



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: IA/27090/2011

THE IMMIGRATION ACTS

Heard at Newport
On 10 September 2013

Determination Promulgated
On 30 September 2013

Before

UPPER TRIBUNAL JUDGE STOREY

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

MANTUS POLIUS

Respondent

Representation:

For the Appellant: Miss K Heath, Senior Home Office Presenting Officer
For the Respondent: In person

DETERMINATION AND REASONS

1. The appellant (hereafter the Secretary of State or SSHD) appeals against a determination by a First-tier Tribunal (FtT) panel (Judge Wooley and Mr R Baines) allowing the appeal by the respondent (hereafter the claimant) against a decision to

make a deportation order against him pursuant to Regulation 21 of the Immigration (European Economic Area) Regulations 2006 on the ground that his continued presence was contrary to public policy.

2. At the hearing the claimant was not represented. I explained to him that my initial task was confined to deciding whether the FtT panel had erred in law, not to decide whether I would have made the same or different decision.
3. By reference to the written grounds, Miss Heath submitted firstly that the FtT panel had made unsustainable findings regarding the claimant's relationship with his girlfriend. She pointed out that the uncle had said that the claimant's relationship with his girlfriend had ended and she had not attended the hearing. Ms Heath submitted secondly that it was unreasonable of the panel to have assessed the claimant as at low risk of reoffending.
4. I find these grounds unmeritorious. As regards the first ground, the panel heard evidence from the claimant and his uncle, the latter whom it found to be an impressive witness. It had regard to the evidence about the history of the relationship between the claimant and his girlfriend and the fact that they had had a child born in February 2011.
5. Contrary to what is suggested in the grounds, the evidence of the uncle was not that the couple's relationship had ended permanently, only that it was "over for now with the appellant being in prison" and the uncle expressly said he believed the relationship would still be there when the claimant was released. The panel also addressed the matter of the girlfriend not visiting him in prison or attending the hearing. It also analysed the correspondence between the couple. In my judgment these were findings of fact which were eminently within the compass of the panel as a fact-finding tribunal and are free of legal error.
6. As regards the challenge to the panel's assessment of the claimant's low risk of reoffending, it is clear that the appeal took into account the severity and speed at which the claimant offended after arrival in the UK and his failure to attend a bail hearing. Its assessment was plainly based squarely on the evidence before it including the pre-sentence report, the judge's sentencing remarks and the evidence of the uncle and the appellant himself.
7. As the panel rightly noted, the claimant could only be deported from the UK if such measure met the criteria set out in the 2006 Regulations. He is an EU national, not a third-country national. Paras 25-16 contain a well reasoned assessment setting out why it could not be said that claimant represented a present threat or that the deportation decision would be proportionate.

8. For the above reasons, the determination of the FtT panel was free of legal error and accordingly it shall stand.

Signed

Date

Upper Tribunal Judge Storey