Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: DA/01767/2014

THE IMMIGRATION ACTS

Heard at : Sheldon Court, Birmingham	**Determination Promulgated**
On : 2 March 2016	**On : 18 March 2016**

Before

UPPER TRIBUNAL JUDGE KEBEDE

Between

Y L
(ANONYMITY ORDER MADE)

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Ms R Manning, instructed by Scott-Moncrieff & Associates Ltd Solicitors
For the Respondent: Mr A McVeety, Senior Home Office Presenting Officer

DETERMINATION AND REASONS

1. The appellant appeals against the decision of the First-tier Tribunal dismissing her appeal against the decision to deport her from the United

Kingdom pursuant to Regulation 19(3)(b) of the Immigration (European Economic Area) Regulations 2006 ("the EEA Regulations"). Permission to appeal was granted on 3 August 2015.

2. The appellant is a national of Norway, born on 6 October 1970. She first came to the attention of the United Kingdom authorities on 6 February 2009, having, she claims, previously resided in the United Kingdom from 2002 until 2008, when she returned to the United Kingdom from Norway. She was apprehended on arrival in the United Kingdom, as there was an outstanding warrant for her arrest.

3. On 19 November 2009 the appellant was convicted of money laundering and concealment of criminal property and was sentenced to three years' imprisonment. The Home Office considered, but decided not to pursue deportation at that time, but she was warned that deportation would be considered if she re-offended. On 20 September 2013 the appellant was convicted again of concealing or converting or transferring criminal property and possessing criminal property and was sentenced to two years' imprisonment.

4. On 2 December 2013 the appellant was served with a notice of liability to deportation and she responded accordingly. Her daughter's views on her possible deportation were sought by the Home Office in July 2014 and she also responded.

5. On 2 September 2014 a deportation order was signed and the respondent made a decision to deport the appellant under the EEA Regulations on 11 September 2014. In making her decision, the respondent did not accept that the appellant had acquired a permanent right of residence in the United Kingdom and considered that she posed a genuine, present and sufficiently serious threat to the interests of public policy pursuant to Regulation 21(5). It was considered further that her deportation would not breach her Article 8 rights under the ECHR.

6. The appellant appealed against that decision and her appeal was heard on 27 March 2015 by First-tier Tribunal Judge Ferguson.

7. Judge Ferguson heard from the appellant, her former partner PF (and a father-figure to F) and two other witnesses. He accepted that the appellant had acquired a permanent right of residence in the United Kingdom and he found that the correct test was therefore the "serious grounds" test under Regulation 21(3). He found that the appellant represented a genuine and serious risk and that there was a serious risk to public policy and went on to consider whether the decision to deport was proportionate. In so doing he considered the circumstances and interests of the appellant's daughter F, who was 16 years old at the time and was a student at a private girls' boarding school, and he concluded that it was proportionate for F to remain in the United Kingdom without her mother, if she were deported to Norway. He found the decision to deport the appellant to be proportionate.

8. The appellant sought permission to appeal to the Upper Tribunal on the grounds that the judge, in considering whether or not the appellant presented a genuine and sufficiently serious threat, had erred in law by failing to give adequate reasons for preferring the evidence of the probation service over the evidence of a consultant forensic psychologist and for finding that the serious grounds threshold had been met; that the judge had erred by making numerous references to the Morecombe Bay tragedy when there was no evidence that the appellant was linked to that; and that the judge, in concluding that deportation was proportionate, had failed to consider material matters, including in particular the evidence from F in her answer to the Home Office questions and in her statement, as well as the effect of the appellant's deportation on F.

9. Permission to appeal was initially refused, but was subsequently granted on a renewed application to the Upper Tribunal on 3 August 2015, with particular reference to the ground relating to F's evidence.

Appeal hearing and submissions

10. Ms Manning pursued all the grounds. She submitted that the consultant forensic psychologist's report revealed flaws in the probation service's assessment of risk and that the judge had erred by preferring the report of the probation officer in concluding that the appellant posed a medium risk of re-offending. She submitted further that the judge had erred by referring to the Morecombe Bay tragedy, when the appellant was not linked to that in any way. She submitted that the judge's proportionality decision failed to consider F's own evidence, as well as the impact on her education, her right to stay in the United Kingdom as an EEA national and PF's evidence about F's situation.

11. Mr McVeety submitted that the judge was entitled to find that the appellant posed a medium risk, that the Morecombe Bay tragedy was referred to only by way of an example and that the judge had taken into account F's evidence and was entitled to conclude that the appellant's deportation would be proportionate.

12. Ms Manning, in response, reiterated her previous submissions.

13. I advised the parties that, in my view, the judge's decision contained no errors of law. My reasons for so concluding are as follows.

Consideration and findings.

14. The appellant challenges the judge's assessment of risk of re-offending, asserting that he was wrong to rely on the probation reports rather than the expert's report, particularly where the expert identified errors in the probation reports. However it seems to me that this ground is simply a disagreement with the weight that the judge attached to the probation reports, whereas the weight to be attached to the different reports was a matter for the judge. It

cannot in any way be said that the judge did not give full and proper consideration to the expert's views and neither can it be said that he did not provide reasons for accepting the evidence of the probation services. At [34] and [35] he set out the submissions made on behalf of the appellant raising the same points as are now raised in this challenge, and, in considering those matters undertook, at [44] to [52], a very detailed and careful analysis of both the probation reports (the National Offender Management Service, NOMS report of June 2014 and the additional NOMS report of 17 September 2014) and the expert report, giving cogent reasons for attaching the weight that he did to the reports.

