed by BMAP (Bureau for Migrant Advice and Policy)

DECISION AND REASONS

1. The Secretary of State appeals against the decision of the First-tier Tribunal Judge upholding Mr Beqiri's appeal against the decision of the Secretary of State to deport him pursuant to Regulations 23 and 27 of the Immigration (European Economic Area) Regulations 2016 (SI (2016/1052)), referred to for the remainder of this judgment as the EEA Regulations.

2. For ease of reference the parties are referred to in this judgment as they were in the First-tier Tribunal namely Mr Beqiri as the appellant and the Secretary of State as the respondent.

The Legal Framework

3. The Secretary of State's deportation decision was made under the 2016 Regulations as retained together with Section 5(1) of the Immigration Act 1971. The burden of proof in establishing the facts relied upon in support of the deportation rests with the respondent with the standard of proof being a balance of probabilities. Pursuant to Regulation 23(6)(b) an EEA national who has entered the UK may be removed if "the Secretary of State has decided that the person's removal is justified on grounds of public policy, public security or public health in accordance with Regulation 27".

4. Regulation 27 provides, as is material, as follows:

> 27(5) the public policy and public security requirements of the United Kingdom include restricting rights otherwise conferred by these Regulations in order to protect the fundamental interests of society and where a relevant decision is taken on grounds of public policy or public security it must also be taken in accordance with the following principles
>
> (a) the decision must comply with the principle of proportionality
>
> (b) the decision must be based exclusively on the personal conduct of the person concerned
>
> (c) the personal conduct of the person concerned must represent a genuine, present and sufficiently serious threat affecting one of the fundamental interests of society taking into account past conduct of that person and that threat does not need to be imminent
>
> (d) the matters isolated from the particulars of the case or which relate to considerations of general prevention do not justify the decision
>
> (e) a person's previous criminal convictions do not in themselves justify the decision
>
> (f) the decision may be taken on preventative grounds even in the absence of a previous criminal conviction provided the grounds are specific to the person.

5. Section 27(6) provides that before taking a relevant decision on the grounds of public policy or public security in relation to a person who is resident in the United Kingdom the decision maker must take account of considerations such as age, state of health, family and economic situation of the person, the person's length of residence in the United Kingdom, the

person's social and cultural integration into the United Kingdom and the extent of the person's links with his country of origin.

6. Schedule 1 to the Regulations sets out the relevant considerations of public policy and public security and Section 7 provides a non-exhaustive list of the fundamental interests of society in the UK.

Background

7. The appellant is a citizen of Albania born on 6 May 1991. He claimed to have arrived in the UK in 2013. He married an EEA national on 18 September 2014 and they have a child born 13 September 2014 who is now a British citizen. The appellant was granted a residence card from July 2018 to July 2023. He was sentenced on 1 July 2019 to 30 months' imprisonment for one count of possession with intent to supply a controlled drug of class A (cocaine), and one count of possession of a controlled drug of class B (cannabis and cannabis resin). A deportation order was made on 14 July 2020.

The Deportation Decision

8. The Secretary of State's decision sets out the details of the offending, the harm done by class A drugs, that the appellant was a willing participant in a pre-planned and highly organised offence. The letter states that whilst the OASys assessment found a low risk of reoffending this was in conflict with the written comments of the offender manager. There is no evidence of the appellant being in employment or able to support himself without resorting to crime and the offences are serious. It is then said that

> "Whilst you do not have an extensive criminal record and your offender manager has calculated that your risk of reconviction is low the Home Office takes the view that the serious harm which would be caused as a result of any similar instances of offending is such that it is not considered reasonable to leave the public vulnerable to the potential for you to reoffend."

9. The letter goes on to state

> "There is insufficient evidence that you have fully and permanently addressed all the reasons for your offending behaviour, it is considered reasonable to conclude that there remains a risk of you reoffending and continuing to pose a risk of harm to the public or a section of the public. All the available evidence indicates that you have a propensity to reoffend and that you represent a genuine, present and sufficiently serious threat to the public to justify your deportation on grounds of public policy."

