IAC-AH-LEM-V1

Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: DA/00376/2015

THE IMMIGRATION ACTS

Heard at Royal Courts of Justice	**Decision & Reasons Promulgated**
On 7 March 2016	**On 6 April 2016**

Before

UPPER TRIBUNAL JUDGE MCGEACHY

Between

AYOUB ELABBOUBI

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: In person
For the Respondent: Mr S Whitwell, Senior Home Office Presenting Officer

DECISION AND REASONS

1. The appellant is a citizen of Morocco born on 17 February 1988 who appeals, with permission, against a decision of Judge of the First-tier Tribunal Grimmett who, in a determination promulgated on 24 November 2015 dismissed the appellant's appeal against a decision of the Secretary of State made on 6 August 2015 to deport him

from the United Kingdom under Regulation 19(3)(b) of the Immigration (European Economic Area) Regulations 2006.

2. The judge noted that the appellant had told her that he had entered Britain when he was aged 22 in 2010 without being granted leave to enter. However on 10 December 2012 he had been issued with a residence card as the husband of an EEA national exercising Treaty rights.

3. On 13 January 2015 the appellant had been convicted of robbery and sentenced on 10 March 2015 to two years' imprisonment and ordered to pay a £120 victim surcharge. The sentencing notes showed that the appellant and an accomplice had stolen a watch worth £15,000 from a drunk foreigner in a planned and skilfully executed distraction robbery on a London street after dark. The sentencing judge had noted that the appellant had no previous convictions but considered it appropriate to pass a custodial sentence as the offence was at the top of the lower level identified in the sentencing guidelines.

4. Judge Grimmett set out the provisions of Regulation 21 before noting that it was the appellant's evidence that his Lithuanian wife had not seen him since before he was sent to prison. The appellant had also said that he had no family in Morocco, in that he had been given by his mother to social services when he was a baby and placed with another Moroccan family who had moved to France when he was 12. He believed that they were still in France. The appellant had said that he was stupid to commit the offence and now realised how serious it was.

5. In paragraph 7 onwards the judge set out her decision and reasons. She noted that she had no OASys Report about the appellant but stated that it was not in issue that he had married an EEA national and obtained a residence card and that he had produced pay slips to show that he had been working in a restaurant for at least six months prior to the offence. She said that she was satisfied on hearing the appellant's evidence of the effect of prison on him and his desire never to return to prison, that he was aware of the seriousness of the offence but she noted from the sentencing remarks that the offence was described as a skilfully executed distraction robbery and she considered that that did not suggest that that was the first time the appellant had been involved in such an incident although he had no previous convictions. She noted that the appellant had been lawfully in Britain and was working at the time the offence was committed as was his wife and therefore it appeared that the motivation for the offence was merely financial. She said there was no evidence produced by the appellant to show that he had undergone any courses in prison to redress his offending or that he was genuinely remorseful and that he had undergone any rehabilitation to address his offending behaviour.

6. She said that she was not satisfied that he had shown that he is currently in a relationship with his wife. She had not supported his appeal and there was no evidence from anyone else willing to support him although he did have a cousin in Britain. She accepted he had undertaken courses for English in prison stating that his

English before her was very good. She stated that as he had apparently so easily committed the offence in the past she could not be satisfied that he would not do so in the future if he found himself in financial difficulties. She noted that he had entered Britain illegally and said that that behaviour did not show that he was willing to abide by the laws of the United Kingdom despite his protestations to her. She concluded that she was satisfied that there was a risk of further offending against which she needed to balance the appellant's own situation in the United Kingdom. She accepted that he might not have been in Morocco for a very long time but said he was now an adult and that he could look after himself and that as he had managed to enter Britain and survive for some time before obtaining the EEA family membership card it was clear that he could look after himself. She said there was no suggestion that he had any health issues and apart from one cousin she was not satisfied that he had shown that he had any family in the United Kingdom or had integrated here although she accepted that he had made efforts to learn English. She accepted that he would have few links with his country of origin having left long ago and not having returned since but said that he was in touch with family members and therefore would have links via them to his country of origin. It was her conclusion that the public policy for the prevention of crime and disorder outweighed any ties that he might have with the United Kingdom and that she was satisfied that he remained a present genuine and serious threat in light of a skilfully executed robbery of a stranger on the streets of London. She therefore dismissed the appeal.

