



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

Appeal Number: DA/00082/2014

THE IMMIGRATION ACTS

**Heard at Glasgow
on 7 October 2014**

**Determination
promulgated
On 8 October 2014**

Before

UPPER TRIBUNAL JUDGE MACLEMAN

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

CLETUS OKPALA

Respondent

For the Appellant: Mrs M O'Brien, Senior Home Office Presenting Officer
For the Respondent: Mr J Bryce, Advocate, instructed by Maguire, Solicitors

No anonymity order requested or made

DETERMINATION AND REASONS

1. The parties are as described above, but the rest of this determination refers to them as they were in the First-tier Tribunal.

2. The SSHD appeals against a determination by a panel comprising Judge Morrison and Dr Winstanley, allowing the appellant's appeal against deportation under Regulation 19(3)(b) of the Immigration (European Economic Area) Regulations 2006.

3. These are the grounds:

... the panel ... failed to provide adequate reasons why the appellant does not represent a genuine, present and sufficiently serious threat to the public to justify his deportation ... while the SSHD did not provide a copy of the prison social worker's formal risk assessment which assessed him as a medium risk of re-offending a copy of the parole board review was provided which ... took [this assessment] into account ... the panel failed to provide adequate reasons why they cannot rely on the ... review which took account of all assessments ... and found that [the appellant] should not be recommended for parole because of the continuing risk he poses ... the appellant continues to deny full responsibility for his actions and there is limited evidence that his circumstances have changed to reduce the risk ... the appellant remains a medium risk of re-offending and does represent a genuine, present and sufficiently serious threat to the public as demonstrated by the parole board's recent decision to refuse him parole ...

... had the panel taken those issues into consideration they would have found that his deportation is proportionate.

4. On 24 April 2014 a judge of the First-tier Tribunal extended time for the SSHD to seek permission to appeal and granted permission, describing the grounds as a submission:

... that the panel erred in law by failing to give adequate reasons for finding that the SSHD had not established that the appellant's personal conduct did not represent a sufficiently serious threat to one of the fundamental interests of society.

5. Mrs O'Brien submitted that although from paragraph 27 onwards the panel referred to the evidence taken into account, including the parole board review, and although the panel said at paragraph 36 that the review would be given "lesser weight", it could not be seen that the panel had given the review any weight at all, which was a material error of law. The substantive analysis at paragraphs 38 - 41 did not mention the review. She did not support the proposition in the grounds that deportation must have been found to be proportionate, but she did say that the panel had to explain just what weight the review carried, and why. The determination should be set aside and the UT should substitute a fresh decision. Taking all the evidence including the review properly into account, that decision should be to dismiss the appeal, as originally brought to the First-tier Tribunal.
6. At this stage I tried to ascertain precisely what is said to have been missing from the parole board review document, and what the panel made of that omission. The documents which were variously provided by both sides are not in the best of order and the referencing is not easy to follow. The parole board review took place on 29 October 2013. The respondent's reasons for deportation letter of 10 January 2014

based itself at page 5 on “the prison social worker’s formal risk assessment” of a medium risk of offending. That assessment was one of several mentioned in the review, and it was not itself produced. Some of the other assessments are in the SSHD’s bundle, having been firstly produced by the appellant when making representations through his solicitors. The outcome of the review was intimated to the appellant by letter dated 12 November 2013, which has attached a copy minute of the Board’s decision, which includes reference to “the prison social worker’s formal risk assessment”. The determination at paragraph 36 says that “the absence of Ms McCheyne’s report ... lessens the weight we can place on the parole board review ... in particular her suggestion that there were inconsistencies in the appellant’s account, but of course the appellant does not know what these claimed inconsistencies were and had had no opportunity to answer these concerns.” The panel had identified the prison social worker’s formal risk assessment as Ms McCheyne’s report from a report by Mr Carmichael, criminal justice social worker, dated 20 September 2013, which was before the panel and which discusses Ms McCheyne’s report before coming to its own conclusions.

7. It is plain from this that the panel engaged in a thorough scrutiny of the evidence before it, and made sense of the cross-references. Having made the comment at paragraph 36 recorded above, the panel at paragraph 38 (ii) found that it could not take into account the alleged inconsistencies in absence of Ms McCheyne’s report. The panel did not say it could not rely on the parole board review, as suggested in the grounds. The panel did take the review into consideration, but held that it could not take into account alleged inconsistencies, not knowing what they were, and that this lessened the weight to be given to the review. I cannot detect legal error in that approach.
8. Having arrived at that view at the hearing, I did not hear from Mr Bryce on the other points in his note of argument dated 6 October 2014. I record briefly as follows. I doubt if the grant of permission is on a point not to be found in the grounds. I think that the question before the parole board while not identical to that before the First-tier Tribunal was not “completely distinct in character”. I agree that refusal of parole does not necessarily mean that deportation is justified.
9. I mentioned at the hearing that it might have been said that the panel should not have given the appellant any benefit from the respondent’s non-production of the prison social worker’s formal risk assessment, because he must have had a copy in the ordinary course of events, and so could not claim to be prejudiced. However, conclusions of this nature should not be minutely picked apart. The degree of weight to be given to any item is a matter for the panel, and I have found their approach to be properly reasoned.

10. The relative weightings to be given to items of evidence are never capable of being stated with mathematical precision. One assessment of medium risk, to be taken along with other assessments of low risk, would not demand the conclusion that the test in Regulation 21(5) was met.
11. The SSHD's grounds are in essence disagreement with the panel's fact-sensitive overall assessment.
12. The determination of the First-tier Tribunal shall stand.

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

7 October 2014
Judge of the Upper Tribunal