



**Upper Tribunal
(Immigration and Asylum Chamber)
DA/00091/2017**

Appeal Number:

Extempore judgement

THE IMMIGRATION ACTS

Heard at Royal Courts of Justice

**Decision &
Promulgated**

Reasons

On 16 October 2017

On 19 October 2017

Before

UPPER TRIBUNAL JUDGE McWILLIAM

Between

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

And

KR

(ANONYMITY DIRECTION MADE)

Respondent

Representation:

For the Appellant: Mr T Melvin, Home Office Presenting Officer

For the Respondent: Mr S Hosein, Counsel instructed by RMS Immigration Limited

DECISION AND REASONS

1. I will refer to the Respondent as the Appellant as he was before the First-tier Tribunal. He is a citizen of Portugal and his date of birth is 15 February 1977. On 30 January 2017 the Secretary of State made a deportation order against the Appellant pursuant to Regulation 19 of the Immigration (EEA Regulations) 2006. The Appellant appealed and his appeal was allowed by Judge of the First-tier Tribunal Rowlands in a

decision promulgated on 12 May 2017, following a hearing on 20 April 2017. Permission was granted to the Secretary of State on 2 August 2017 by Upper Tribunal Judge Smith.

2. The Appellant came to the UK in May 2014. On 18 October 2014 he was cautioned by the police following a common assault. On 2 October 2015 he was convicted of criminal damage and made subject to a restraining order and ordered to pay a fine, compensation and costs. The complainant in both instances is his wife. The Appellant breached the restraining order and on 8 October 2015 was sentenced to twelve weeks' immediate imprisonment. Within days of his release he breached the restraining order for a second time and on 7 December 2016 was convicted of harassment (of his wife) and sentenced to eighteen weeks imprisonment. The deportation order followed.
3. The judge heard evidence from the Appellant, two of his brothers-in-law, the Appellant's son's friend and in addition I understand that there was a statement from the Appellant's son. The judge concluded that the Appellant had not acquired permanent residence and this has not been challenged. The judge set out Regulation 21 (5) at paragraph 17;

“21 (5) Where a relevant decision is taken on grounds of public policy or public security it shall, in addition to complying with the preceding paragraphs of this regulation, be taken in accordance with the following principles—

- (a) the decision must comply with the principle of proportionality;
- (b) the decision must be based exclusively on the personal conduct of the person concerned;
- (c) the personal conduct of the person concerned must represent a genuine, present and sufficiently serious threat affecting one of the fundamental interests of society;
- (d) matters isolated from the particulars of the case or which relate to considerations of general prevention do not justify the decision;
- (e) a person's previous criminal convictions do not in themselves justify the decision.”

4. The judge made salient findings at paragraphs 18, 19, 20 and 21;

“18. I have noted his previous convictions which are all offences against his wife, ranging from criminal damage, to harassment and breaking the Restraining Order. They are all of a similar nature and show a complete disregard for Orders of the Court. I

have noted what his in-laws and friends have said about him and have been frankly staggered at their sheer lack of understanding of the nature of the man. I am not even sure that some of them have the slightest knowledge of what he has done. He has been described as a good husband, a charming father and husband and a very caring husband. He is clearly none of these and I am happy to dismiss the evidence of all of the witnesses who clearly have some agenda to stick to together. He is a very poor husband and father, it is evidence that some of the offences occurred when the children were present and also clear that Social Services have concerns about him. I share those concerns when he says in his statement that he is a law abiding citizen and cherishes the laws of this country, clearly he does no such thing. I am concerned that he can't recognise that. I am also concerned that some of the witness statements included in the bundle have sentences seemingly cut and pasted from other statements and may not properly reflect the views of the maker. My view is that he is a thoroughly nasty person who has no respect for his wife and children.

