Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: DA/02161/2013
DA/02162/2013

THE IMMIGRATION ACTS

Heard at Glasgow
on 2 November 2015

Determination issued
On 13 November 2015

Before

UPPER TRIBUNAL JUDGES DEANS & MACLEMAN

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT
Appellant

and

HELENA AND RENATA KULOVA
Respondents

Representation:
For the Appellant: Mrs M O'Brien, Senior Home Office Presenting Officer
For the Respondents: Mr A J Bradley, of Peter G Farrell, Solicitors

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 appellants are mother and daughter, born on 28 April 1965 and 25 July 1992, both citizens of Slovakia.

3. The SSHD appeals, on grounds numbered 1 – 6, against a determination by a panel of the First-tier Tribunal comprising Designated Judge

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Macdonald and Judge Dennis, promulgated on 3 February 2015, allowing appeals by both appellants against deportation under the Immigration (European Economic Area) Regulations 2006.

4. Parties agreed that the SSHD's ground 3 correctly and "in the interests of fairness" points out a legal slip, but the matter has no bearing on the outcome. Mrs O'Brien did not rely upon ground 6 to the extent that it argues that notwithstanding whether the appellants pose any future threat, past conduct alone might justify deportation. The SSHD did not take that line in the decisions under appeal or in the First-tier Tribunal.

5. Submissions for SSHD. Two points were to be taken from the grounds:

   (1) Based on the remaining parts of grounds 1-5, the panel went wrong in finding that the appellants had acquired a permanent right of residence, and so fell to be judged by the higher test in the regulations. The panel did not adequately explain why the history of either appellant qualified for that status. Such status might derive from the history of the witness Miroslav Kula, who is the husband of the first and father of the second appellant, but no clear finding was made; the first appellant was not individually qualified in terms of the regulations; the first appellant's period of imprisonment had not been factored into the consideration; imprisonment interrupted continuity of residence; there had been little evidence that Mr Kula had acquired a right to permanent residence; consequently, there was inadequate reasoning for the conclusion that the second appellant acquired permanent residence as the minor child of a qualified person. The panel found the evidence from the appellants evasive, confusing and difficult to reconcile. The evidence from Mr Kulova was only oral. Given the criminality, the vague account of immigration history, and the absence of documentation, there was no evidence to support the panel's conclusion.

   (2) Based on ground 6, the panel had failed to explain why the appellants did not pose a serious risk of re-offending, when had no insight into their offending behaviour and its impact.

6. Submissions for appellants. The Secretary of State had at one time conceded that the appellants had permanent residence status, but withdrew that in light of their convictions. The panel had oral evidence from Mr Kula of effectively continuous presence since arrival in 2004. There was nothing to contradict him. Once his status was resolved, the periods of imprisonment and any criticisms that might be made of the evidence from the appellants were of no account. The positive finding on the evidence from Mr Kulova was a complete answer to point (1). On point (2), there had been an initial social work report which suggested that the appellants had not addressed their offending, but that was prepared while they were on bail prior to conviction and sentence, and was overtaken by more up to date reports. The author of those more recent reports attended the hearing and gave evidence, which the panel was entitled to

accept. Although other evidence from the appellants was found defective, the evidence about their recognition of responsibility was found reliable, after careful consideration (paragraph 25).

7. We reserved our determination.

8. The panel was entitled to find, and did find, that Mr Kula had been in the UK as a qualified worker since 2004 and so accrued a permanent right of residence. There was no written evidence, a factor to which the respondent was entitled to draw attention, but nor was there any reason why the panel might not find his oral evidence reliable and sufficient. At that stage, the vagueness and inconsistency of the evidence from the appellants about their immigration history became irrelevant to deciding their residence status.

9. The panel's assessment of the risk of re-offending is in line with the assessment by the expert author of the most recent reports. The panel did not simply accept the reports at face value and without examination. Ground 6 is headed "misdirection in law/inadequate reasoning" but the respondent shows no legal misdirection, and the panel's reasoning is plainly detailed and thorough, in particular at paragraphs 20-26.

10. The determination speaks for itself in answer to both the respondent's points, and no more needs be said. The grounds are only disagreement.

11. The determination of the First-tier Tribunal shall stand.

12. No anonymity direction has been requested or made.

Upper Tribunal Judge Macleman

5 November 2015