



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

Appeal Number: DA/01700/2014

THE IMMIGRATION ACTS

Heard at Bennett House, Stoke

**Decision and Reasons
Promulgated**

On 14 January 2016

On 15 January 2016

Before

UPPER TRIBUNAL JUDGE PLIMMER

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

PAUL OKEKE

Respondent

Representation:

For the Appellant: Ms C Johnstone, Senior Home Office Presenting Officer

For the Respondent: Ms R Manning, Counsel

DECISION AND REASONS

Introduction

1. This decision refers to the appellant in this case as the SSHD and the respondent as the appellant, as he was before the First-tier Tribunal ('FTT').
2. The origins of this appeal are traceable to a decision made on behalf of the SSHD, dated 21 August 2014, to deport the appellant, a

national of Belgium, from the United Kingdom ('UK') pursuant to regulation 21 of the Immigration (European Economic Area) Regulations 2006 ('the 2006 Regulations').

Appeal Proceedings

3. On 25 August 2015, the appellant's appeal against the SSHD's decision was allowed by the FTT. The SSHD has appealed on the basis, inter alia, that the FTT's decision is inadequately reasoned.
4. At the hearing before me Ms Johnstone maintained the submission that the key conclusions are inadequately reasoned. Ms Manning relied upon a rule 24 notice and asked me to find that when the decision is read as a whole the relevant findings are adequately reasoned.
5. After hearing submissions I reserved my decision, which I now provide with reasons.

Error of law discussion

6. The FTT came to the clear conclusion that the appellant does not present a genuine present and serious threat affecting one of the fundamental interests in society [21]. This is a finding of pivotal importance. As pointed out in MC (Essa principles recast) Portugal [2015] UKUT 520 (IAC) at [23] in a case such as this, the decision-maker must be satisfied that the individual needs "*to represent a present threat by reason of a propensity to re-offend or an unacceptably high risk of re-offending*".
7. The FTT accepted the conclusion of the OASYS report that the appellant posed a low risk of offending and accepted the credibility of his evidence. Whilst the FTT's reasons are brief. In addition, the FTT did not set out in terms that the appellant does not present a present threat by reason of a propensity to re-offend or an unacceptably high risk of re-offending. However the FTT's findings are nonetheless adequate. The FTT's conclusion that the appellant is a low risk to the public together with its acceptance that the appellant "*has shown genuine remorse, an acceptance of responsibility for his offence, a genuine desire to improve his life, a strong aspiration to work and strong family support*" is sufficient to demonstrate that the FTT did not regard the appellant as presenting an unacceptably high risk of offending or a propensity to re-offend.
8. The grounds of appeal criticise the FTT for failing to explain why the appellant is a credible witness. It would have been preferable for the FTT to have given more detailed reasons but it is sufficiently clear from the decision that having heard the appellant give oral evidence and having considered all the relevant detailed documentary evidence from a variety of sources (including the probation service

and social services) the FTT accepted his evidence. The decision must be read as a whole. The FTT set out in some detail the ambit of the evidence considered at [16] and emphasised that regard was had to all the evidence [17] before concluding that the appellant was credible [18] in relation to specific matters [19 and 20]. It is implicit from these paragraphs read together that the FTT considered the appellant's evidence to be consistent with the documentary evidence and the views of professionals involved in assessing risk, and preferred their conclusions to the submissions on behalf of the SSHD. The FTT was clearly well aware of the SSHD's position having summarised it at [4].

9. The grounds of appeal also submit that a 'low risk' of offending still amounts to a 'real risk' and the FTT failed to direct itself accordingly. No authority is cited to support this submission. For the reasons I have set out at paragraphs 6 and 7 above, the FTT has applied the correct test having properly directed itself to Essa (EEA: rehabilitation/integration) [2013] UKUT 00316 (IAC). MC of course post-dates the FTT decision.
10. The SSHD also submits that inadequate reasons are provided as to why rehabilitation could not continue in Belgium. In so far as the issue of rehabilitation is relevant to the issue of risk I accept that it would have been preferable for the FTT to have given clearer reasons. It is sufficiently clear that the FTT considered that the appellant now had a genuine desire to improve his life and this was evidenced by his employment and commitment to family life since leaving prison. It is obvious that that if the appellant is deported to Belgium, there would be insuperable difficulties in maintaining the important developing relationship with his children and this would adversely impact upon rehabilitation. The circumstances of the children and the appellant's increasingly important role with them is summarised by the FTT at [16i)-n)] and expressly accepted at [20].
11. The grounds of appeal submit that the FTT did not take into account the seriousness of the appellant's offending. The FTT was clearly aware of the detailed OASYS report and accepted its conclusion as to risk. That report set out the circumstances of the offence - a clearly serious offence regarding the misuse of drugs which resulted in a lengthy sentence of 54 months.
12. In MC the Upper Tribunal accepted that it is only if the personal conduct of the person is found to represent a genuine, present and sufficiently serious threat that it becomes relevant to consider whether the decision is proportionate taking into account all the considerations identified in regulation 21(5)-(6) of the 2006 Regulations. In these circumstances, Ms Johnstone accepted that if the FTT was entitled to find that the appellant did not represent the requisite threat there was no need to consider grounds 2 and 3. It follows that having found that the FTT did not err in law in its finding

that the appellant does not represent the requisite threat that I do not need to go to consider the findings regarding proportionality and human rights.

Decision

13. The decision of the FTT does not contain a material error of law and is not set aside.
14. I dismiss the SSHD's appeal.

Signed:

Ms M. Plimmer
Judge of the Upper Tribunal

Date:
15 January 2016