Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: OA/10896/2013

THE IMMIGRATION ACTS

Heard at Field House	**Determination Promulgated**
On 8 August 2014	**On 26 August 2014**

Before

UPPER TRIBUNAL JUDGE O'CONNOR

Between

MR SHADIKUL ISLAM PROTIK MOHAMMAD

Appellant

and

IMMIGRATION OFFICER - BRUSSELS

Respondent

Representation:
For the Appellant: Mr N Paramjorthy, instructed via the Direct Access Scheme
For the Respondent: Ms J Isherwood, Senior Presenting Officer

DETERMINATION AND REASONS

1. The appellant, born 10 May 1993, is a Dutch national. On 20 May 2013 he presented himself to an Immigration Officer at the Eurostar UK control in Brussels, with the intention of travelling to the United Kingdom. The Immigration Officer identified that the appellant has five criminal convictions in the United Kingdom - all obtained between June 2012 and April 2013, and refused him entry. The appellant had previously been refused to entry into the United Kingdom on 30 April 2013. His criminal convictions relate to matters of shoplifting in Oxford Street, fare evasion on the underground, as well as breach of court orders.

2. The appellant appealed the Immigration Officer's decision to the First-tier Tribunal. This appeal was heard by First-tier Tribunal Judge Ross on 21 March 2014 and dismissed in a determination promulgated on 1 April 2014. The core of the reasons given by Judge Ross are as follows:

> "11. I find that the Immigration Officer was entitled to base his decision on the conduct of the appellant, who is a person who has visited the United Kingdom and has shoplifted in Oxford Street during some of his visits. Whilst fare evasion is not of itself the most serious of offences, it displays antisocial behaviour which the Immigration Officer was entitled to take into account. The Immigration Officer faced with the history of the appellant's recent conduct, was entitled to conclude that his personal conduct represents a genuine present and sufficiently serious threat affecting one of the fundamental interests of society, namely the maintenance of law and order.
>
> 12. I am satisfied that the appellant's exclusion was not based on his previous convictions themselves and took into account the appellant's likely conduct if admitted into the United Kingdom. I find that Regulation 21(6) is not applicable given that the appellant is not resident in the United Kingdom and is resident in Netherlands. I reject the submission that the appellant was a jobseeker and therefore a qualified person, given that Regulation 6(4) defines a jobseeker as a person who enters the UK in order to seek employment and can provide evidence that he is seeking employment and has a genuine chance of being engaged. No evidence of any job applications or chance of being employed has been submitted. I am satisfied that the appellant's exclusion was proportionate to the aim of maintaining law and order."

3. In a decision of 22 May 2014 First-tier Tribunal Judge McDade granted the appellant permission to appeal to the Upper Tribunal. Thus the matter came before me.

4. At the hearing before the Upper Tribunal Ms Isherwood accepted that there were two fundamental errors in the First-tier Tribunal's determination that required the determination to be set aside. She identified these errors to be as follows:

   (i) The judge misdirected himself in fact and/or came to an irrational conclusion of fact when finding that the appellant had lived with his father in The Hague since 30 May 2011.

   (ii) The judge erred in law in concluding that Regulation 21(6) of the 2006 EEA Regulations was not applicable to his considerations

5. Given this concession I need do no more than express my agreement with it and briefly set out my reasons for so doing.

6. As to the first of the errors accepted by Ms Isherwood, it has never been the appellant's case that he had lived in the Netherlands since May 2011. Indeed it was the appellant's evidence that he entered the United Kingdom in July 2011 along with his family and had thereafter made the United Kingdom his home. In his interview with the Immigration Officer on 20 May 2013 the applicant identified that he lived in England, providing his residential address in London, and he further stated that he had lived at

this address since 2011. This was also the evidence he gave in a witness statement to the Tribunal.

7. In addition to the appellant's own testimony, there was ample evidence before Judge Ross that the appellant had studied at Stratford College between January 2012 and July 2013. There was additional evidence from Jobcentre Plus identifying dates on which the appellant had signed at a centre in the United Kingdom. The Tribunal also had before it a Community Order dated 17 July 2012, which required the appellant to carry out 80 hours 'community service' thereafter. These are just a number of a wide range of documents which all point to the appellant having lived in the United Kingdom from 2011 onwards rather than in The Hague. Where the appellant has been living for the past 3 years is clearly relevant to the assessment of the issue of whether his exclusion is proportionate and the First-tier Tribunal's error regarding this issue is plainly capable of affecting the outcome of the appeal.

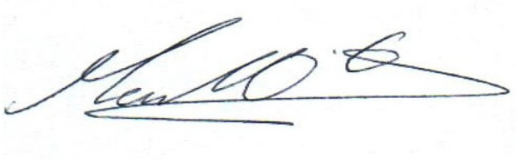
8. As to the second accepted error, this flows from the error identified above; the First-tier Tribunal's failure to consider Regulation 21(6) of the 2006 EEA Regulations being founded on its conclusion that the appellant was 'not resident' in the United Kingdom .

Decision

For the reasons set out above I set aside the determination of the First-tier Tribunal.

It was agreed between the parties, and I accept that this should be so, that the appeal be remitted to the First-tier Tribunal to be determined afresh and I so direct.

Signed:



Upper Tribunal Judge O'Connor
Date: 11 August 2014