19. Regulation 21(6) says that 'before taking a relevant decision on the grounds of public policy or public security in relation to a person who is resident in the United Kingdom, the decision maker must take into account considerations such as the age, state of health, family and economic situation of a person, the persons length of residence in the United Kingdom, the persons social and cultural integration into the United Kingdom and the extent of the person's links with his country of origin. The Appellant is a 40 year old man who is seemingly in good health and has a wife and children in the United Kingdom who have been here for only a short period of time. He has spent the vast majority of his life either in India or Portugal and I do not believe that he has shown quite strong social or cultural integration into the United Kingdom.
20. Having reached the conclusions concerning length of residence and permanent residence in the United Kingdom I have gone on to consider whether or not his continued presence would amount to a sufficiently serious threat in the interests of public policy. He is clearly somebody who I would consider to be a persistent and regular offender. I have also considered the question of rehabilitation following the case of **Essa, (R (on the application of) v Upper Tribunal (Immigration and Asylum Chamber)**. So far as rehabilitation is concerned clearly I have no evidence either way of the availability of such in Portugal although I would be surprised if there were not. I do not believe that this particular Appellant is someone who will receive some rehabilitation since the length of the order is such that he would not be on licence on his release. Bearing in mind what I have said concerning that point I do not believe that any decision in this case would prejudice the prospects of rehabilitation. I do not

think therefore that weighing that risk will make any difference to the decision.

21. When looking at the situation in the round it appears to me, that despite the fact that he is a persistent offender that there is a real risk of him re-offending but that is only towards his wife. I hope she will forgive me when I use the word only as it implies that there is nothing particularly wrong in that whereas the truth is that it is amongst the worst kind of offending but I have to be satisfied that he represents a proportionate and sufficiently serious threat to the public in the United Kingdom. He has never shown any likelihood of committing offences against the public he is simply a bully towards his wife. It may well be that his behaviour is such that he will not have any contact with her. As to contact with his children then that clearly depends on the Family Courts and Social Services. As far as I can see at the moment there is little chance of him being allowed to see them unsupervised and although the children have all expressed a view for him not to be deported I am not sure that it is in their best interests to have contact with him.”
5. Despite having set out Regulation 21(5) the judge did not apply the test set out at 21(5) (c). The judge should have addressed his mind to whether the Appellant’s conduct represented a genuine, present and sufficiently threat affecting one of the fundamental interests of society, whereas he considered whether or not the Appellant’s continued presence would amount to a sufficiently serious threat in the interests of public policy (see paragraph 20) and whether the Appellant represents a proportionate and sufficiently serious threat to the public in the United Kingdom (see paragraph 21). The judge found that the Appellant’s wife was not the public and therefore the requirement in Regulation 21 (5) (c) was not satisfied. This is misconceived.
6. It is difficult to see how the Appellant’s conduct and propensity to reoffend (as found by the judge) could not represent a genuine, present and sufficiently serious threat affecting one of the fundamental interests of society (in this case protecting citizens, specifically women from violence or fear of violence). However, I cannot rule out that a judge may conclude otherwise. The judge materially erred. The decision is set aside and remitted to the FtT for a re-hearing.
7. I can see no reason at present to go behind the findings of the judge in relation to permanent residence, the conduct of the appellant (and propensity to reoffend) and rehabilitation. However, the matter is to be heard afresh. I will not tie the hands of the next judge who will be make findings on the evidence. When deciding the issue under Regulation 21 (5) (c) the judge will no doubt have regard to *Arranz [2017] UKUT 294* in respect of the standard and burden of proof. If the judge concludes that the Respondent has discharged the burden, there will need to be a proportionality assessment having regard to Regulation 21 (5) and (6).

8. The matter is to be remitted to the First-tier Tribunal for a rehearing.

Notice of Decision

The Secretary of State's application is allowed. The decision of the FtT to allow the appeal under the Rules is set aside.

Direction Regarding Anonymity - Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008

Unless and until a Tribunal or court directs otherwise, the Appellant is granted anonymity. No report of these proceedings shall directly or indirectly identify him or any member of their family. This direction applies both to the Appellant and to the Respondent. Failure to comply with this direction could lead to contempt of court proceedings.

Signed

Joanna McWilliam

Upper Tribunal Judge McWilliam
October 2017

Date 19