



IAC-AH-SC-V1

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

Appeal Number: DA/01053/2014

THE IMMIGRATION ACTS

Heard at Bradford
On 13th January 2016

Decision & Reasons Promulgated
On 26th January 2016

Before

UPPER TRIBUNAL JUDGE D E TAYLOR

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

**MICHAL FILAK
(ANONYMITY DIRECTION NOT MADE)**

Respondent

Representation:

For the Appellant: Mrs Petterson

For the Respondent: In person

DECISION AND REASONS

1. This is the Secretary of State's appeal against the decision of Judge Turnock made following a hearing at Bradford on 19th November 2014.

Background

2. The appellant is a citizen of the Czech Republic born on 25th July 1992. He entered the UK on 1st July 2007 and it is accepted that he has acquired a permanent right of residence in the UK.

3. The claimant was convicted of driving otherwise than in accordance with a licence at Sheffield Juvenile Court on 23rd June 2010 and using a vehicle whilst uninsured. He was fined £100 and his driving licence was endorsed and he was disqualified.
4. On 22nd November 2012 he received a caution from Kent Police for forging a document other than a prescription for a scheduled drug.
5. On 29th July 2013 he was convicted of conspiring to steal motor vehicles and was sentenced to a term of imprisonment for 30 months. In his sentencing remarks the judge said that it was accepted that he was not the prime mover but he had an important role to play acting as interpreter and recruiter. He was given credit for his guilty plea.
6. The judge set out the legal framework including Regulations 19 and 21 of the 2006 Regulations before considering the evidence including the circumstances surrounding the index offence.
7. The claimant's evidence was that he had a mother, aunt and uncle in the UK and many cousins living here. His stepfather had family in the Czech Republic although he did not really know them and his mother had a sister there but was not in contact with her. The judge accepted that the claimant had substantial family connections in the UK and no significant family links with the Czech Republic. He was satisfied that there was more support from his immediate family here which would assist with his rehabilitation compared with the situation there and that he had undergone a significant degree of training and had engaged with the probation service. Although the respondent was of the view that there was insufficient evidence to show that the claimant had adequately addressed all of the reasons for his offending behaviour and that the completion of offending behaviour programmes could reduce the risk of reoffending in the future the claimant produced at the hearing a number of documents of evidence of courses which he had undertaken whilst in custody.
8. The judge concluded as follows:

"The Appellant produced a letter from the National Offender Management Service dated 16 October 2014. The Appellant has been supervised by the National Probation Service since his release on Licence in 24th June 2014. He has engaged with the service and kept all appointments offered. The priority areas of work for the National Probation Service are protecting the public from serious harm and reducing the likelihood of reoffending. The Appellant has been assessed as posing a low risk of serious harm in relation to public protection and the risk of reoffending tool indicates a low risk of re-offending. Given the date of that letter I am satisfied that the author was aware of all relevant considerations.

In conclusion the Respondent considered that the Appellant had committed a serious criminal offence in the United Kingdom and there is risk that he might reoffend in the future. Given the threat of serious harm that the Appellant posed to the public the Respondent considered that his personal circumstances did not preclude his deportation being pursued. The Respondent considered that the decision to deport was proportionate and in accordance with the principles of the EEA Regulations.

The cases referred to above indicate that the acquisition of permanent residence indicates a substantial degree of integration. In the case of the Appellant it is relevant that his immediate family are now settled in the UK. Whilst the subsequent imposition of a prison sentence indicates that the Appellant has failed to comply with the values expressed by society I do not consider that it shows he has not substantially integrated into society when taking into account his home and family circumstances. Taking account of all the evidence produced, particularly the assessment from the National Offender Management Service I conclude that it had not been established that the conduct of the Appellant represented a genuine, present and sufficiently serious threat affecting one of the fundamental interests of society nor that his removal would be proportionate."

