



Upper Tribunal  
(Immigration and Asylum Chamber)

Appeal Number: DA/00706/2014

THE IMMIGRATION ACTS

Heard at Field House  
Oral determination given following hearing  
On 16 February 2015

Determination Promulgated

On 31 March 2015

Before

UPPER TRIBUNAL JUDGE CRAIG

Between

JORGE ALEXANDRE BIZITO PIEDADE

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr O Oshunrinde, Solicitor, Samuel & Co  
For the Respondent: Mr M Shilliday, Home Office Presenting Officer

DETERMINATION AND REASONS

1. The appellant in this case is a citizen of Portugal who was born on 3 February 1972. It is not entirely clear when he first arrived in this country because although the appellant says that he first entered here in about May 2003 the respondent has no

record of this entry. However it is accepted that he started a relationship with another citizen of Portugal about ten years ago and that they have a son, and to all intents and purposes it is accepted by the respondent that the appellant has been in this country for more than five years such that he had acquired a permanent right of residence in the UK. It is not suggested on his behalf that he has been here for over ten years.

2. The appellant has a very bad criminal record which has got worse. I will deal with this below. The index offence which gave rise to the decision now under challenge was a very serious street robbery. On 12 April 2013 the appellant attacked a lady who had just taken £200 from a cash machine outside Lloyds TSB in Tottenham High Road.
3. The OASys report summarises the offence as follows:

“He came from behind the victim and grabbed the bank notes that were sticking out of her hand. The victim kept hold of the money and when [the appellant] realised she was not letting go he pushed her and she fell to the ground. The victim only let go of the bank notes when she thought [the appellant] was going to bite the hand with the money in.”
4. Some very brave witnesses apprehended and detained the appellant until the police arrived. Again according to the OASys Report, the appellant’s version of events was that he had spent the money he had on him before the offence on alcohol and crack cocaine and when he saw the victim at the cash machine decided to rob her as he wanted more money. In the words of the report “He states that as he struggled to get the cash the victim fell to the ground but was not injured”.
5. The OASys Report, which was considered by the panel which made the decision upholding the respondent's decision to deport him, assessed that the appellant posed a medium risk of reoffending.
6. Having considered the seriousness of the offence in light of the appellant's personal circumstances, including his criminal history, the respondent made a decision to deport him. A letter setting out the reasons for deportation was drafted on 4 April 2014. I am told by Mr Shilliday now representing the respondent that that appears to have been a draft which was subsequently amended by a senior caseworker working for the respondent. In that letter the respondent set out the respondent’s initial view that the appellant had not acquired the right of permanent residence in this country because it was not accepted that he had been continuously resident for five years excluding periods of time spent in prison.
7. However when this letter was amended the respondent did accept that the appellant had acquired a permanent right of residence because in the amended letter setting out reasons for deportation dated 10 April 2014 this is stated in terms at paragraph 28, which is as follows:

“... there is, therefore, evidence of your having exercised treaty rights from 2003 in accordance with the Regulations for a continuing period of five years and it is accepted that you have acquired a permanent right of residence in the UK.”

8. It is clear from what is then set out at paragraph 30 that the respondent had in mind the right test when considering whether deportation was warranted because the letter goes on to state as follows:

**“Assessment of threat**

30. Consideration has been given to the principles set out in Regulation 21(5). This states that a decision to deport the person under the 2006 Regulations must be taken in accordance with the following principles:

- The decision must comply with the principle of proportionality
- The decision must be based exclusively on the personal conduct of the person concerned
- The personal conduct of the person concerned must represent a genuine, present and sufficiently serious threat affecting one of the fundamental interests of society,
- Matters isolated from the particulars of the case or which relate to considerations of general prevention do not justify the decision, and
- The person’s previous criminal convictions do not in them justify the decision.”

