



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: DA/02336/2013

THE IMMIGRATION ACTS

Heard at Manchester
On 15 May 2014

Determination Promulgated
On 15 July 2014

Before

UPPER TRIBUNAL JUDGE CLIVE LANE

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

DANIEL CZACZKOWSKI

Respondent

Representation:

For the Appellant: Ms Johnstone, a Senior Home Office Presenting Officer
For the Respondent: In person

DETERMINATION AND REASONS

1. The respondent, Daniel Czaczkowski, was born on 30 June 1973 and is a male citizen of Poland. I shall hereafter refer to the respondent as “the appellant” and to the Secretary of State as the “respondent” (as they were respectively before the First-tier Tribunal). The appellant was sentenced to a total of twelve months’ imprisonment having pleaded guilty on 10 May 2013 to two counts of being knowingly concerned

in the importation of restricted goods on which a duty was payable (tobacco). A decision was taken on 7 November 2013 to deport the appellant. The appellant appealed against that decision to the First-tier Tribunal (Judge Chambers; Mrs SA Hussain JP) which, in a determination promulgated on 21 February 2014, allowed the appeal. The Secretary of State now appeals, with permission, to the Upper Tribunal.

2. The grant of permission rejected a number of the grounds submitted by the Secretary of State. First, the respondent had challenged the Tribunal's finding of fact that the appellant had been continuously living in the United Kingdom for a period of five years [21-23]. Judge Bird, who granted permission on 12 March 2014, observed [3] that the Tribunal had given reasons and had been entitled to conclude the appellant had spent five years continuously in the United Kingdom; she refers to the evidence which the Tribunal had accepted as proving that fact. Secondly, the respondent challenged the adequacy of the reasoning given by the Tribunal for finding the appellant had established both family and private life in the United Kingdom. Judge Bird noted [5] that the Tribunal had given reasons for finding that the appellant enjoyed family life in the United Kingdom, she found that, "the panel was entitled to this conclusion on the evidence that had been provided. Nothing however turns n this point and the respondent's grounds seeking permission on this issue are therefore unfounded." Judge Bird granted permission in the following terms:

It is arguable that in considering the appellant's offences from paragraph 27 and the risk assessment from paragraphs 28 to 33 the panel has made an arguable error of law in failing to consider whether there are serious grounds of public policy that require that the appellant be deported particularly as the appellant had been involved in importation of cigarettes without paying the relevant excise duty which had amounted to just short of £300,000 (see paragraphs 26 and 27). In this it is arguable that the panel failed properly to consider whether or not the appellant's deportation is required on the grounds of public policy. An arguable error of law has arisen.

3. Ms Johnstone, in her oral submissions, drew attention to [31] of the determination:

We take account of what the sentencing judge said about loss and danger. The loss of revenue to the UK is described as being a serious loss. Many crimes cause economic loss. We do not consider the basis of the offence as an offence solely of dishonesty but serious grounds of public policy or public security are made out in the appellant's case. For the offence he received a sentence in totality of twelve months' imprisonment of which he served half, six months before being released. Not long after beginning his sentence he was transferred to an open prison. The judge described the possible danger to the public who smoke contaminated products. Science and common sense show that cigarettes are dangerous to health. But on behalf of the respondent Mr Ogbewe submitted that the sentencing judge identified a possible danger to the public who smoke contaminated products and greater health risks resulting from the type of trade in which the appellant was engaged. When an offender knowingly supplies contaminated products which may cause serious harm it could, potentially, give rise to the sort of serious grounds of public policy or public security Mr Ogbewe contends for. But we do not find that was shown to be present in the offence.

4. At [32] the Tribunal went on to find that the sentencing judge had spoken only “in general and non-specific terms” of the possible danger to the public who smoke contaminated products. He had not sentenced the appellant on the basis that his activities were a danger to the public. The Tribunal did not consider it appropriate that the appellant, who had not been charged and sentenced in relation to specific health risks to the public, should now in effect be punished for such alleged misdemeanours in the deportation proceedings.
5. Ms Johnstone submitted that the Tribunal at [31] had not paid any proper attention to the appellant’s previous offending in Poland. I reject that submission. It was clear that the Tribunal at [31] was attempting to deal with the Presenting Officer’s submission that the possibility that the appellant had supplied contaminated products which were a danger to public health had pushed his offending over the threshold of public policy and public security. The Presenting Officer does not appear to have made any specific submissions about the Polish offences of which the Tribunal were well aware since they refer to them (quoting the sentencing judge’s remarks) at [26]. In the same paragraph, the Tribunal noted that the sentencing judge had identified as an aggravating feature the appellant’s previous offences and his membership in 2004 of what is described as “an organised crime group.” I find that the Tribunal has made the assessment as to whether the appellant had crossed the public policy/public security threshold in full knowledge of all the relevant facts. There is no evidence that they have ignored relevant evidence or had taken into account evidence which was not relevant. Judge Bird was clearly concerned regarding the economic consequences of the offending but the Tribunal referred more than once to the fact that the appellant had attempted to evade excise duty of about £300,000. I find that the Tribunal has reached an outcome in this appeal which was available to it on the evidence; whether issues of public policy or public security are engaged needs to be determined on the particular facts of each and every appeal concerning the deportation of a EEA national. I do not find that the Tribunal has downplayed the appellant’s offending or that its reasoning is inadequate. I find that the Tribunal has not erred in law such that its determination falls to be set aside.

DECISION

6. This appeal is dismissed.

Signed

Date 10 June 2014

Upper Tribunal Judge Clive Lane