Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: DA/01425/2014

THE IMMIGRATION ACTS

Heard at Glasgow	**Decision and Reason Promulgated**
On 2 June 2015	**On 8 June 2015**

Before

UPPER TRIBUNAL JUDGE MACLEMAN

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

MICHAL RONDOS

Respondent

Representation:
For the Appellant: Mr M Templeton, of Quinn, Martin & Langan, Solicitors
For the Respondent: Mr M Matthews, Senior Home Office Presenting Officer

DETERMINATION AND REASONS

1. The parties are as described above, but the rest of this determination refers to them as they were in the First-tier Tribunal.

2. The appellant is a citizen of Slovakia, born on 3 October 1986. He was sentenced at Glasgow Sheriff Court on 20 March 2013 to imprisonment for 3 years and 3 months on 3 charges of participation in a fraudulent scheme, which involved transporting persons from the Slovak and Czech Republics to Scotland on the pretence of providing them with employment. In terms of a decision and a letter both dated 15 July 2014 the respondent

decided to make an order for his deportation and removal to Slovakia under the Immigration (European Economic Area) Regulations 2006.

3. By determination promulgated on 15 October 2014, Judge Reid allowed the appellant's appeal to the First-tier Tribunal under the regulations.

4. The Secretary of State appeals to the Upper Tribunal on the following grounds:

> 'Ground 1: Material misdirection of law
>
> a) Rehabilitation: on the authority of *Essa* [2013] UKUT 00316 the judge erred by considering the issue of rehabilitation when she had found that the appellant had not acquired permanent residence, and therefore could not be said to be integrated and to fall within the scope of the principle of rehabilitation.
>
> b) Integration: the judge failed to take account that the appellant's criminality showed that he disregarded social values; integration is not based only on temporal and familial factors.
>
> c) Regulation 21(5)(c): the judge concluded at paragraph 50 that there was "no evidence that the appellant is now a present threat and sufficiently serious threat". This failed to have regard to the appellant's ongoing denial of his offence, although the judge had commented that he was not prepared to accept responsibility.'

5. There is a second ground of appeal, aiming to show perversity, but it is in confused terms. Mr Matthews conceded that it could not be made out.

6. Mr Templeton sought to persuade me that there was no error of law because even if the judge's finding that the appellant did not pose a threat was inconsistent with other findings and aspects of the evidence, there was before her a social work report which said that he presented a low risk of serious harm to the wider community and a low level of overall offending, and the Secretary of State had taken no issue with the terms of that report and the low risk assessment.

7. Mr Templeton, whose firm had not represented the appellant at the stage of the hearing on the First-tier Tribunal, had not obtained a copy of the respondent's letter dated 15 July 2014 explaining the reasons for the decision. This says at pages 3-4:

> "In completing your criminal justice social work report the offender manager found that you posed a low risk of harm to the community should you re-offend. 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. However, the overall score given on your report is in conflict with the written comments of the sentencing judge who found your crimes to be well planned and cynical frauds involving young, often, and almost always trusting people who were down on their luck and in the main unemployed. It is therefore considered that you pose a high risk of harm should you re-offend. Whilst the risk of your re-offending is viewed as low, the serious harm which would be the

cause of the result is such that it is not considered reasonable to leave the public vulnerable to the effects of your re-offending."

8. That letter was before the judge and was relied upon by the respondent's representative in submissions. The judge should also have considered at this point her findings that he minimised his offending and showed no empathy or remorse. The conclusions in the social work report, as Mr Matthews submitted, are difficult to understand and do not appear to follow from the body of the report.

9. The judge's statement at paragraph 50 that she saw "no evidence to support the assertion that the appellant is now a present threat and sufficiently serious threat" contradicts what has gone before. It might have been possible to reach the conclusion that he did not represent such a threat, but only after a proper resolution of the evidence. That result could not be received by adopting the rather surprising conclusion in the social work report and ignoring significant aspects of the evidence and of the respondent's analysis which pointed in the other direction.

10. The respondent's decision was reached on the basis that the appellant failed to show that he had resided in the UK in accordance with the regulations for a continuous period of 5 years and thereby acquired the right of permanent residence. The point is significant in relation to the level of protection available to him against deportation. The judge found that his evidence failed to establish that he did have a permanent right of residence. The appellant says that he was let down by his previous representatives in this respect and that given the chance he would be able to lead additional evidence to establish the right of permanent residence. Mr Matthews agreed that in remaking the decision the appellant should have that opportunity.

11. The determination of the First-tier Tribunal is **set aside**. No findings are to stand. Under section 12(2)(b)(i) of the 2007 Act and Practice Statement 7.2 the nature and extent of judicial fact finding necessary for the decision to be remade is such it is appropriate to **remit** the case to the First-tier Tribunal. The member(s) of the First-tier Tribunal chosen to reconsider the case are not to include Judge Reid.

12. Since preparing the determination as above I have noted the reporting of *Dumliauskas and others* [2015] EWCA Civ 145, which may be a useful reference in the remaking of the decision.

13. No anonymity order has been requested or made.

Hugh Macleman

4 June 2015

Upper Tribunal Judge Macleman