9. The sentencing remarks of the judge are set out at paragraph 34 and bear repeating. They were as follows:

“Mr Piedade, you have pleaded guilty to the robbery of a lady in the street, and that is so serious that nothing other than a custodial penalty may follow. In plain language, it means I shall be passing a prison sentence today. I note from your Counsel you understand that, and the remainder of my remarks govern the length of the sentence to be passed.

This was a robbery of a lady alone using a cash machine. That is a vulnerable victim. Women are vulnerable. It is targeting. Women who use cash machines are a ready target. It indicates there will be money. And in this particular case, she was knocked to the ground and suffered some degree of injury.

I agree with Counsel that this places it in category 2 robbery, with a starting point of four years’ imprisonment. I believe that is too high for the circumstances in this case, and I believe the proper starting point is one of three years. From there, I then look at the other factors.

You are aged 34 and you have a record of offending of twelve convictions and eighteen offences. There were no robberies before this but there is a consistent theme of minor unpleasant and violent behaviour. That is disorderly conduct of assaults, and racially aggravated matters.

In this particular case, you clearly indicated your guilt at an early opportunity in a police station. Of course you could do little else as you had been pinned to the ground by two courageous and helpful citizens. Nevertheless, you have pleaded guilty at an early stage, and the earliest possible. I accept that remorse has been expressed, and I also certainly accept that this is as a result of drugs and drug taking. I therefore will reduce the three years to a sentence of two years' imprisonment. I make no order for compensation or as to costs.

I turn finally then to the fact that this is a breach of a conditional discharge, and I am going to take no action on that. I note that it is breached. It has not been put to him, of course. But I am passing no separate penalty.

The sentence that I have passed means that as a Portuguese national the Secretary of State will be considering your automatic deportation, it being a sentence of over twelve months. That then, Mr Piedade is the sentence of the court."

10. Then in the following paragraphs of the revised reasons it is said on behalf of the respondent as follows:

"35. Your victim would doubtless have been traumatised by the events and may suffer long-term psychological harm as a result of your behaviour. Moreover, street robberies have a wider impact upon society in that they create feelings of fear and insecurity in the community.

36. In completing your NOMS1 assessment the offender manager found that you posed a medium risk of reoffending. In assessing you as a medium risk it has been acknowledged that there are identifiable indicators that you will seek to reoffend. In reaching this conclusion your offender manager has taken into consideration those factors which originally led to your offending behaviour and whether those same factors continue to exist. In particular the following issues have been highlighted within the NOMS1 report.

37. It is noted that you sought to minimise your responsibility by stating that drink and drugs were to blame for your behaviour. Seeking employment will be problematic because of your substance abuse despite your work ethic; that you are a long term user of cocaine and crack cocaine and that you have a history of alcohol use and being drunk was a major factor in this offence and others.

38. While living in Brazil and Portugal you claimed to have been involved in violent gang warfare and you continued this lifestyle while in the United

Kingdom when you became involved with the Tottenham Boys, one of the main gangs in Hackney. You claimed to have left the gang two years ago as *"I did not want to spend the rest of my life behind bars"*, although there are reports that you still have a loose connection with them and that you are at risk from a feud with the Bombacilars from Hackney which led to a discussion about being transferred to a different probation office. However, even after leaving the gang your chaotic lifestyle continued, disinhibited by drugs and alcohol. Your offending has led to an Asbo banning you from large parts of Tottenham which has been breached numerous times.