7. The applicant applied for permission in person stating that the judge was wrong to place weight on the fact there was no OASys Report and that the judge had erred in stating that confirmed the appellant's right to residency (it did not). A request was made that an OASys Report be obtained and the appellant said that he was subject to a systems failure and should not be penalised for it. It was important to realise that someone who was abandoned by their mother would face problems in later life.

8. Judge of the First-tier Tribunal Simpson gave permission to appeal stating that the fact that the appellant's wife had not attended the hearing was not determinative of their relationship as the marriage had not been dissolved and that therefore the appellant was lawfully present in Britain. It might be the case that he had not lived in Britain for five years or more and the judge had been silent on that point. The grant went on to refer to the principles in **Maslov** (application no. 1638/03 of 23 June 2008) and that in the absence of both pre-sentence report and OASys Reports it is arguable that the judge was not able to adequately assess the risk of reoffending as required in **Maslov**.

9. The Secretary of State served a Rule 24 reply submitting that the Judge of the First-tier Tribunal had directed herself appropriately, properly considering the terms of the Immigration (EEA) Regulations 2006. The judge had been correct to note that the appellant was not in a relationship with his wife who was not supporting his appeal and the judge's conclusions were entirely open to her on the evidence before her. It was pointed out that the appellant had failed to demonstrate that he had been in Britain in accordance with the Regulations for five years and so it was unclear why

the First-tier Judge had been expected to consider that. This was a deportation under the EEA Regulations whereas **Maslov** was a decision of the European Court of Human Rights and therefore was not relevant to this case.

10. At the hearing of the appeal before me the appellant, although it is clear that his English was good, had the services of an interpreter. I confirmed that he had read the determination and the application for permission to appeal and asked the interpreter to read to him the Rule 24 notice. I then asked him if there is anything he wished to add to the grounds of appeal. He stated that there was nothing further he wished to submit.

11. Mr Whitwell relied on the Rule 24 statement and stated that the judge had properly considered the rights of the appellant under the Immigration (EEA) Regulations 2006. From what she had written it was clear that she found, correctly, that he was only entitled to the lowest form of protection under the Regulations and in fact he stated there was nothing further the judge could have said.

12. He went on to state that the central issue in **Maslov** was that of reoffending and this had been an issue which had been addressed by the judge. He stated in paragraphs 2 and 5 of the determination the judge had taken into account the length of time the appellant had lived in Morocco and in Britain, she had noted his nationality and had properly found that he was not in a relationship with his wife. She had considered his ties to Morocco and in all had properly considered the "**Maslov**" test. He referred to the sentencing remarks and the fact that it was stated that the crime was skilfully executed. He stated that Judge Grimmett had properly considered the relevant Regulations and with findings that were properly open to her.

13. In reply the appellant for whom the submissions of Mr Whitwell had been interpreted stated that he was the victim of the offences rather than the person who had committed them as he was drunk when the incident had taken place. He stated that he had been arrested and detained and had complied with all relevant requirements. His relationship with his wife had been good before he was detained. He stated that it was the first time that he had been convicted and that he was ill and depressed. He produced various certificates to show that he had learned English in prison and that he also had qualifications in hairdressing and had taken courses in victim awareness and thinking skills. He asked for to leave to remain saying that he had been in Europe for fifteen years and that he had no family in Morocco.

Discussion

14. I consider that the judge did properly weigh up all relevant factors taking into account the provisions of Regulations 19 and 21 of the Immigration (EEA) Regulations 2006. She clearly found that the applicant whose marriage, is no longer subsisting did not benefit from anything other than the basic level of protection as he had not lived in Britain under the Regulations for a period of five years. She

properly considered whether or not the applicant was still a risk to the community and reached a conclusion which was fully open to her that he was. She properly considered all relevant issues of the proportionality of removal and indeed made reference to the various factors which are set out in the judgment of the European Court of Human Rights in **Maslov**. In all I consider that her conclusions were fully open to her and were correct in law. I find there is no material error of law in the determination of the judge and that her determination shall stand.

Notice of Decision

This appeal is dismissed.

No anonymity direction is made.

Signed Date

Upper Tribunal Judge McGeachy