Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: DA/00034/2015

THE IMMIGRATION ACTS

Heard at Taylor House	**Decision & Reasons Promulgated**
On 9 May 2016	**On 19 May 2016**
Determination given orally at the hearing.	

Before

UPPER TRIBUNAL JUDGE MCGEACHY

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

MR RONALD BALDACCHINO
(ANONYMITY DIRECTION NOT MADE)

Respondent

Representation:

For the Appellant: Mr. L Tarlow, Senior Presenting Officer.
For the Respondent: None

DECISION AND REASONS

1. The Secretary of State appeals against a decision of Judge of the First-tier Tribunal Cohen who in a determination promulgated on 28 July 2015 allowed the appeal of

Mr Ronald Baldacchino, a Maltese national, against a decision of the Secretary of State made on 28 October 2014 to make a deportation order against him under Section 5(1) of the Immigration Act 1971.

2. Although the Secretary of State is the appellant before me I will for ease of reference refer to her as the respondent as she was the respondent in the First-tier. I therefore refer to Mr Baldacchino as the appellant as he was the appellant in the First-tier.

3. The appellant claims to have arrived in Britain in 2005 and applied to the Home Office for a residence permit as an EEA national on 22 November that year. He was granted a residence permit with validity for five years in February 2006.

4. In May 2014 he was convicted at Snaresbrook Crown Court of threatening a person with an offensive weapon in a public place and sentenced to twelve months' imprisonment and ordered to pay a victim surcharge of £100. He did not appeal against his conviction or sentence. On 20 May 2014 he was notified of his liability to deportation on the grounds of public policy or public security in accordance with Regulation 19(3)(b) of the Immigration (EEA) Regulations 2006. He made representations thereafter as to why he should not be deported. Regulation 19(3) relates to a decision of the Secretary of State when it has been decided that the removal an EEA national is justified on grounds of public policy, public security or public health in accordance with Regulation 21. Regulation 21 deals with the removal of EEA nationals who have committed crimes. It makes a distinction between those who have permanent residence because they have lived here exercising Treaty rights for 5 years, those who have permanent residence and have lived here of 10 years and those who have leave to remain for a limited period.

5. The judge found that the appellant had exercised not Treaty rights here for 10 years and that therefore was not entitled the higher level of protection. What he stated was that "the appellant is in respect of regulation 21(5) of the regulations". I consider that he was focusing on the terms of Regulation 21 (5) (c) which states that revocation is justified on the grounds of public policy, public security or public health and thereafter that can lead to the removal of the EEA national.

6. The judge had before him a probation officer's report dated 10 April 2015. In it the probation officer states:

> "Upon his release Mr Baldacchino had initially been assessed as posing a high risk of harm to the public, an assessment which was purely based on the severity of the offence. However due to Mr Baldacchino's willingness to accept and reflect on his behaviour alongside the evidence of him being dedicated to living a positive life Mr Baldacchino is currently assessed as posing a medium risk of harm to the general public. This assessment is based on the fact the index offence is serious in nature. However there is little evidence to suggest that Mr Baldacchino may be minded to react in this way again in the future. I have considered reducing this risk to low should Mr Baldacchino continue to

> demonstrate the same attitude, acceptance and self-awareness and responsibility over a significant period."

7. However, the judge in his determination did not quote directly from the report. Rather he lifted the part of the report which was set out in the skeleton argument before him and concluded that the probation officer had indicated that the appellant posed no present risk and that "following the passage of additional time of the appellant demonstrating the same attitude, acceptance and self-awareness that he had demonstrated to date would consider reducing this risk to low". He goes on to say:

> "Based upon the appellant's significant period of time spent in the UK one offence caused during unjustifiable but emotional circumstances the appellant's low sentence compared to the possible maximum the positive comments made by his probation officer indicating that the appellant potentially will be low at posing a low risk of harm to the public in the future and no reference of continuing harm to the victim who has disappeared off the scene and having been dismissed by his previous employer who is the current employer of the sponsor I find that the appellant simply does not pose the relatively high risk that is of representing a genuine present and sufficiently serious threat affecting one of the fundamental interests of society I do not find that the appellant poses a significant risk of re-offending or that his deportation is justified and serious grounds of public policy."

8. The Secretary of State argued in the grounds of appeal that there was no basis on which the judge could have reached the conclusion that the appellant had a permanent right of residence. When granting permission Upper Tribunal Judge Reeds did not accept that assertion and referred to the fact that in the letter of refusal the respondent had accepted that the appellant had permanent residence. That ground has been renewed before me by Mr Tarlow but for the same reasons as Upper Tribunal Judge Reeds I consider that that ground has no merit. What is relevant, is, of course, that the appellant does not have the highest level of protection as he has not exercised Treaty rights here for 10 years.

9. Be that as it may, however, the grounds of appeal also argued that the judge was not entitled to reach the conclusion that the personal conduct of the appellant did not represent as genuine, present and sufficiently serious threat affecting one of the fundamental interests of society: that is the test set out in Regulation 21(5)(c).

10. I can only conclude that that is correct. I consider that the judge's conclusions did not properly take into account the clear findings in the probation officer's report which state in terms that the appellant had been assessed as posing a high risk of harm to the public and that that had been based obviously quite properly on the severity of the offence. In any event he was currently assessed as posing a medium risk of harm to the general public: that simply cannot be characterised as not being a sufficiently

serious threat affecting one of the fundamental interests of society. I therefore set aside the decision of the Immigration Judge.

11. There has been no appearance by the appellant before me today or any appearance on his behalf. I note that the appeal had previously been adjourned because it was said that he had returned to Malta. The appellant's solicitors have written in to say that they have no instructions. It was for that reason that I considered it appropriate to proceed to hear the issue of the error of law in this appeal. Having made a decision on error of law I see no reason, given the evidence that the appellant is not here and is living in Malta and that indeed that in any event should he attempt to re-enter the country he could be refused entry on public interest grounds that it is appropriate that I should determine the appeal before me substantively.

12. In doing that I take into account the terms of the probation officer's report dated 10 April 2015 and the fact that the appellant had been assessed as posing a high risk of harm to the public - an assessment which had been based on the severity of the offence - and that that risk had only been lowered to a medium risk of harm. I also take into account the remarks of the sentencing Judge who referred to the number of aggravating circumstances in this case which include the fact that the appellant had brought a machete to the scene of the crime and that he had chased the victim down the road – the Judge pointed out it was fortunate that he had not made contact with the victim. Given the seriousness and nature of the offence I consider that serious grounds of public policy and public security arise under Regulation 21(3). I have taken into account the issue of the appellant's private and family life here but the reality is that there is nothing to indicate to me that he has done anything other than break these ties – while his partner has children here , he is not the father.

13. In all, consider that the decision of the Secretary of State to make the deportation order was a decision which was fully open to her on the evidence before her. I therefore in re-making this decision I allow the appeal of the respondent and dismiss the appellant's appeal against the decision to make a deportation order.

Decision

The decision of the Judge in the First-tier is set aside.

The appeal of the appellant against the decision to make a deportation order is dismissed.

Signed Date 19 May 2016

Upper Tribunal Judge McGeachy