15. It is argued on behalf of the appellant that the expert's view, that the commission by the appellant of the second offence whilst on licence did not increase the risk of re-offending, was to be preferred to the probation service's view that the risk was increased to a medium risk. However I would agree with Mr McVeety that the judge was entitled to place little weight on the expert's view in that respect and to prefer that of the probation services. I would also agree with Mr McVeety that the expert's criticism of the probation service's apparent failure to consider "protective factors" including the financial and other support available to the appellant from PF, failed to take account of the fact that those factors had always been there and had not prevented the appellant from offending. As Mr McVeety submitted, the panel clearly took such matters into account in assessing the overall risk.

16. For the reasons given by the judge, and having considered the expert and probation reports myself, it seems to me that the judge properly gave the weight that he did to the reports and was perfectly entitled to place little weight upon the expert's criticisms of the NOMS reports and to accept the conclusions of the probation service that the appellant presented a medium risk of re-offending.

17. The grounds also criticise the judge for having relied on the tragedy at Morecombe Bay as justification for his conclusion on "serious" grounds, when the appellant was not linked in any way to that incident. However the judge clearly did not proceed on an understanding that the appellant was directly linked to the incident. He referred to it firstly because it was mentioned in the NOMS report in relation to associations of the appellant and her sister, but also to emphasise at [53] and [54] that, contrary to the appellant's view of the harmless nature of her offence, money-laundering was not a victimless crime and was in fact linked to criminal gangs and resulted in threats and harm to vulnerable people. Accordingly there was no error on the part of the judge in referring to the tragedy in the context that he did. Neither was there any error in the judge concluding that the "serious grounds" test had been met.

18. The grant of permission was granted primarily upon the last ground which challenged the judge's decision on proportionality, asserting that he failed to take into account the evidence of the appellant's daughter, F, and the effect the appellant's deportation to Norway would have on her. Reference is made in particular to F's answers to the 22 questions put to her by the Home Office and

to her statement. However it is clear from the judge's findings at [56] to [69] that he undertook a very careful and detailed assessment of F's circumstances and best interests, recognising at [56] that that was the focus of the submissions made on behalf of the appellant in regard to proportionality. Whilst he did not refer directly to F's answers to the questions or to her statement, it is plain that the contents of that evidence formed part of his overall conclusions as to her best interests.

19. Ms Manning submitted that, by failing to consider F's evidence, the judge had given no consideration to the impact on her education if she went to Norway and to her right as an EEA national to stay in the United Kingdom. However it was, of course, the judge's conclusion that she would not be compelled to leave the United Kingdom and go to Norway with her mother and that she could continue with her education and with her life in the United Kingdom with minimum disruption, despite her mother's deportation. Indeed, having carefully considered F's evidence in her answers to the questions it seems to me that it serves only to confirm that conclusion. Her answer to question 4 confirms the limited nature of F's visits to her mother and, significantly, her answer to question 6 confirms that her mother's move to Norway would be no different to her friends' circumstances whose parents lived abroad. As Mr McVeety submitted, the appellant's evidence in answer to questions 16 and 17, that she was only boarding at school because her mother was in prison and that she would otherwise prefer to be a daygirl, is contradicted by the fact that she has remained a boarder despite her mother's release from prison some time ago. Ms Manning's response was that that was because her mother lived at some distance from the school and was bound by her bail conditions to remain living where she was, but she was unable to respond to the suggestion that F could have moved schools to be closer to her mother.

20. Clearly, as the judge properly found at [65] to [67], and for the reasons properly given, the priority was for F to remain at her current school and complete her education there, as a boarder, and there was no reason, given PF's commitment to continue funding her education and given F's ability to visit her mother in Norway during school holidays or even at weekends, why the appellant's deportation would prevent that. There is no merit in the assertion in the grounds that the judge failed to give proper consideration to F's evidence and to the evidence of PF in regard to F's circumstances and interests. As for Ms Manning's reliance upon the respondent's previous decision, on Article 8 grounds, not to pursue deportation, it is clear that that was a decision made prior to the appellant re-offending during the period of her licence and that it was in any event a matter which the judge took into account at [57]. Having taken all relevant matters into account, and having given full and detailed consideration to the circumstances of the appellant, PF and in particular F, and for the reasons cogently given, the judge was perfectly entitled to conclude, and properly concluded, that the appellant's deportation would not be disproportionate.

21. For all of these reasons I conclude that the grounds of appeal do not disclose any errors of law in the First-tier Tribunal's decision requiring the decision to be set aside.

DECISION

22. The appellant's appeal is accordingly dismissed. The making of the decision of the First-tier Tribunal did not involve an error on a point of law, such that the decision has to be set aside. I do not set aside the decision. The decision to dismiss the appellant's deportation appeal therefore stands.

Anonymity Order

Pursuant to Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008 (SI 2008/269) I make an anonymity order. Unless the Upper Tribunal or a Court directs otherwise, no report of these proceedings or any form of publication thereof shall directly or indirectly identify the original Appellant. This direction applies to, amongst others, all parties. Any failure to comply with this direction could give rise to contempt of court proceedings.

Signed Date
Upper Tribunal Judge Kebede