The First-tier Tribunal Decision

10. The First-tier Tribunal Judge noted that the case law confirms that previous convictions alone are not sufficient grounds for a deportation decision and

general considerations such as deterring other offenders may not be taken into account. The relevant aspects of the decision then go on to state as follows:

> "22. The index offence is the only offence of the appellant who was previously of good character before the offence. He has been assessed by probation as being at a low risk of reoffending in the OASys report updated on 9 November 2021. This report also assesses the appellant as 'very motivated' to address offending and 'quite capable in capacity to change and reduce offending'. He has submitted a number of good behaviour slips that he was issued with whilst in prison where he obtained enhanced prisoner status. He has been tested for drugs both in prison and on release by his probation officer and found to be negative. He undertook some courses in prison but said he was not offered a course relating to drugs. He continued after his release to attend a relaxation course for a period of time and a gardening course. His probation officer in a letter dated 9 May 2022 confirms that the appellant successfully completed his licence period and had complied with all licence conditions. Also, on the evidence before me that was not challenged, I find that the appellant has a strong and supportive relationship with his wife and son, he has not committed any further offences since his release from prison and has remained free from drugs.
>
> 23. Whilst I do not underestimate the serious nature of the appellant's offence I do not find the respondent has shown on the balance of probabilities that the threshold justifying the deportation is met. In other words, it has not been shown that the appellant is a 'genuine, present and sufficiently serious threat affecting one of the fundamental interests of society'. I am therefore satisfied that the respondent fails at this first hurdle and that the appeal is to be allowed for this reason."

11. Whilst it was unnecessary by virtue of her view on the threat presented by the Appellant, the judge nonetheless considered the proportionality of deportation:

> "25. The appellant is now aged 30 having lived in the UK for nine years. His EEA national wife has been granted settled status in the UK and his son has become a British citizen. They are both permanently settled in the UK with the wife working within the NHS and the son in full-time education. It is accepted that the appellant has an especially close relationship with his son and plays an active part in caring for him. A letter from his son's teacher confirms the adverse impact that the appellant's absence in prison had on his son and this is to be contrasted with a school report after the appellant returned home. In these circumstances I do not find that it would be in the best interests of the appellant's son or wife to relocate to Albania and that it would be in their best interest to have the appellant remain in the UK.
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> 26. In all these circumstances I do not consider that the appellant's deportation would be proportionate."

The Secretary of State's Grounds

12. Two main grounds are advanced:

Ground 1 is the failure to give adequate reasons for the findings on a material matter namely that the appellant does not present a genuine, present and sufficiently serious threat to one of the fundamental interests of society.

Ground 2 is material misdirection in law namely for failing to have substantive regard to Schedule 1(7) of the Regulations.

13. The errors are said to feed into the judge's assessment of proportionality.

Discussion

Ground 1

14. It is a well-established aspect of Tribunal law that judicial restraint should be exercised when the reasons that a Tribunal gives for its decisions are being examined. An Appellate Court should not assume too readily that the Tribunal misdirected itself just because not every step in its reasoning is fully set out in it (**Jones v First-tier Tribunal [2013] UKSC 19** at paragraph 25). The judge's reasons should be read on the assumption that unless demonstrated to the contrary the judge knew how to perform his or her functions and which matter should be taken into account (**Piglowska v Piglowski [1999] 1 WLR** at 1372 (Lord Hoffman)). In the Upper Tribunal decision of **Budhathoki [2014] UKUT 341** the following was said at paragraph 14:

> "14 We are not for a moment suggesting that judgments have to set out the entire interstices of the evidence presented or analyse every nuance between the parties. Far from it. Indeed, we should make it clear that it is generally unnecessary, unhelpful and unhealthy for First-tier Tribunal judgments to seek to rehearse every detail or issue raised in the case. This leads to judgments becoming overly long and confused. Further, it is not a proportionate approach to deciding cases. It is, however, necessary for First-tier Tribunal judges to identify and resolve the key conflicts in the evidence and explain in clear and brief terms their reasons for preferring one case to the other so that the parties can understand why they have won or lost."

15. Applying these propositions, we are not persuaded that the judge failed to give adequate reasons for finding that the appellant does not pose a sufficiently serious present and genuine threat.

