Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: DA/01329/2014

THE IMMIGRATION ACTS

Heard at Manchester	**Determination Promulgated**
On 29th April and 28th May 2015	**On 29th May 2015**

Before

UPPER TRIBUNAL JUDGE MARTIN

Between

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

MR MARTIN GIRGA

Respondent

Representation:
For the Appellant: Not Represented
For the Respondent: Mr G Harrison (Senior Home Office Presenting Officer)

DETERMINATION AND REASONS

1. This is an appeal to the Upper Tribunal, with permission, by the Secretary of State.

2. The Respondent to this appeal is Mr Girga but for the sake of continuity and clarity I will continue to refer to him as the Appellant and to the Secretary of State as the Respondent. This appeal first came before me on 29th April 2015 when I decided that the First-tier Tribunal had made a material error of law and set aside its decision. The error of law was inadequate reasoning that deportation was

disproportionate. I adjourned the case for a resumed hearing. Thus the matter came before me on 28th May.

3. The Appellant, born on 18th August 1978 is a Czech Roma and as such an EEA national. He appeared in person before me as he did before the First-tier Tribunal.

4. The Appellant first entered the UK in April 2002 and claimed asylum. His partner/wife claimed asylum in her own right. The asylum claims were refused in May 2002 and the Appellant's appeal against the refusal dismissed in December 2002. He had sought asylum on the basis of mistreatment as a Czech Roma. Mr Page, an Adjudicator, in his determination at paragraph 21 said that he had reached the clearest view, upon all the evidence before him that the Appellant had not shown that he was in need of international protection. He found that he had not shown a well founded fear of persecution and was claiming asylum as a means to obtain an immigration status in the UK where he would prefer to live.

5. The Appellant was then removed from the United Kingdom in January 2003. The Czech Republic became a member of the EU on 1st May 2004 and according to the Appellant, he returned to the UK in the middle of May 2004. He was accompanied by his wife, stepson and their two children born in 1999 and 2003. The couple have subsequently had two further children born in the UK in 2005 and 2009.

6. Throughout his time in the United Kingdom the Appellant has amassed a considerable number of criminal convictions. His first offence was in June 2002 when he was cautioned for theft/shoplifting. In the period from 31st October 2002 until 11th March 2014 he has been convicted on 20 occasions of 40 offences. The offences included two offences against the person, seven fraud and kindred offences, seven theft and kindred offences, two public order offences, 10 offences relating to police/courts/prisons, one drug offence and 11 miscellaneous offences.

7. As a result of his offending the Secretary of State wrote to the Appellant on 12th June 2013 warning him that his offending behaviour was liable to result in deportation. Undeterred, he continued to commit offences. On 21st January 2014 the Appellant was convicted at Bolton Magistrates Court of burglary and theft of a non-dwelling and on 3rd March 2014 at Wigan and Leigh Magistrates Court of seven counts of making false representations to make gain for himself or another or cause loss to others/expose others to risk. Additionally, on 11th March 2014 he was convicted at Bolton Magistrates Court of driving while disqualified and using a vehicle while uninsured. He was then sentenced to a total of nine months imprisonment.

8. As a result of his offending a decision was taken on 19th May 2014 to deport him to the Czech Republic under the Immigration (European Economic Area) Regulations 2006 (the Regulations).

9. At the First-tier Tribunal hearing in front of Judge Farrelly consideration was given as to whether the Appellant had a right of permanent residence in the United Kingdom and whether he could demonstrate ten years continuous residence in the UK. On the evidence before Judge Farrelly he found that neither applied and only the lower level of protection afforded by the Regulations apply to the Appellant. Judge Farrelly noted the absence of any documentary evidence as to the Appellant's claimed employment throughout his time in the UK. Notwithstanding those comments by Judge Farrelly the Appellant has not produced any additional evidence. He produced various payslips but these have been produced previously and do not show a period of five years as a qualified person. The Appellant claimed that the reason he could produce no payslips was because there had been a house fire in 2013 which destroyed his paperwork. I do not accept that as an adequate excuse as it would have been possible for the Appellant to obtain evidence from his various employers if it was indeed the case that he had been in continuous employment as claimed. Furthermore, he has spent a considerable amount of time offending during that period which suggests it is unlikely that he would have been working continuously. Similarly as his time in the UK has been punctuated by offending and numerous prison sentences he cannot show continuous residence for ten years either.

