IAC-AH-KEW-V1

Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: DA/00250/2014

THE IMMIGRATION ACTS

Heard at Birmingham	**Decision & Reasons Promulgated**
On 22 January 2015	**On 4 February 2015**
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Before

UPPER TRIBUNAL JUDGE CLIVE LANE

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

LOUIE MENDY
(ANONYMITY DIRECTION NOT MADE)

Respondent

Representation:
For the Appellant: Mr Smart, Senior Home Office Presenting Officer
For the Respondent: Miss Rutherford, instructed by TRP Solicitors

DECISION AND REASONS

1. The respondent, Louie Mendy, was born on 4 October 1989 and is a citizen of Sweden. I shall hereafter refer to the appellant as the respondent and to the respondent as the appellant (as they appeared respectively before the First-tier Tribunal).

2. The appellant appealed (against the decision of the respondent to make a deportation against the him under Regulation 19(3)(b) of the Immigration (EEA) Regulations 2006) to the First-tier Tribunal (Judge Robertson; Ms L Schmitt JP) which, in a determination promulgated 27 June 2014, allowed

the appeal. The Secretary of State now appeals, with permission, to the Upper Tribunal.

3. There are two grounds of appeal. The first ground concerns the alleged failure of the Tribunal to give reasons for findings on a material matter. The Secretary of State asserts that the appellant had lied to the Tribunal. The Tribunal had failed to take his unreliability as a witness into account in its analysis. The appellant had continued to deny responsibility for the index offence and was likely to associate with "negative influences." These were both matters which the Secretary of State asserts should have led the Tribunal to find that the appellant was likely to re-offend. Secondly, the Secretary of State asserts that the Tribunal failed to provide reasons why the appellant's rehabilitation prospects would be better in the United Kingdom rather than in Sweden. This ground of appeal concerns the Tribunal's decision in respect of Article 8 ECHR. The respondent considered that there were no exceptional circumstances in the appellant's case which might justify allowing the appeal on Article 8 ECHR grounds.

4. The Tribunal found that there were no serious grounds for concluding that the appellant was a present, genuine and sufficiently serious threat to a fundamental interest in society. I find that the Tribunal was fully aware of the fact that the appellant had denied involvement in the index offence (on 20 April 2011, he was convicted at Wolverhampton Crown Court on two counts of robbery and sentenced to four years' imprisonment). At [33] the Tribunal was aware that it had to balance "[the appellant's] attempt to minimise his part in the offences he has committed with the positive steps he has taken to date." At [34], the Tribunal stated that it appreciated that "the appellant's crime represents an escalation in his offending" and noted the appellant's "unsettled lifestyle, with neither parent being engaged with him during the time he was offending." The Tribunal also considered the unsatisfactory milieu in which the appellant continues to live. I find that it was plainly open to the Tribunal to conclude that the appellant would have more family support in the United Kingdom than he would in Sweden; his only close relative in Sweden is his 14 year old half-brother.

5. I also find that the Tribunal was entitled to give weight to the report of Lisa Davies. Miss Davies had concluded that the appellant was at medium risk of re-offending. The Tribunal gives six detailed reasons at [32] for placing weight on her report. The assertion by the respondent that it was wrong to do so is no more than a disagreement with the Tribunal's reasoned findings.

6. I agree with the submissions of Miss Rutherford, for the appellant, that the ground raising "exceptional circumstances" and Article 8 ECHR is misconceived. The Tribunal's assessment of proportionality was under the Immigration (European Economic Area) Regulations 2006, and not under Appendix FM of the Immigration Rules (see *Vasconelos (Risk – Rehabilitation) [2013] UKUT 00378 (IAC*). Regulation 21 identifies the

issues to be considered in a proportionality assessment under those Regulations. I cannot find anything in the determination which might indicate that the Tribunal has applied the law incorrectly or that its reasonable findings were not available to it on the evidence.

7. The First-tier Tribunal has carried out a very detailed and thorough analysis of the evidence. It has applied the correct law and has reached a conclusion which was available to it. It has not had regard to irrelevant evidence nor has it (as the grounds suggest) failed to have regard to relevant considerations. The Tribunal was, in particular, aware of the appellant's reluctance to admit involvement in the index offence but it was entitled to conclude that the appellant's rehabilitation was likely to be more successful in the United Kingdom than in Sweden. I dismiss the Secretary of State's appeal.

NOTICE OF DECISION

This appeal is dismissed.

No anonymity direction is made.

Signed Date 2 February 2015

Upper Tribunal Judge Clive Lane