9. On that basis he allowed the appeal.

The grounds of application

10. The Secretary of State sought permission to appeal on the grounds that the Tribunal had erred in his assessment that the claimant was not a genuine, present and sufficiently serious threat. He had shown that he was of a deceptive character given his convictions and continual denial of responsibility for his actions. Any claim that he has rehabilitated and is remorseful was not credible. His offending history since 2010 shows that he has not integrated into the UK way of life and his index offence was committed over nearly a period of a year. He was aware of what he was doing and continued to offend even when he knew it was illegal. He now seeks to downplay his involvement and the assessment that he is a low risk by his offender manager cannot be relied upon as the facts show that he has not reformed and information given at the hearing may have changed the assessment. Given that he has shown he has a propensity to reoffend and escalation and seriousness of offences he clearly remains a risk of reoffending and potential harm to the public. The evidence does not support the Tribunal's findings. Furthermore his family have been unable to exert any sufficient influence over him and there is no reason to believe that they can do so now.
11. Second, the Tribunal erred in its assessment that his rehabilitation will be prejudiced if deported. The Tribunal found that he could live an independent life and it was unclear why he needed his family's support. The option remained for them to return temporarily to the Czech Republic to assist him if needed. It was not plausible that they would not be in contact with their family in the Czech Republic and it would not be unreasonable to resume contact with them. There is no evidence that they would be unable to assist. The claimant spent his formative years in the Czech Republic and speaks the language which will assist him in his reintegration and rehabilitation there. The fact that there is no evidence of any offending in the Czech Republic also suggests that his prospects are better there as his level of integration is stronger there. The fact that he has been offending since 2010 clearly shows that he is not integrated into the UK way of life.
12. Permission to appeal was initially refused by Judge Astle on 6th January 2015 but subsequently granted by Upper Tribunal Judge Storey on 14th April 2015. Judge

Storey stated that the First-tier Tribunal Judge had failed to refer to Essa in the Court of Appeal and it did not help that he had not explained on what basis he accepted the evidence about family connections here and in the Czech Republic. He had arguably erred in appearing to accept that the assessment of present threat was confined to deciding whether the author of the probation report was aware of all relevant considerations, taking into account all relevant matters when assessing the prospects of rehabilitation and considering whether his integrative links established by his permanent residence were broken by his criminal offending.

The hearing

13. Mrs Petterson told me that she was without her file because it had gone to the wrong hearing centre. Nevertheless she had prepared the case and, with the help of my file, would be in a position to present her arguments if allowed enough time to do so.
14. When she returned she frankly accepted that she would be in difficulty because the only letter on the file was that quoted in full by the Immigration Judge from the National Probation Service. There was no other information before him. Furthermore the claimant had provided the certificates of the courses which he had completed whilst in prison which were said to have been lacking by the Secretary of State in her refusal letter. She accepted that it was difficult to see what else the Immigration Judge could have done with the material in front of him.
15. So far as the evidence about his links to the Czech Republic were concerned she submitted that the judge's conclusion that the claimant had no significant family links with the Czech Republic was not firmly based on the evidence, because his mother had a sister there, but accepted that this would be immaterial if the claimant did not represent a genuine, present and sufficiently serious threat to society.

Findings and Conclusions

16. The grounds merely re-argue the Secretary of State's case.
17. The only evidence before the judge in relation to the risk of reoffending was that set out in the letter from the National Probation Service dated 16th October 2014. It is quite clear that the claimant was assessed as a low risk of serious harm in relation to public protection and a low risk of reoffending. The grounds set out a series of arguments as to why that letter should not be taken at face value. However, as Mrs Petterson realistically accepted, the judge was entitled to rely on the opinion of the National Probation Service to reach the conclusion that the claimant was not a genuine, present and sufficiently serious threat.
18. So far as the links with the Czech Republic are concerned, the judge's conclusion that the claimant had no significant family links with the Czech Republic was firmly based on the oral evidence. His decision that there was more support from his immediate family in the UK compared with the situation in the Czech Republic is unassailable.

19. The grounds do not establish any misapplication of the relevant law. The only evidence before the judge from the National Probation Service was that contained in the letter of October 2014. He was entitled to rely on the conclusions in that letter and to conclude that the Secretary of State had not established that the claimant falls within Regulation 21(5) and to allow the appeal accordingly.

Notice of Decision

20. The original judge did not err in law. His decision stands. The Secretary of State's challenge to his decision is dismissed.

Signed

Date

Upper Tribunal Judge Taylor