10. Under the EEA Regulations a person who has neither permanent residence nor been continually resident for a period of 10 years can be removed from the United Kingdom on the grounds of public policy under Regulation 19(5) and Regulation 19 (6) requires any action taken on the grounds of public policy to be in accordance with Regulation 21.

11. Regulation 21 provides:-

21.— Decisions taken on public policy, public security and public health grounds

(1) In this regulation a "relevant decision" means an EEA decision taken on the grounds of public policy, public security or public health.

(2) A relevant decision may not be taken to serve economic ends.

(3) A relevant decision may not be taken in respect of a person with a permanent right of residence under regulation 15 except on serious grounds of public policy or public security.

(4) A relevant decision may not be taken except on imperative grounds of public security in respect of an EEA national who—

(a) has resided in the United Kingdom for a continuous period of at least ten years prior to the relevant decision; or

(b) is under the age of 18, unless the relevant decision is necessary in his best interests, as provided for in the Convention on the Rights of the Child adopted by the General Assembly of the United Nations on 20th November 1989**1** .

(5) Where a relevant decision is taken on grounds of public policy or public security it shall, in addition to complying with the preceding paragraphs of this regulation, be taken in accordance with the following principles—

(a) the decision must comply with the principle of proportionality;

(b) the decision must be based exclusively on the personal conduct of the person concerned;

(c) the personal conduct of the person concerned must represent a genuine, present and sufficiently serious threat affecting one of the fundamental interests of society;

(d) matters isolated from the particulars of the case or which relate to considerations of general prevention do not justify the decision;

(e) a person's previous criminal convictions do not in themselves justify the decision.

(6) Before taking a relevant decision on the grounds of public policy or public security in relation to a person who is resident in the United Kingdom the decision maker must take account of considerations such as the age, state of health, family and economic situation of the person, the person's length of residence in the United Kingdom, the person's social and cultural integration into the United Kingdom and the extent of the person's links with his country of origin.

(7) In the case of a relevant decision taken on grounds of public health —

(a) a disease that does not have epidemic potential as defined by the relevant instruments of the World Health Organisation or is not a disease [listed in Schedule 1 to the Health Protection (Notification) Regulations 2010] shall not constitute grounds for the decision;

and

(b) if the person concerned is in the United Kingdom, diseases occurring after the three month period beginning on the date on which he arrived in the United Kingdom shall not constitute grounds for the decision.

12. Before considering the EEA Regulations however I must consider the best interests of the four children in this case. I must consider their interests as a primary consideration but not the paramount consideration. Generally speaking, absent countervailing factors, it is in a child's best interests to live with and be brought up with both of its parents. There are of course numerous situations where that does not happen such as where parents separate, where one is abusive or as in cases such as this where one parent is imprisoned. Similarly where one parent is deported and the other chooses to remain. Such

instances are not inevitably against the children's best interests. I find that the Appellant by his actions in this case has not shown that it would be in his children's best interests for him to remain with them. He is a spectacularly bad role model and a person who has paid scant regard to their welfare whilst committing his numerous offences. It is also relevant when considering the best interests of the children, to consider the circumstances of the Appellant's stepson. The Secretary of State provided evidence that the Appellant's wife's son, Miroslav Girga, is about to be deported from the United Kingdom following a conviction for burglary. The Appellant became quite aggressive when asked about his stepson refusing to answer questions about him saying that it was irrelevant to his appeal. However, it is not irrelevant to his appeal because that stepson, although now aged 24, came to the UK as a child with the Appellant and his wife and lived in their household. He has clearly followed the example of his stepfather so far as criminality is concerned, which would indicate that the best interests of the Appellant's children do not require his continued presence in the household. He is a poor role model, has shown disregard for their welfare and has chosen by committing crimes to separate himself from his children when imprisoned.

