Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: DA/00518/2014

THE IMMIGRATION ACTS

Heard at Field House	**Determination Promulgated**
On 7th January 2015	**On 19th January 2015**

Before

UPPER TRIBUNAL JUDGE REEDS

Between

ABDERRAHIM TELADJATI
(ANONYMITY DIRECTION NOT MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Miss Panagiotopoulou, Counsel instructed on behalf of O'Keefe Solicitors
For the Respondent: Mr S Kandola, Senior Presenting Officer

DETERMINATION AND REASONS

1. The Appellant, appeals with permission, against the determination of the First-tier Tribunal (Judge Grant) promulgated on 16th October 2014. By its decision, the Tribunal dismissed the Appellant's appeal against the Secretary of State's decision, to

deport him from the United Kingdom. The Tribunal dismissed his appeal on the ground that deportation would not breach his rights as a European citizen under the Immigration (European Economic Area) Regulations 2006 ("the 2006 Regulations") and would not be an infringement of his rights under Article 8 of the ECHR.

2. The Appellant is a citizen of France born on 27th June 1993. The background to the appeal demonstrates that on 3rd June 2008 the Appellant was issued with a registration certificate as an EEA national dependant of his mother.

3. These proceedings arise out of a decision made by the Respondent to make a deportation order under the deportation provisions of the Immigration (EEA) Regulations 2006. That decision was made following the Appellant's conviction for an offence of robbery to which he was sentenced on 26th March 2012 to a two year detention and training order. That sentence was later varied to one of two years' imprisonment in a young offenders institution. It is plain from the schedule of convictions that on 19th August 2012 for an offence of battery he was sentenced to a community order, cost of £85, compensation of £100 and an exclusion requirement for a period of twelve months and on 20th August 2013 at Snaresbrook Crown Court was sentenced for two offences namely common assault committed on 13th January 2012 for which he was sentenced to a period of six months at a young offenders institution to run concurrently with a sentence of custody in a young offenders institution for a period of two years in relation to count 2 for harming a witness or juror with intent to obstruct, pervert or interfere with justice also committed on 13th January 2012.

4. The Appellant appealed against the decision to make a deportation order and his appeal came before the First-tier Tribunal on 3rd October 2014. The First-tier Tribunal dismissed the Appellant's appeal. Permission to appeal was granted by an Upper Tribunal Judge on 3rd November 2014. Summarising the grant of permission, the Upper Tribunal Judge stated that in relation to Ground 1 it was arguable that the First-tier Tribunal misunderstood the Appellant's offending and this was a material error by reason of the First-tier Tribunal relying on the Appellant's offending history as a material consideration justifying the Appellant's deportation. As to Grounds 2, 3 and 4, the Upper Tribunal Judge also found those grounds to have merit making reference to the finding concerning return to Algeria at [20] when it was the case that the Appellant grew up in France and spent his formative years there. The Judge also considered that the findings made by the judge affected the Article 8 assessment and therefore permission to appeal was granted on all grounds advanced on behalf of the Appellant.

5. Thus the appeal came before the Upper Tribunal. At the hearing the Appellant was represented by Miss Panagiotopoulou and the Secretary of State by Mr Kandola. She relied upon the grounds as drafted. In relation to Ground 1 she submitted that the First-tier Tribunal had made a factual error concerning the Appellant's offending history. At paragraph 13 of the determination, the judge placed reliance on the fact that the Appellant had offended after his release from prison resulting in a second sentence of imprisonment and that finding led to the conclusion that the Appellant

had demonstrated an escalating pattern of offending and showed no respect for the laws of the UK which in turn led to the overall conclusion that his removal was justified on the grounds of public policy and public security. The factual error was further made at [18] where the judge stated that the Appellant did not reform after his first sentence and imprisonment but that he subsequently offended and then served a second period of imprisonment. Furthermore at paragraph [18] the judge noted:

> "There was no evidence before me to suggest that the Appellant has addressed his offending behaviour and his ongoing criminal activities since release for the first offence demonstrate that the Appellant has no interest in complying with the laws of the UK."