39. Your conviction history includes an anti-social attitude towards the public and community. You appear to have given no consideration to the time and public funds spent each time you offend – from the resources spent by the police investigating your crimes to your victims spending time in reporting the offences and in addition, the high costs involved in taking you to court.
  40. Your convictions indicate an established pattern of repeated offending within a relatively short period of time. The fact that you have continued to offend without being deterred by previous convictions or sentences indicates you have a lack of regard for the law, a lack of remorse for your offending behaviour, and a lack of understanding of the negative impact your offending behaviour has on others.
  41. Furthermore, there is clearly an escalation in seriousness of the offences you have committed, as indicated by the sentences you have received. Your offender manager has stated that alcohol is linked to your current previous offending and that you often drink to offend.
  42. Your offender manager has also stated that drug use is linked to your current and previous offending. Your offender manager has stated that your gang affiliation, as well as alcohol and drugs, give cause for concern. The nature of your offences suggests you are unable to support yourself or your lifestyle in the United Kingdom without resorting to criminal activity.
  43. All the available evidence indicates that you have a propensity to reoffend and that you represent a genuine, present and sufficiently serious threat to the public to justify your deportation on grounds of public policy."
11. The respondent's reasons for considering why deportation of this appellant would be proportionate (as it has to be within Regulation 21(5)(a)) are then set out.
  12. The appellant appealed against this decision and his appeal was heard before a panel of the First-tier Tribunal (First-tier Tribunal Judge Archer sitting with Miss V S Street JP, non-legal member) sitting at Columbus House, Newport on 21 October 2014. In a

determination promulgated on 17 November 2014 the panel dismissed the appellant's appeal.

13. The appellant now appeals against this decision, permission having been granted by First-tier Tribunal Judge Adio on 30 December 2014. There are a number of grounds which I will attempt to summarise. It is suggested in paragraph 1 that the respondent having "simply based a deportation decision on the fact that the appellant has not acquired the right of permanent residence in the UK ... it is contended that the judge is going outside the purview of his adjudication" in seeking "to make findings on the appellant's threat to public security as a basis for justifying the appellant's deportation when in actual fact the respondent has relied on the length of the appellant's residence for justifying taking the appellant outside the high threshold for deportation set in Regulation 21 of the EEA Regulations 2006."
14. With regard to this ground, it is apparent first of all that the appellant's solicitors are relying on the draft which had been sent to them dated 4 April 2014. Although the appellant's solicitors would not have been aware that this letter was a draft, they were also sent the amended version dated 10 April 2014 and so it should have been clear to them then (and also to Judge Adio who also did not appear to have given any consideration to the subsequent reasons which were sent) that the respondent had indeed considered the appellant's case on the basis that he had acquired a right of permanent residence but had sought to justify her decision on the basis that there were serious grounds of public policy or public security justifying the decision.
15. In any event, the panel considered the appeal on the basis that the appellant had acquired the right of permanent residence in this country because this is stated in terms at paragraph 18 of the determination where it is said as follows:

"We find that the appellant has not resided in the UK in accordance with the Regulations for a period for ten years, because of his periods of imprisonment, but he has resided in the UK in accordance with the Regulations for a continuous period of five years. He has therefore acquired a permanent right of residence in the UK and can only be removed on serious grounds of public policy of public security."
16. It is not suggested that this is not the right test, but what seems to be suggested at paragraph 1 of the grounds is that as the respondent had not sought to suggest this it was not for the panel to do so. Apart from the fact that the respondent had indeed suggested this (as is clear from what has been set out above), in any event, even if she had not, the panel could not in any event be criticised for considering whether or not the appellant's deportation was justified applying a higher test than that applied by the respondent in the event that the panel considered that that higher test needed to be applied.
17. The second paragraph suggests that the appellant's threat to public security as found by the panel was "clearly inconsistent with the OASys Report" which "the judge sought to rely on". The basis of this submission is that because that report had

assessed the risk as a medium risk of reoffending “Our submission is simply that an appellant with a medium risk of reoffending or risk to others will hardly fall within the high threshold of deportation on serious grounds of public policy or public security”.

