Upper Tribunal
(Immigration and Asylum Chamber) Appeal Numbers: DA/00096/2014

THE IMMIGRATION ACTS

Heard at Nottingham Magistrates' Court	**Determination Promulgated**
On 25 July 2014	**On 31 July 2014**

Before

UPPER TRIBUNAL JUDGE PITT

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

JAMAL ABDULAH MOHAMED ATO

Respondent

Representation:

For the Appellant: Mr Diwnycz, Senior Home Office Presenting Officer
For the Respondent: Not represented

DETERMINATION AND REASONS

The Appeal

1. This is an appeal by the Secretary of State against a determination promulgated on 9 April 2014 of First-tier Tribunal Judge Kelly and Mr J H Eames which allowed the respondent's appeal against deportation.

2. For the purposes of this determination, I refer to Mr Ato as the appellant and to the Secretary of State as the respondent, reflecting their positions as they were before the First-tier Tribunal.

3. The appellant is a citizen of Holland and was born on 7 March 1994.

4. The background to this matter is that on 18 June 2103 the appellant was convicted of three offences of burglary of a dwelling house with five further live offences being taken into account. He was sentenced to 2 years imprisonment in a Young Offenders Institution.

5. It is also undisputed that the appellant has been in the UK exercising Treaty rights since 2006 and that his deportation fell to be considered against the "serious grounds of public policy or public security" test set by in Regulation 21 (3) of the Immigration (European Economic Area) Regulations 2006 (the EEA Regulations).

6. As it indicated at [4] of its determination, the First-tier Tribunal also had to consider the provisions of Regulations 21 (5) and (6) when making their decision. These are as follows:

> Decisions taken on public policy, public security and public health grounds
>
> …
>
> (5) Where a relevant decision is taken on grounds of public policy or public security it shall, in addition to complying with the preceding paragraphs of this regulation, 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;
>
> (d) 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.
>
> (6) 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 the 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.

7. Although the grounds begin in paragraph 1 by stating that the First-tier Tribunal failed to give adequate reasons for finding that the appellant did not pose a genuine, present and sufficiently serious threat so as justify deportation, the substance of the grounds is really that of challenges to the substance of the reasons given by the First-tier Tribunal and the weight they apportioned to the various competing factors rather than there being inadequate reasons.

8. The grounds at paragraph 1 go on to argue that the First-tier Tribunal failed to weigh whether the appellant had addressed his offending behaviour, how his family would be able to exert sufficient influence over him when they had been unable to do so previously and that he would be returning to the same area where he had encountered the negative influences that had played a part in his offending. The grounds also maintain that the panel "failed to provide any reasons as to his future risk of re-offending."

9. It was my judgement, however, that the First-tier Tribunal's approach to the appellant's criminal history and risk of re-offending was sound. The panel was entitled to rely on the professional assessment of the risk of re-offending as set out in the Pre-Sentence report; see [9] and [21]. The panel considered the remarks of the sentencing judge at [21]. The full offending history was set out at [20], including the fact of the appellant having committed offences whilst on bail, so the panel clearly had that in mind also when reaching its conclusions as to there being "a present" threat to a fundamental interest of society.

10. The Pre-Sentence report indicated that the appellant:

> "… accepted full responsibility for committing these offences. He very much regretted his actions, and if given the opportunity is prepared to apologise to the victims. During interview he presented as able to reflect on his behaviour, learn from his mistakes and motivated to make positive changes in his life."

11. That was the tenor of the appellant's evidence at the hearing before the First-tier Tribunal; see [12]. The panel was entitled to place weight on that evidence when concluding at [21] that the appellant was genuinely remorseful.

12. The appellant indicated in his witness statement that the length of his sentence precluded access to courses whilst in detention but that he had looked into an employability course in order built a better future. There is no suggestion that his evidence in that regard was not correct or that the inability to attend specific courses addressing reoffending was considered to be a significant matter in the context of the evidence as a whole on the risk of re-offending.

13. The First-tier Tribunal did not place any weight on the ability of appellant's family acting to influence his future behaviour so this also did not appear to me to be a point that could have any materiality.

14. The panel also found in terms at [21], in line with the sentencing judge, that it was not peer influence that lay behind the appellant's offending. That finding is not challenged so the question of the role of returning to negative influences in his home cannot be a matter of importance when assessing the risk of reoffending.

15. In short, the panel's approach to the appellant's criminal behaviour and risk of re-offending was sound, took into account material matters and did not rely on immaterial matters. I did not find that the grounds showed any error in that regard.

16. The grounds also argue that the First-tier Tribunal was in error in finding that the appellant did not have ties in the Netherlands. The appellant had spent the first 9 years of his life there, those being formative years and had been educated there.

17. Mr Diwyncz conceded at the hearing that this ground had little merit given that the appellant had spent over half of his life and most of his formative years in the UK. That appeared to me to be a sensible concession where those facts were so and the panel accepted at [18] the evidence of the appellant's mother that he had little if any knowledge of Dutch and no longer had contacts there.

18. For completeness sake I noted that the grant of permission to appeal refers to the question of the appellant having almost acquired 10 years residence as an EEA national by the time of his conviction. The panel indicated in terms at [22] that they did not accept that the appellant was entitled to any weight on a "near miss" argument. EEA case law indicates that they were required to assess the degree of integration, the appellant's length of residence being clearly material to such an assessment; Onuekwere (Case C-378/12) CJEU (Second Chamber), 16 January applied. No error arises from the approach taken to the appellant's length of residence.

Decision

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

Signed:  Date: 25 July 2014

Upper Tribunal Judge Pitt