Against that background Miss Panagiotopoulou submitted that that was a material mistake in fact because the history demonstrated the Appellant had not committed a further offence following the sentence of imprisonment but had been serving the sentence until 26th March 2012 when he appeared to be sentenced for an offence that had been committed previously in January 2012. It was submitted that such an error in the offending history was material because it was relied upon in the judge's assessment and conclusions that the deportation of the Appellant was justified under Regulation 19 but also because it demonstrated in the judge's assessment that he represented a genuine, present and sufficiently serious threat under Regulation 21(5)(a). Furthermore, the materiality of the mistake of fact was established as the judge took into account that evidence to demonstrate his propensity to offend and that was based on her mistaken understanding of his offending history and that he had offended post his release. Thus she submitted that the date of the commission of the offences and the order in which he had served his sentences had not been considered in the light of the evidence and that the mistakes of fact went to the heart of her assessment and findings made in the appeal.

6. As to Ground 2 she submitted that in reaching the conclusions the judge erred in failing to have a balanced approach to the assessment of proportionality under the EEA Regulations. In this respect she submitted that at [20] the judge did not consider that the offences were committed when he was a juvenile and further did not take into account his state of health. However in this respect whilst she submitted that the Appellant had disclosed difficulties with epilepsy and asthma, she conceded that there had been no medical evidence in relation to those issues. As to Ground 3, it was submitted that when assessing proportionality under the Regulations the judge did not consider the issue of return of the Appellant and at [20] found that if the Appellant did not wish to live in France that he could return to Algeria where he grew up. He spent his formative years in Algeria and there would be no reason why he could not live there if he did not wish to establish himself in France. However she submitted, the Appellant was a French national and the proposed country of deportation was France, a country which he claims to have no links to thus she submitted the conclusions on proportionality were also unsustainable. At Ground 4 Miss Panagiotopoulou submitted that the approach to the assessment of proportionality under Article 8 also disclosed material errors and relied upon the

matters set out at paragraphs 9 and 10 highlighting the matters in which it is said were not taken into account including the Appellant's relationship with his younger sibling who was 14 years of age and the relationship between them or considered the Appellant's individual rights.

7. In respect of paragraph 11 of the grounds, there was reference to the Appellant's propensity to reoffend and the assessment in the NOMS1 Report. That evidence, it was submitted was relied upon by the First-tier Tribunal Judge at paragraph 18. However that was not the most recent assessment and an updated assessment in relation to the Appellant, relevant to his attempts at rehabilitation and risk of reoffending had been served by the Probation Officer on the CCD on 2nd October 2014 but that information had not found its way before the First-tier Tribunal Judge. Miss Panagiotopoulou provided that information to the Upper Tribunal although it had been an annex to the Grounds of Appeal when made. It could be seen from that information that an e-mail was sent to the Criminal Work Flow Team on 2nd October 2014, which was the day before the hearing, making reference to an updated report. Mr Kandola observed that the Presenting Officer had not requested that further information but acknowledged from the information provided that there had been in existence an updated report relevant to the issue of propensity and rehabilitation.

8. After hearing the submissions of Counsel, Mr Kandola on behalf of the Secretary of State conceded that the determination did disclose a material error of law based on the first ground which related to the factual errors made in relation to the Appellant's offending history and sequence of the events. He submitted that the error was a material one as can be seen from the determination at paragraphs 13 and 18 as the judge relied upon the offending history as a material consideration to justify the Appellant's deportation under the 2006 Regulations. He further submitted that the conclusions reached on these issues that the Appellant had reoffended on release and thus had not shown rehabilitation nor had he addressed his reoffending, went to the issue of propensity set out at Regulation 21 therefore further underlined the materiality of the factual error.

9. In those circumstances there was common ground between the parties that the judge had erred in law in a material respect.

10. Thus it is accepted that the Tribunal erred in law. In the light of the concession made on behalf of the Respondent it is now common ground that the First-tier Tribunal Judge made a material error of law and that in those circumstances the decision must be set aside. In those circumstances, it is necessary only briefly to explain why the Tribunal finds that to be the case.