18. In oral argument before me Mr Oshunrinde sought to maintain this submission on the basis that a medium risk of reoffending could not amount to serious grounds justifying deportation. In the grounds at paragraph 2 it is even said that “the panel has failed to justify its decision that the appellant is a potentially dangerous individual”.
19. There is then a challenge at paragraph 3 to the panel’s consideration of the prospect of rehabilitation of this appellant even though it is conceded that reference was made to the principles set out in *Essa (EEA rehabilitation/integration)* [2013] UKUT 00316. It is suggested that the panel relied on the appellant's criminal history “rather than the threat posed by the appellant by his propensity to reoffend”. It is suggested “that the OASys Report of the appellant lays all issues to rest on the appellant's propensity to reoffend and danger to the public”.
20. Paragraph 4 of the grounds appears to repeat what is said at paragraph 3 and at paragraph 5 it is suggested again that the panel had departed from the OASys Report and was being influenced “mainly by the fact of the appellant's criminal conviction rather than any present threat he poses to the public”.
21. It is then suggested at paragraph 7 that in any event the panel should have allowed the appeal under Article 8.
22. In my judgement these grounds are entirely without merit. The determination of the panel is a model determination in the course of which its conclusions and findings are properly reasoned. The requirements of the Regulations are set out at paragraph 11 of the determination and it is quite clear that at all times the panel had in mind that this appellant, as someone who had a permanent right to reside in this country, could only be removed if that removal was justified on “serious grounds of public policy or public security”. The panel also had in mind that “the personal conduct of the person concerned represents a genuine, present and sufficiently serious threat affecting one of the fundamental interests of society” and that “a person’s previous criminal convictions do not in themselves justify the decision”.
23. When setting out the background to the decision the panel had in mind also, as it was obliged to do, that in the view of the respondent (as set out in paragraph 16 of the determination)

“The appellant took pride in his involvement with gang culture. The robbery was a revolting offence. He has a poor criminal record and has engaged in unpleasant and violent behaviour. He is a thug addicted to drugs and alcohol. He takes no responsibility for his addictions.”

24. There was no attempt by the respondent to suggest that the appellant represented a "high" risk of reoffending, and the respondent's case had always been put on the basis that "there is a medium risk of reoffending and harm to the public".
25. The panel set out the family circumstances of the appellant so it is clear that matters which might have led to a consideration of whether there were compelling reasons why notwithstanding the public interest in deporting the appellant he should not be deported were properly considered.
26. At paragraph 19 the panel summarised the appellant's account of his family history as follows:

"It is common ground that the appellant has a number of children who live in the UK. He states in his witness statement of 2 August 2014 that Joysie has been diagnosed with cerebral palsy with severe developmental delay. She has also severe gastro esophageal reflux and requires gastrostomy feeding. She is unable to do anything on her own and will require care for the rest of her life. She requires constant hospital appointments for the doctors to monitor her condition. His relationship with Ana broke up in 2007 but he continued to support her with the children by spending time with them and making financial provision for them as he could. He stayed close to Ana throughout the period. He has matured greatly in prison and has ambitions to live a peaceful life and contribute his own quota to the progress of society."

27. Having set out the appellant's case with regard to his family circumstances the panel then stated at paragraph 25 that "There is insufficient evidence to conclude that he has a family life with Ana and no such family life has existed since 2007" although it is accepted that he has a family life with Zion and Joysie. However, it was not accepted that the deportation of the appellant would "necessarily result in permanent separation from Ana and the children".
28. In any event, the panel went on to conclude that the deportation of this appellant was entirely justified in accordance with the Regulations.
29. At paragraph 27 the panel states as follows:

"The index offence of robbery is very serious. It was a robbery of a lady alone using a cash machine. The sentencing judge recognised that women are vulnerable and women who use cash machines are a ready target. It indicates that there will be injury. In this particular case, the victim was knocked to the ground and suffered some degree of injury. The sentencing judge stated that the appellant's criminal record discloses a consistent theme of minor unpleasant and violent behaviour. That is disorderly conduct and assaults and racially aggravated matters. The appellant was detained at the scene of the robbery by two courageous and helpful citizens."

