



UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

THE IMMIGRATION ACTS

Heard at: Field House
On: 23 September 2013

Decision Promulgated: 3 October 2013

Before

Upper Tribunal Judge Pitt

Between

Gusztav Haga

Appellant

and

Secretary of State for the Home Department

Respondent

Representation:

For the Appellant: Mr Mak of MKM Solicitors

For the Respondent: Ms Holmes, Senior Home Office Presenting Officer

DETERMINATION AND REASONS

The Appeal

1. The appellant is a citizen of Hungary and was born on 30 April 1987.
2. The appeal is brought against the decision dated 7 July 2013 of First-tier Tribunal Judge C M Phillips and Sir Jeffery James KBE CMG which dismissed the appellant's appeal against the respondent's decision of 5 February 2013 to make a

deportation order against him under the Immigration (Immigration (European Economic Area) Regulations 2006 ("the EEA Regulations").

Background

3. The appellant came to the UK on 10 August 2010. On 27 June 2012 he assaulted his partner. The assault was described by the sentencing judge as "savage", three of the victim's teeth being knocked out, amongst other "very serious" injuries suffered. On 29 June 2012 he was convicted of two counts of assault by beating and one count of assault causing actual bodily harm. On 3 August 2012 he was sentenced to 16 months imprisonment and ordered to pay £500 to the victim. He was released from detention on immigration bail on 25 March 2013.

Grounds of Appeal

4. The First-tier Tribunal found that the appellant represented "a genuine, present and sufficiently serious threat affecting one of the fundamental interests of society" and dismissed his appeal under the EEA Regulations and under Article 8 of the ECHR.
5. The grounds of appeal argue that the First-tier Tribunal set out the correct law and tests for the deportation of an EEA national but did not apply them correctly. The appellant could not be said to pose a "present" threat as :
 - a. this was his first offence
 - b. the likelihood of reconviction was stated to be "low" according to the Probation Service and the panel erred in departing from the assessment of this professional body
 - c. a letter from the Probation Service dated 14 June 2013 stated that "I am not aware of any imminent concerns" and the panel were wrong at [45] not to place weight on that opinion
 - d. the appellant had not reoffended in the two months prior to the hearing when he had been on bail
6. The grounds also argued that the panel misdirected themselves when referring to Maslov v Austria (Application no. 1638/03), a case relating to a minor.
7. There is no challenge in the grounds to the dismissal of the appeal under Article 8 and that matter went no further before me.

My Decision

8. I did not find that any of the grounds had merit as the panel made permissible

findings on the evidence before them.

9. The panel were clearly aware that this was a first offence. They accept that in terms at [41].
10. The grounds are not correct in stating that the Probation Service found the appellant to be at low risk of reoffending. The First-tier Tribunal correctly stated at [6] and [44] that he was assessed as being a low risk of reoffending but medium risk of serious harm to known adults, specifically his former partner whom he had seen since being released from detention and other future partners. The panel was entitled to place weight at [44] on the statement in the letter from the Probation Service dated 14 June 2013 that the level of risk had not altered. They were also entitled to take into account at [44] that on the appellant's own evidence he had resumed his relationship with the victim, something the Probation Service identified as likely to increase the serious risk of harm.
11. The First-tier Tribunal addressed the final sentence of the Probation Service letter dated 14 June 2013 in terms at [45]. The appellant argues that the statement that the Probation Service did not have "any imminent concerns" meant that he could not be regarded as a "present" threat. As in the previous paragraph, the same letter stated clearly that the appellant's risk of reoffending and risk of serious harm to others remained the same as in the original report. Where the risk assessment remained the same, the Tribunal was not obliged to read this sentence as if it meant that there was no risk of reoffending or serious harm. Taking it in the context of the remainder of the letter and the earlier risk assessment, the Tribunal was not obliged to find that this single sentence indicated that the appellant was not a "present" threat to the UK. The Probation Service letter indicates that although the risk assessment remained the same. It states that although the relationship with the victim had been identified as a factor that might increase the risk of reoffending and serious harm, the possible increased risk had not occurred so was not "imminent". It did not have to be read as meaning that there was no longer a risk and so no "present" risk. The panel was entitled to find that this statement could not be read as a "trump" card to the deportation order.
12. In any event, there were other parts of the evidence that the First-tier Tribunal found showed that the appellant was "a genuine, present and sufficiently serious threat affecting one of the fundamental interests of society". At [49] and [50] they found that the appellant was unclear and inconsistent as to his reasons for attacking his partner and sought to "lay at least some responsibility on his victim". It was open to them to find that this did not suggest that he had shown a proper understanding of his actions and that this went to future risk. The panel was equally entitled to place weight at [51] on the appellant becoming "irritated" at the hearing and not wanting to go into his past actions. His evidence that his

relationship with the victim had been “beautiful” prior to the attack was not credible, a further factor to be weighed against the appellant. They did not err in finding at [55] that although the appellant claimed to be complying fully with the Probation Service in addressing his issues with domestic violence, the letter from the Probation Service showed that he was not fully compliant.

13. The period between the appellant’s release from detention and the First-tier Tribunal hearing was two months. Little weight could attract to the appellant not having offended during that period and I did not find that this aspect of the grounds had any materiality. In any event, the First-tier Tribunal specifically took this into account at [55], just as they did the fact that he had obtained work since leaving detention.
14. In short, the conclusion that the appellant’s personal conduct was sufficient to show a “a genuine, present and sufficiently serious threat affecting one of the fundamental interests of society” was clearly one open to the First-tier Tribunal on the evidence before them.
15. Nothing in the grounds or submissions before me indicates what material error or detriment to the appellant arose from the panel referring to the guidance of the ECtHR in Maslov v Austria (Application no. 1638/03). Without more, this ground is not made out.

Decision

16. The decision of the First-tier Tribunal does not disclose an error on a point of law and shall stand.

Signed:
Upper Tribunal Judge Pitt

Date: