IAC-FH-CK-V1

Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: DA/01509/2014

THE IMMIGRATION ACTS

Heard at Field House	**Decision & Reasons Promulgated**
On 25 June 2015	**On 8 July 2015**

Before

THE HONOURABLE MR JUSTICE DOVE
UPPER TRIBUNAL JUDGE ESHUN

Between

MR JEROEN DRIES HEBBREECHT
(ANONYMITY DIRECTION NOT MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellant: In Person
For the Respondent: Mr S Whitwell, Home Office Presenting Officer

DECISION AND REASONS

1. This is the appeal against a decision reached by First-tier Tribunal Judge Martins following a hearing at Hatton Cross on 22 January 2015 in a determination dated 27 February 2015 when she dismissed the appellant's appeal against a decision of 27 May 2014 to make a deportation order in relation to him. The Appellant asked us to consider making an anonymity direction in this case but we can see no basis upon which such an order should be made and have declined to do so.

© CROWN COPYRIGHT 2015

2. The appellant is a citizen of Belgium who was born on 22 September 1972. In terms of the issues that were raised in this appeal it is not necessary to delve deeply into the history of the matter and how he came to find himself before FtTJ Martins. It suffices for us to note that he arrived in the United Kingdom in 1993 having first been cautioned on 4 July 1994 for criminal damage. He then, between October 1994 and March 2014, has been convicted of 99 offences including ten offences against the person, seven offences against property, two thefts and light offences, 23 public order offences, nineteen offences relating to the authorities for drug offences and 34 other miscellaneous offences.

3. During his submissions before us Mr Hebbreecht has been keen to point out that some of these may have been overstated and that on other occasions he may have pleaded guilty on advice or tactically rather than because he genuinely felt he was guilty of the offence. Whilst that is understood and his feelings in that respect are respected those submissions are of no materiality to us as we have to take his criminal record as it is presented in the documentation and cannot reopen the circumstances of that litany of offending.

4. On 24 March 2014 at the North West Magistrates' Court he was convicted of battery, destroying or damaging property and breach of a conditional discharge. He was sentenced to ten weeks' imprisonment and ordered to pay a £100 fine. That led to the service upon him on 27 May 2014 of the notice of a decision to make a deportation order in relation to him. Although a deportation order was made on 1 August 2014 it then came to light that he had lodged an out of time appeal against the earlier decision on 30 July 2014, leading to the matter being brought on before FtTJ Martins.

5. Prior to the hearing on 22 January 2015 Mr Hebbreecht had made a number of appearances at bail hearings where he had sought to be released from detention. It is clear from the helpful decision in relation to the grant of permission to appeal by FtTJ Landes in this case that so far as the hearing is concerned there are contained on the Tribunal's file notices of 5 September 2014 and 11 September 2014 which included directions and a notification of the hearing which have been sent by post to HMP Wormwood Scrubs and returned marked "addressee gone away". That was surprising bearing in mind that the appellant had been held at HMP Wormwood Scrubs during that time. In fact the appellant was produced at the hearing on 22 January 2015 and during the course of the hearing this morning he accepted that he knew that that was for the purposes of his appeal albeit that he felt unprepared to address the issues at the appeal and appeared without documentation and was not feeling well.

6. He also wished for reasons that we shall turn to in due course to have available the material that he furnished in support of his bail applications. That material he advises both in the grounds of appeal and in his submissions to us today included information on two topics, firstly his employment history in the United Kingdom and secondly documents which pertained to the opportunities he had for

rehabilitation in the United Kingdom and which evidenced his earnest of seeking to address the causes of his offending.

7. In any event, as we have explained, he attended on 22 January 2015 and represented himself before FtTJ Martins. She having heard the evidence reached the following findings and conclusions:

> "57. I had the opportunity of hearing and observing the appellant give evidence. It was clear that the appellant is very confused about his time in the United Kingdom, particularly in terms of the employment he has had. He attributes much of his offending to the fact that he became homeless in 2006, after which time his dependence on alcohol escalated. His evidence however makes it clear that he takes very little if any responsibility for his offending and that which he says is helpful, namely attending meetings for his alcohol dependency does not appear to have helped, as he has offended consistently within eighteen months of his arrival in the United Kingdom in 1993, his first offence having been committed in 1994 until he was imprisoned in 2013.
>
> 58. I find that I cannot conclude from the evidence that the appellant has exercised treaty rights continuously for five years, such that he has acquired permanent residence. As submitted by the respondent's representative, the appellant cannot demonstrate such and his offending also calls that into question, in that in accordance with the case of **LG and CC**, time spent in prison does not count towards the acquisition of the level of years to afford him protection given to an EEA national, by Regulation 21(4) of the 2006 EEA Regulations, or to establish him as a person who has a right of permanent residence in the United Kingdom. The mere fact of the appellant's presence in the United Kingdom for a lengthy period does not entitle him to permanent residence and the evidence is such that I cannot be satisfied that he has resided in accordance with the 2006 EEA Regulations for a continuous period of five years, given that as observed by the respondent's representative, every time he is incarcerated that resets the clock insofar as the required five years continuous residence, in accordance with the Regulations. Even in respect of the period between 2002 and 2007 when it appears the appellant was not in prison he has no evidence of his exercise of treaty rights in that period, as on his own evidence his working life was sporadic on account of having been made homeless in January 2006. He is therefore not eligible for the enhanced protection under Regulation 21(5) of the 2006 EEA Regulations. The decision to deport therefore has to be proportionate and based on his own conduct, which should present a genuine and sufficiently serious threat.
>
> 59. The appellant does not accept responsibility for his offending and does minimise or blame others for it. Even that which he claims is helping in rehabilitating him, namely attendance at meetings for his alcohol dependency, does not appear to be assisting him and I agree with the respondent's representative's submission that there is no evidence on which I can conclude that the pattern of the appellant's life over the last twenty years has been broken and that he will behave differently."

