



Upper Tribunal  
Immigration and Asylum Chamber

Appeal Number:  
DA/01094/2012

**THE IMMIGRATION ACTS**

Heard at Field House  
On 15 January 2014

Promulgated on:  
On 17 January 2014

**Before**

**Upper Tribunal Judge Kekić**

**Between**

**Elliot Joshua Ezike  
(anonymity order not made)**

**Appellant**

**and**

**Secretary of State for the Home Department**

**Respondent**

**Determination and Reasons**

**Representation**

For the Appellant: Mr D Lemer, Counsel

For the Respondent: Mr G Saunders, Senior Home Office Presenting Officer

**Details of appellant and basis of claim**

1. The appellant was granted permission to appeal on 22 November 2013 by First-tier Tribunal Judge P Lane in respect of the determination of Judge

Aujla and Mrs Holt dismissing his deportation appeal following a hearing at Kingston Crown Court on 26 February 2013.

2. The appellant is a Nigerian national born on 17 August 1986. He claimed to have arrived here in 2001. On 18 July 2002 he was granted a residence card valid until 7 April 2004 as the dependent of an EEA national; i.e. his Portuguese stepfather. This was extended and on 12 September 2006 he was issued with a ten year residence card.
3. Between January 2007 and May 2011 the appellant amassed a total of 12 convictions for 23 offences. On 25 October 2012 the respondent made a decision to deport him.

### **Appeal Hearing**

4. At the hearing on 15 January I heard submissions from the parties. Mr Lever sought only to rely upon the grounds argued before the Administrative court which had led to the matter being returned to the Upper Tribunal and to Judge Lane's grant of permission. Those grounds disclose two points on the Tribunal's assessment of whether the appellant constituted a "present threat" requiring removal. It was not argued that his offending did not amount to a genuine and sufficiently serious threat.
5. Mr Lemer submitted that the Tribunal had made two factual errors as shown by paragraphs 32 of the determination. The first was that although the panel had been right to say that the NOMS' assessment of the level of risk to others was high, it had wrongly stated that risk of reconviction was also high; in fact the report shows it was a medium risk. The second concerned an allegation made in the same report that the appellant had been stalking a female prison education officer. The panel had observed that the appellant failed to deny this allegation in his witness statement although he had done so at the hearing. In fact, the witness statement plainly showed that the appellant had denied the allegation at that time. It was argued that these two factual errors undermined the risk assessment and that meant the conclusion that the appellant was a "present threat" was flawed. The appeal would have to be re-heard by the First-tier Tribunal.
6. In response, Mr Saunders submitted there had been no error. The NOMS report had been considered but so had other evidence and the report was not determinative of the panel's conclusions. The panel took account of the appellant's long history of offending behaviour and found that he would not change his behaviour just because he would be living with his

mother as was claimed. It noted that he had in fact been living with her previously when he had committed crimes. The panel also considered the appellant's denials, whenever they had been made, and found that it preferred the evidence of the education officer who had no vested interest in fabrication such an allegation, to that of the appellant. Therefore, although the panel had made the factual errors claimed, when all the evidence was considered, it had reached a sustainable conclusion.

7. Mr Lemer made a brief reply. He stated that he did not contend that if the appeal were remitted it had to be allowed, but that there was a possibility of that and the errors were material to the Tribunal's overall assessment.
8. At the conclusion of the hearing I reserved my determination which I now give.

### **Findings and Conclusions**

9. I have carefully considered the evidence, the determination and the submissions made and reach the conclusion that whilst the panel did make the two factual errors claimed, they were not errors that undermined the overall findings and conclusions such that the decision has to be remade. I now give my reasons for so finding.
10. The appellant has a long history of offending. Many of his crimes were committed at a time when he was living with his mother and so the claim that somehow he would now be a reformed character because he lived with her or that she would be able to exert some influence over him was properly rejected. Indeed, it noted she had sacked him when he worked for her because he had stolen money. The Tribunal also considered the nature and regularity of his offending. It noted he had not taken any victim awareness courses in prison and that a sharp item had been found in his cell which was of concern given the repeated crimes involving weapons.
11. When considering the NOMS assessment, it is right that it conflated the level of risk to others and the likelihood of conviction; both are described as high whereas in the report the latter was stated to be medium. Mr Lemer argued that this undermined the Tribunal's conclusions but it has to be said that even a medium risk of reconviction is a present threat. I cannot see, therefore, that consideration of the correct risk would have altered the findings of the Tribunal to the extent that the outcome of the decision would have been different.

12. I find it is immaterial when the appellant first denied the stalking allegation. The fact remains that when the appellant's denials were considered, the panel chose to believe the female officer who made them rather than the appellant, who, it has to be said, has a history of criminality including offences involving deception. The panel found the officer had no vested interest in falsely implicating the appellant and I do not accept there is any possibility that it would have found differently had it appreciated that the appellant had denied the allegation when he made his witness statement. It is still a matter of his word over hers and the panel made it clear whose evidence was preferred.
13. For these reasons I find that the decision of the panel to dismiss the appeal is sustainable.

**Decision**

14. The First-tier Tribunal did not make errors of law such that the determination has to be set aside. The decision to dismiss the appellant's appeal against deportation is upheld.

**Signed:**



**Dr R Kekić  
Judge of the Upper Tribunal**

16 January 2014