



**Upper Tribunal  
(Immigration and Asylum Chamber)**

Appeal Number: DA/01510/2013

**THE IMMIGRATION ACTS**

**Heard at Field House  
On 7 January 2015  
Extempore Judgment**

**Decision & Reasons  
Promulgated  
On 14 January 2015**

**Before**

**UPPER TRIBUNAL JUDGE COKER**

**Between**

**MR CARLOS MIGUEL CUIANDA CORREIA  
(ANONYMITY DIRECTION NOT MADE)**

Appellant

**and**

**THE SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Respondent

**Representation:**

For the Appellant: in person

For the Respondent: Ms J Isherwood, Home Office Presenting Officer

**DETERMINATION AND REASONS**

1. This is the appeal of Mr Carlos Miguel Cuianda Correia, who is a Portuguese national. He appealed a decision to deport taken in accordance with Regulation 19(3)(b) of the Immigration (EEA) Regulations 2006 on 10 July 2013 and following a hearing on 6 August 2014 the determination of which was promulgated on 19 August 2014, the appeal was dismissed. It was conceded at that hearing by the appellant that he

had not shown five years' continuous residence and that he was entitled to the lowest level of protection only.

2. The determination was, according to the grounds seeking permission to appeal, not received by the solicitors until 23 September as opposed to 20 August 2014. They asserted that the time limit should run from then in which case given the application for permission to appeal was submitted within five days of that date it would be in time.
3. In granting permission the First-tier Tribunal made no ruling on whether the application for permission to appeal was in time and it was therefore a provisional decision only. Correspondence that was attached to the application for permission to appeal does appear to indicate support to the position put forward by the solicitors and given that this is something that was said by the solicitors I am prepared in this case to accept that they did not receive the decision until 23 September and insofar as an extension of time is required I will extend time. Thus the provisional grant of permission becomes a grant of permission.
4. Permission was sought and granted on the basis of an asserted failure by the First-tier Tribunal Judge to take account of abstinence from drug abuse since his release from prison when the report had stated that reversion to drug use would indicate an increased risk of offending; that the Immigration Judge does not dispute that the appellant had completed his RAPt course nor had she disputed the witness statement and the psychiatric report; that the oral evidence indicated continued abstinence from drug use and that she had failed to take account of this when making her own assessment of risk.
5. The grounds also submitted that there had been a failure to take account of the lack of drug use in assessing the risk of future offending when he is drug-use free, that there had been a failure to take account of progress in rehabilitation as per the case of **Essa**, that the judge had failed to give due weight to supportive family life and that the Immigration Judge's reassessment of the risk was ill-founded as she had failed to consider all of the relevant factors in reassessing the expert report.
6. There is no objection in the grounds seeking permission to appeal to the summary of the background to this appellant's residence in the UK as set out in the determination, in particular that he came to the UK in March 2005. He first came to the adverse attention of the authorities in October of that year when he was cautioned on suspicion of committing shoplifting and from 3 November 2006 to 14 January 2013 he had 34 offences leading to fifteen convictions. He had previously been sent a warning letter about deportation following an offence of theft in 2008 or 2009 and he had been convicted on 9 November 2012 at Woolwich Crown Court for burglary and sentenced to two years' imprisonment. His licence expired in November 2014 and he was released from immigration detention on 21 May 2014.

7. The First-tier Tribunal Judge sets out her findings of fact and considerations from paragraph 28 onwards. In paragraph 28 she sets out the appellant's history and in 29 she sets out the correct legal test to be applied. She summarises again the evidence and identifies the shortcomings in the OASys Report and the NOMS report and gives details of the report by the expert, in particular dealing with the reoffending risk. She makes the point that this report was prepared whilst the appellant was in prison but specifically says that the appellant would benefit from developing social networks to support him in obtaining protective factors and that he had reported that his sources of support included his partner, his sister and family members in the UK.
8. The judge records the expert's opinion that there was a low to moderate risk and also the confirmation from the probation officers that since his release in May 2014 he has remained drug-free. She places weight on that report even though it is different to the limited evidence in the OASys and the NOMS report and finds the report to be substantial and independent. In assessing the value and the weight to be placed on that report she also looks at the other information before her. She sets out her assessment of the appellant's integration into the UK, his claimed relationship with his partner and issues of rehabilitation. She is entitled to reach a different view as to the risk assessment of reoffending. On the basis of the evidence before her her assessment that the risk of reoffending is more likely to be medium than low to medium is a decision and a conclusion that she was entitled to come to on the basis of the evidence and the information that was before her. It is worth noting that she reaches a lower assessment than the NOMS report although higher than in the OASys Report although again noting that both of those she criticises as being incomplete.
9. In determining the level of integration that the appellant has she acknowledges the role of family and economic relationships. She sets out in detail the evidence before her in connection with that and reaches sustainable findings that the appellant is not well-integrated into the UK. She refers specifically to the lack of integration by way of work or educational studies, the relationship with a partner and lack of evidence of supportive friendships. She refers to his only family members being his sister and her children and the significant amount of time that he spent in prison since he came to the UK in 2005.
10. The judge accepts that the appellant's rehabilitation is likely to have started when he was in prison and that he is on licence and has the support of a probation officer. She acknowledges his evidence that he has no further contact with his old peer group but she looks at that in the light of all the other evidence and states, as the independent report does, that an important aspect of rehabilitation is the supportive relationships that are in place to provide a protective factor. The judge on the basis of the information before her concludes that it is really only his sister that he can depend upon and makes the point that on the basis of the evidence before

her this has not assisted him in the past. She makes a finding that as at the date of that appeal he had only been in the community for two and a half months, which made it difficult to assess whether the changes were durable. She considers all of those factors in the light of the case law and reaches a conclusion that although it is not possible to say that there are no reasonable prospects of rehabilitation it could not be said that his prospects were significantly improved by continued residence in the UK.

11. The judge also considers everything in connection with proportionality. She sets out again the correct test and plainly takes account of all the evidence before her. In a determination that is reasoned and sustainable the judge reaches the conclusion that the appeal against deportation should be dismissed. There is no error of law in her conclusions and I dismiss the appellant's appeal against the First-tier Tribunal Judge's determination.

### **CONCLUSION**

The appeal is dismissed.

No anonymity direction is made.

Signed

Date **13 January 2015**

Upper Tribunal Judge Coker