



**Upper Tribunal
(Immigration and Asylum Chamber)**

Appeal Number: IA/18420/2012

THE IMMIGRATION ACTS

**Heard at Glasgow
on 15 November 2013**

**Determination
promulgated
On 16 December 2013**

Before

UPPER TRIBUNAL JUDGE MACLEMAN

Between

JOSEPH SAID-CALLEJA

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

For the Appellant: Mr H Ndubuisi, of Drummond Miller, Solicitors
For the Respondent: Mr A Mullen, Senior Home Office Presenting Officer

DETERMINATION AND REASONS

- 1) The appellant appeals against a determination by a panel of the First-tier Tribunal comprising Judge Reid and Mr Yates, dismissing his appeal against deportation to Malta under the Immigration (European Economic Area) Regulations 2006.
- 2) The first ground of appeal is that the panel erred by failing to have regard to the issue of rehabilitation, on the authority of Essa [2012] EWCA Civ 1718.
- 3) This is at best an error of form, not of substance. The appellant did not put any case to the First-tier Tribunal that his rehabilitation might be better served in the UK than in Malta. His preference is not to reside in the UK but in the Republic of Ireland, where he has connections, and where he lived after absconding from bail granted at Edinburgh Sheriff Court. He does not

seek to rehabilitate himself in the UK. Whether he is permitted to re-enter the Republic of Ireland is a question for that State. The appellant may seek to enter there as readily from Malta as he can from the UK.

- 4) The panel did not fall into any material error of law by failing to deal with this matter, which could have led to no resolution in the appellant's favour.
- 5) The second ground is that the panel erred in rejecting the conclusion reached in a parole report that the appellant was at low risk of recidivism.
- 6) At paragraph 67 of the determination, the panel took into account that although assessed at a low risk of general recidivism and of general harm, the scenarios likely to trigger offending behaviour were his previous history of dishonesty, offences of fraud and lack of insight. The ground goes on to complain that the panel's conclusion is speculative because there was evidence that the appellant had not committed any criminal offences in Ireland from 2006 to 2010. However, what the panel found was that it could not agree with the conclusion that there were significant gaps in the appellant's history, given the considerable time he had spent out of the UK and the lack of information during those periods. Given what was known of his history, that was a sensible observation. It does not sit well with a claim of good behaviour that this was during a period when the appellant was avoiding proceedings in the UK.
- 7) The panel was entitled to disagree with the conclusion stated by the parole board, and gave good, if short, reasons for doing so.
- 8) The third ground is that the panel erred by not concluding that the appellant enjoyed the enhanced protection against deportation afforded by Regulations 21(3) and (4) on the basis of 5 or 10 years' residence. Mr Ndubuisi, however, acknowledged that the only evidence that the appellant resided continuously in the UK for even the shorter of those periods is his own, and he was found to be an unreliable witness.
- 9) When that became plain, Mr Ndubuisi sought to amend the grounds to include an attack upon the adverse credibility findings. I declined to permit such amendment, because it came at much too late a stage. In any event, the panel plainly reached adverse credibility conclusions which were properly open for the reasons given.
- 10) While it is not necessary to go any further for present purposes, it would be surprising if any panel had found the appellant to be anything but an unreliable witness.
- 11) The appellant's representative was correct on one point made by the Presenting Officer in his submissions. Mr Mullen said that the appellant could not reach a qualifying period of residence even if he had been found credible, because Malta only became part of the EEA on 1 May 2004 and the appellant absconded from bail in 2006. Mr Ndubuisi produced a copy of

Ziolkowski C-424/10 and C-425/10 in which the CJEU, Grand Chamber, held that periods of residence prior to accession were to be taken into account for the purposes of the acquisition of the right of permanent residence. However, it remains the case that there was no evidence found to be credible by which the appellant could establish either 5 or 10 years' continuous residence.

- 12) None of the 3 grounds show error of law in any material respect by the panel of the First-tier Tribunal, such as to require its determination to be set aside. The determination shall stand.

A handwritten signature in black ink, appearing to read "Hugh Maclemon". The signature is written in a cursive style with a large, stylized initial "H".

19 November 2013
Judge of the Upper Tribunal