13. So far as the Regulations are concerned, Regulations 21 (5) and (6) apply. As noted by the First-tier Tribunal, this Appellant has a vast number of convictions. He blames this on the fact that he was a drug addict and that if he had not taken drugs and he only did so in the United Kingdom, he would not have committed the offences. That of course is an explanation not an excuse. He has put forward no evidence of any work that he has undertaken in connection with drug abuse and he told me, as he told Judge Farrelly, that he has come off drugs purely through willpower. I am unable to accept that that is the case. If all it required was willpower then in order to avoid committing further offences and being incarcerated and possibly deported from the United Kingdom he could have exercised his willpower at any time between 2002 and 2014 and yet he did not do so. He did not do so even after he had been warned by the Secretary of State that he would be deported if he continued to offend. The sheer number and variety of offences lead me to be far from reassured by his claim to have turned over a new leaf and that he will not commit further offences. His history would indicate otherwise. He told me that his wife was the good influence that would prevent him either taking drugs or offending in future. However, his wife has not been able to exert any such influence over the past 12 years; nor could she over her son. I am therefore led to the inescapable conclusion that the personal conduct of this Appellant represents a genuine, present and sufficiently serious threat affecting one of the fundamental interests of society. It is a fundamental interest of society for the public to be protected from serial criminals.

14. So far as Regulation 21 (6) is concerned I am required to take into account the Appellant's age. He is now aged 37. With regard to his

state of health; there is no evidence that he is other than fit and well. So far as his family and economic situation is concerned it is that on which he relies most heavily in order to remain in the UK. His wife and his four children are all Czech nationals. The younger two children were born in the UK and all four are in education. The Appellant said that he is currently working for an agency but without his passport is unable to work full-time. He told me that he wants to support his family and work. He told me that the people that he currently works for want to employ him full-time because they are impressed by his work. There was no evidence however from the company to that effect before me.

15. Given the Appellant's criminal record and how he has been occupying himself over the past 12 years it seems highly unlikely that he has been providing financially for his family in the UK. I was provided with no evidence from his wife that she is working and contributing to the family income, which means that the family are likely to be dependent on public funds.

16. While the Appellant has been in the UK for a considerable length of time that time has been spent largely committing offences and displaying a total disregard for the UK law and society. The Appellant says that his wider family is in the UK and he no longer has any family in the Czech Republic. However, it is of note that he used a Czech interpreter at the hearing and it was clear that he understood very little English. He conversed with his wife, he told me in Roma and Roma is the language they use at home. His children speak both English and Roma. Language and the fact that the Appellant has committed so many criminal offences indicates that he has not integrated culturally into the UK. Had he done so, he would not show such a blatant disregard for the law. While the Appellant has been in the United Kingdom for a long time, he was in the Czech Republic for longer than he has been in the UK. As I have already indicated he is fit and healthy and if he can find work as easily as he claims there is nothing to prevent his doing so in the Czech Republic.

17. The public interest in deporting foreign national criminals from the United Kingdom is extremely high and by his actions this Appellant has made his deportation entirely justified. Whilst I have found that the best interests of his children do not require his remaining in the United Kingdom, even if they did their best interests would be outweighed by the public interest in removing this Appellant from the United Kingdom. As EEA nationals, the family can only be removed from the United Kingdom under the Regulations and no decision has been made to remove them. That of course does not prevent them returning to the Czech Republic with the Appellant if they wish to do so. The Appellant's wife will have a choice to make. She can either leave the UK with her children to live with her husband in the Czech Republic or she can remain in the UK with the children but without the Appellant. She will no doubt manage without the Appellant as she has

done when he has been imprisoned. There is no evidence that either she or the children came to any harm when the Appellant was in prison.

18. I was told that the wife would remain in the UK if the Appellant is deported. That is her choice.

19. I did not hear from the Appellant's wife. Despite my stressing that the Appellant may wish to call her to give evidence and her presence at court, he declined to do so.

20. For all of the above reasons the Secretary of State's appeal to the Upper Tribunal is allowed with the result that the Appellant's appeal against the Secretary of State's decision to deport him from the United Kingdom is dismissed.

Signed Dated 28th May 2015

Upper Tribunal Judge Martin