8. That led the judge to a finding that she could not be satisfied that the appellant had acquired a permanent right of residence in the United Kingdom in accordance with Regulation 15 of the 2006 Regulations nor that she could be satisfied that he had

resided in the United Kingdom for a continuous period of at least ten years in accordance with the 2006 EEA Regulations such he should only be deported on imperative grounds of public security.

9. She concluded applying Regulation 21(5) of the 2006 Regulations that the appellant did, in the light of his long and significant history of previous offences, represent a genuine present and sufficiently serious threat affecting the fundamental interests of society so as to justify the decision to deport him to Belgium. She went on to consider the issues in relation to proportionality and in particular what she had been told by the appellant about his previous life in Belgium and his medical history. She concluded in relation to those matters within paragraph 63 of the determination as follows:

> "63. The appellant is from Belgium and spent twenty years of his life there. According to his own evidence he has parents and siblings whom albeit not frequently he is still in contact with. He stated at the hearing that he has a medical condition and does not believe that he can access medical help in Belgium, having not been in that country for a very long time. I find however that none of the exceptions under paragraph 117C of the 2014 Act, apply to this appellant and there is no independent evidence before me of his assertion that he will not be able to obtain treatment for his health issues in Belgium. I find given the appellant's substantial criminal offending, I do not find him credible and cannot place reliance on his assertions, without independent evidence."

10. She went on to conclude that there would not be a breach of Article 8 based on proportionality and in those circumstances that the decision of the respondent should be upheld.

11. As we have indicated there were two bases upon which permission to appeal was granted in this case. It is important for us to emphasise that our jurisdiction and our decision is not a full reconsideration of the merits of the appellant's appeal. It proceeds on the basis of analysing whether or not in the earlier decision there were errors of law or incidents of unfairness which mean that the decision should be set aside.

12. In this case the appeal proceeds on two aspects which are related to an allegation of unfairness in respect of the proceedings. The first of those is that as we have set out above there was misunderstanding and confusion in relation to the communication of the hearing and a notification to the appellant in that regard. The second, which we have also alluded to above, relates to the absence of bail documentation before FtTJ Martins which it is said contained material which might bear upon the issues which she had to consider.

13. Dealing firstly with the ground in relation to the notification of the hearing, there are two features which in our view are of note. Firstly it was sensible of the Tribunal to notify the prison at which the appellant was being held rather than trusting necessarily to personal communication with the appellant whilst he was detained. That is because it is incumbent upon those who have responsibility for the prison to ensure that he was in attendance at the hearing.

14. The second and very important feature of the case is that notwithstanding the appellant's confusion about whether or not the notification of the hearing was accepted at the prison it appears beyond argument that the prison authorities and also the appellant were aware of the hearing and that the appellant attended and was able to take part in the hearing. Whilst the appellant has expressed his concern about whether or not he was fully prepared at the hearing, nonetheless he was present and we are satisfied that there was no unfairness in terms of the delivery of the notice and the ability of the appellant to attend the hearing in person.

15. Turning then to the second ground on which the appeal is advanced, there is the suggestion of unfairness from the appellant on the basis of the absence of available documentation pertaining in particular to issues associated with his employment and rehabilitation. Additionally, and building upon ground 1, he expressed his concern that there may have been other documentation which he could have produced and witnesses which may have been available in support of his case. Having carefully scrutinised those suggestions, we are unpersuaded that there is substance in them.

16. Firstly, so far as the documentation in relation to employment is concerned it will be clear from both our citation of paragraph 58 of the determination but also as detected by FtTJ Landes in granting permission to appeal the precise employment history of the appellant in this case was unlikely if not certain to be incapable of assisting him bearing in mind the number of occasions on which he had been imprisoned during the course of his time in the United Kingdom and therefore it would have made no difference at all to the decision which was reached by the judge.

17. So far as the documentation in relation to rehabilitation was concerned we have been shown documents of a similar nature during the course of the hearing today. There is no doubt that that documentation and documentation obtained by the appellant at an earlier stage speak to his credit and also his determination to rehabilitate himself. Equally, however, there is no doubt that the conclusions reached in paragraph 59 of the determination about the extent of the repeated criminal offending of which the appellant has been responsible would weigh exceedingly heavily on the other side of the balance. In the circumstances we cannot detect any unfairness in what occurred. There was little particularity about the nature of the material that the Appellant would have been able to produce and in any event bearing in mind the extensive pattern of previous offending and the inevitable heavy weight that that would have carried in the decision which was to be reached on the appeal we are not satisfied that any substantive unfairness has been made out in this case.

18. So far as the appellant relies upon medical issues it is clear from paragraph 63 that the judge was alive to those and took them into account, but in the absence of independent evidence she was entitled to reach the conclusion which she did. In any event those issues bearing in mind the extensive criminal history which had to be borne in mind and would, as we have already observed, carry significant weight in the determination of the appeal it is unlikely if not certain that it would have made no difference to the outcome of this appeal.

19. For all of those reasons and notwithstanding the material which Mr Hebbreecht has put before us this afternoon in support of his appeal we are satisfied that there is no error of law in the conclusions which were reached by FtTJ Martins and therefore this appeal must be dismissed.

Notice of Decision

The appellant's appeal is dismissed on all grounds.

Signed Date

Mr Justice Dove