16. The key aspects of the decision are at paragraphs 21 to 23. At [23] the judge acknowledges the serious nature of offending and states that she does not underestimate it but nonetheless she concludes that the respondent has not met the threshold to justify deportation. She gives her reasons at [22], having observed at [21], that previous convictions alone are not sufficient grounds for a deportation decision and general considerations such as deterring other offenders may not be taken into account. At [22] she explains that the index offence is the only offence of the appellant who was previously of good character. She considers the

OASys Report which identifies a low risk of offending and notes the report assesses the appellant as "very motivated to address offending and quite capable in capacity to change and reduce the offending." She explains the evidence before her of good behaviour slips issued in prison and that the appellant obtained enhanced prisoner status. She further states that there is no evidence of drug consumption in prison or on release and refers to the evidence from a probation officer about compliance with licence conditions. She also refers to the unchallenged evidence that the appellant has a strong and supportive relationship with his wife and son. Significantly, given the arguments put before us and advanced by the Secretary of State in the refusal letter, the judge also observes that the appellant has not committed any further offences since his release from prison and has remained free from drugs.

17. In our view, the judge has identified and resolved the key issues in the evidence and explained in clear and brief terms her conclusions; namely that whilst the offending was serious there is no present threat, given the OASys Report and the appellant's conduct in prison and since his release.

18. Before us, Ms Willocks-Briscoe submitted that the Judge had failed to consider the appellant's finances as a trigger for his offending. However, in our assessment, this is to require the entire indices of the evidence to be examined which the Tribunal in **Budhathoki** said was not required. Mr Toal took us through the relevant evidence which makes it apparent that the appellant's financial issues were considered in the OASys Report and related to drug use. In this context, the Judge explains in her reasons that the appellant had remained drug free in prison and since release. There was no dispute that this meant he had remained drug free for two years by the time of the First Tier Tribunal decision. Ms Willocks-Briscoe also submitted that the family relationship was in place prior to the offending yet was unable to prevent it. In our assessment this amounts, in effect, to an attempt to reargue the merits, as does the submission that any expression of remorse is self-serving. Reliance is placed on **Kamki** ([2017] EWCA Civ 1715) where the Court of Appeal considered that it is legitimate to look both at the likelihood of reoffending occurring and at the seriousness of the consequences if it does. This is not, however, the same as a mandatory stipulation that any failure to do so necessarily gives rise to an error in law. In the present case there is a rationale for the judge not to consider the consequences of reoffending given her assessment of the evidence before her. The Secretary of State may disagree with the judge's view on the risk of reoffending, but it cannot be said it is inadequately reasoned.

19. Moreover, we remind ourselves that the judge heard the appellant and his wife give evidence. In the case of **Piglowska v Piglowski** Lord Hoffmann said this:

> "The Appellate Court must bear in mind the advantage which a first instance judge had in seeing the parties and the other witnesses. This is well understood on questions of credibility and findings of primary

> fact. But it goes further than that. It applies also to the judge's evaluation of those facts".

20. In our judgment, Ms Willocks-Briscoe's submissions amounted, in large part, to an attempt to reargue the merits of the judge's evaluation made after having heard evidence from the appellant and his wife and having considered the written evidence available to her.

21. Accordingly ground 1 fails.

Ground 2

22. We are not persuaded of any material error in relation to ground 2 which is said to be a failure to take substantive account of Schedule 1(7) of the Regulations. The judge refers at [19] to Schedule 1 as setting out considerations of public policy and public security and providing a non-exhaustive list of the fundamental interests of society in the UK. The latter which must be taken to be a reference to Schedule 1(7). No issue is taken by Ms Willocks-Briscoe with this characterisation of the Schedule.

23. We are entirely satisfied that the judge has taken full accounts of the drugs offences and the serious nature of the offending which is the basis for the potential threat to the fundamental interests of society. In this context we further remind ourselves that the Tribunal is an expert Tribunal and as such "it is probable that in understanding and applying the law in a specialised field the Tribunal will have got it right **AH (Sudan) v Secretary of State for the Home Department [2007] UKHL 49** at paragraph 30.

24. It follows that we are not persuaded of any error infecting the proportionality assessment. The judge identified matters she was entitled to rely on in order to reach her view that deportation would be disproportionate.

25. Accordingly, and for these reasons the Secretary of State's appeal fails.

No anonymity direction is made.

Signed: MRS JUSTICE THORNTON DBE Date: 18 November 2022

Mrs Justice Thornton DBE
Sitting as a Judge of the Upper Tribunal