11. The judge has set out her findings at [13] – [20] of her determination. She found that the removal was justified on grounds of public policy and public security based on the factual evidence before her and at [13] reached the conclusion that the Appellant was a man "who has offended whilst awaiting sentence for a previous offence and has offended after his release from prison resulting in a second sentence of imprisonment". When considering the issue of proportionality at [17] the judge gave further

consideration to his offending history and stated that the convictions the Appellant had received arose out of his own personal conduct and that "subsequent to his period of imprisonment alternatively he had a choice to act with respect for the laws of the United Kingdom". The judge then at [18] made further reference to the offending history in the following terms namely:

> "The Appellant has not only reoffended since then because he has been detained and his release on bail was only a matter of eight weeks ago and I am not prepared to accept assurances from his mother or his father of the Appellant himself that he is now a reformed character. The Appellant did not reform after his first sentence and imprisonment, he subsequently offended, a very serious offence indeed interfering with the witness and then served a second period of imprisonment. Consequently there is no evidence before me to suggest that the Appellant has addressed his offending behaviour and his ongoing criminal activities since release from the first offence demonstrate that the Appellant has no interest in complying with the laws of the United Kingdom."

It is plain from the findings of fact made as both parties agree, that the assessment of the factual chronology led the judge to reach the conclusion that he had a propensity to reoffend thus supported the conclusion that he presented a genuine, present and sufficiently serious threat to the public to justify his deportation. However as both parties have also agreed the chronology of his offending history was not that set out or relied upon by the judge. The Appellant had not in fact committed a further offence following a sentence of imprisonment. The robbery for which he received a two year detention and training order was an offence committed on 11th June 2011. He was sentenced on 26th March 2012. The Appellant had not committed a further offence following that sentence of imprisonment but was dealt with for a further offence on 20th August 2013 for an offence that was committed on 13th January 2012. The Appellant then had not committed a further offence following the sentence imposed on 26th March 2012 because the offence itself was committed on 13th January 2012. Whilst it was open to the judge to reach the conclusion as she did that the offences for which he had been sentenced overall may have demonstrated an escalation in seriousness, the overall findings made from the evidence were based on a mistaken view of his offending history which therefore undermined the assessment both under Regulation 19 and Regulation 21.

12. In view of the error of law already established it is not necessary to consider further the other grounds advanced on behalf of the Appellant. In relation to paragraph 11 of the grounds, it cannot be an error of law if the judge had not taken into account evidence which had not been placed before her. It is apparent that shortly before the hearing there was further evidence of a more recent nature relevant to the Appellant's propensity to reoffend and whether the Appellant represented a genuine, present and sufficiently serious threat to the public which would justify his deportation. This information came from his Probation Officer as the Appellant has been released on licence and therefore is subject to the supervision of a Probation Officer. The material referred to in the e-mail and screen shot made reference to his progress in the community and work undertaken with the Probation Service including that of the Thinking Skills Programme and his present progress. As I have

stated this information, although in existence was not made available to the judge. However as both parties have invited the court to set aside the decision and to remit the matter to the First-tier Tribunal for factual findings to be made in relation to his offending history and the other matters outlined by Miss Panagiotopoulou, that evidence should be made available to the First-tier Tribunal.

13. Therefore it is common ground between the parties that the determination should be set aside and that a new hearing be convened to hear the case de novo. In the light of the nature of the errors of law and the issues identified, factual findings are required upon those issues and thus some evidence would be required from the relevant parties. In those circumstances I am satisfied that the appropriate course is to remit the case to the First-tier Tribunal at Taylor House to a different judge to consider the oral evidence of the parties, and to make factual findings necessary on the relevant issues. This will include the up-to-date probation report.

14. Therefore the decision of the First-tier Tribunal is set aside, none of the findings of facts shall stand and the case it to be remitted to the First-tier Tribunal for a hearing in accordance with Section 12(2)(b) of the Tribunals, Courts and Enforcement Act at paragraph 72 and the Practice Statement of 10th February 2010 (as amended). To that end, I make the following directions:-

    (i) The Respondent should file and serve on the parties and on the Tribunal a copy of the most recent Probation Officer's Report relevant to the Appellant within 21 days of this decision being served.

    (ii) The Secretary of State should provide a chronology concerning the offences and the circumstances of the offences committed on 13th January 2012 relating to common assault and the harming of a witness or juror with intent to obstruct, pervert or interfere with justice.

Notice of Decision

The decision of the First-tier Tribunal involved the making of an error on a point of law. The decision of the First-tier Tribunal is set aside and the appeal is remitted to the First-tier Tribunal as set out in the preceding paragraph.

No anonymity direction is made.

Signed Date 8/1/2015

Upper Tribunal Judge Reeds