30. It is also noted that the crime "was the result of drugs and drug taking".



31. The panel at [29] had in mind that part of the OASys Report that states that: “unless there is a radical change in his lifestyle and associates then there is the possibility of relapse”. It summarised what was said in the OASys Report about the appellant's previous involvement in violent gang warfare in Brazil and Portugal. It was noted that he had various knife and bullet wounds and was involved in struggles within British gangs after his arrival in the UK.
32. It is “against that factual background” that the panel then went on to consider whether the deportation of the appellant could be justified having noted that “the standard for removal is relatively high for this appellant because he falls within the second level of EEA nationals. He can only be removed on serious grounds of public policy or public security”. However, the panel then goes on to “find that the index offence of robbery marks a serious escalation in the appellant's criminal behaviour in the UK” and “that the appellant continues to pose a medium risk of serious harm to others, including potential victims of violent crime”. In other words, the panel’s findings are entirely consistent with the OASys Report.
33. The panel then notes that “We have seen no evidence that persuades us the appellant is not at significant risk of relapse into substance and alcohol abuse if he is released in the UK. He is a potentially dangerous individual with a very violent history”.
34. With regard to the principles set out in *Essa*, I agree with Mr Shilliday, who in his submissions to the Tribunal argued that the summary of what was said in *Essa* contained at paragraphs 32 and 33 of the determination was entirely correct and was indeed a model of its type. It is perhaps worth setting out these paragraphs, which are as follows:
  - “32. We have carefully considered the principles set out in *Essa* ... We note that rehabilitation is a relevant factor to be taken into account but is not a determinative consideration. We recognise that for any deportation of an EEA national to be justified on public good grounds then the claimant must constitute a present threat. The fact of a criminal conviction is not enough and deterrence principles are irrelevant. A candidate for EEA deportation must represent a present threat by reason of propensity to reoffend or an unacceptably high risk of reoffending. We have seen clear evidence of a propensity to reoffend and the appellant's offences are becoming much more serious. There is no credible evidence that the appellant has ceased to be a threat to UK citizens. He is a recidivist offender who has failed to respond to previous court orders.
  33. We find that the appellant has achieved a limited degree of integration into UK society. His achievements in relation to work history and his children are marred by repeated reoffending and addiction to drugs and alcohol. We find the appellant does constitute a present threat and is not well advanced in rehabilitation in a host state where there is a substantial degree of integration. Taking all of our findings into account, we therefore conclude that the tests in paragraphs 21(3) and 21(5) of the Regulations are

met. Both the public policy or public security tests are met to the required standard. The decision does also comply with the principle of proportionality.”

35. The panel then considered whether the decision of the respondent was proportionate under Article 8 by referring both to the Court of Appeal decision in *MF (Nigeria)* [2013] EWCA Civ 1192 at paragraphs 41-46 and also by reference to the questions posited in *Razgar*. The panel also had in mind the best interests of the children with whom the appellant had been found to have some family life but nonetheless considered that removal was proportionate to “the legitimate objective that is sought to be achieved, for all of the reasons set out above”.
36. The suggestion advanced on behalf of the appellant that because the risk of reoffending has been stated to be “medium” rather than “high” it cannot then be argued that this is a serious ground for removal is unarguable. One has to bear in mind just what the nature of the risk is which this appellant poses. The type of offences to which this appellant has now graduated are sufficiently serious as to affect key interests of society.
37. The panel was accordingly entitled to find that the appellant is a highly dangerous individual whose continued presence in this country would constitute a serious and present threat to society. It was therefore entirely justified also in concluding that his removal was justified on serious grounds of public security and there was no arguable error of law in the panel’s determination to that effect. Indeed, on the facts of this case, had the panel come to any other decision that would have been arguably perverse.
38. It follows this appeal must be dismissed.

### Decision

**There being no arguable error of law in the decision of the panel of the First-tier Tribunal, this appeal is dismissed.**

Signed:

A handwritten signature in black ink, appearing to read 'Ken Craig', is written over a light blue rectangular background.

Upper Tribunal Judge Craig

Date: 27 March 2015