



**Upper Tribunal
(Immigration and Asylum Chamber)
DA/00335/2016**

Appeal Number:

THE IMMIGRATION ACTS

Heard at Bradford

On 3 July 2017

**Decision & Reasons
Promulgated
On 13 July 2017**

Before

UPPER TRIBUNAL JUDGE CLIVE LANE

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

**HANAD OSMAN
(ANONYMITY DIRECTION NOT MADE)**

Respondent

Representation:

For the Appellant: Mr Diwnycz, Senior Home Office Presenting Officer
For the Respondent: Miss Warren, instructed by South West Law

DECISION AND REASONS

- 1.** I shall refer to the appellant as the respondent and to the respondent as the appellant (as they appeared respectively before the First-tier Tribunal). The appellant, Hanad Osman, was born on 17 October 1994 and is a male citizen of the Netherlands. On 14 July 2016 the decision was made to deport the appellant. The appellant appealed to the First-tier Tribunal (Judge Gurung-Thapa) which, in a decision promulgated on 24 April 2017, allowed the appeal. The Secretary of State now appeals, with permission, to the Upper Tribunal.

- 2.** First, the Secretary of State acknowledges that the judge identified the correct approach for determining residency of an EEA national [46]. However, the Secretary of State asserts that the judge failed to include a custodial sentence from 1 September 2010 to 7 December 2010 which the appellant served at HMP Cookham Wood. On the basis that the judge found that the appellant had entered the United Kingdom on 1 September 2005 [45] the higher level of protection available under the EEA Regulations was not available to this appellant. Secondly, the Secretary of State disputes the start date of the appellant's residence on the basis that there is alternative evidence indicating that this should be 18 January 2016. The judge had preferred evidence to show that the date should be 1 September 2005 when the appellant had enrolled at school.
- 3.** Miss Warren submitted that the period of four months referred to in the grounds of appeal when the appellant was subject to a detention and training order should not prevent the accrual of 10 years' continuous residence for the purposes of the Regulations. She relied upon *MG (Portugal)* [2014] 1 WLR 2441 and also the Upper Tribunal decision in *MG (prison - Article 28(3)(a) of the Citizens Directive) Portugal* [2014] UKUT 392 (IAC) in which the Tribunal held that "the judgment [*MG (Portugal)*] should be understood as meaning that a period of imprisonment during those ten years does not necessarily prevent a person from qualifying for enhanced protection if that person is sufficiently integrated." *MG* had required the judicial decision-maker to determine "whether the integrating links previously forged with the host member state have been broken."
- 4.** I agree with Miss Warren's submissions. *MG* establishes the principle that the appropriate level of protection is to be determined by an assessment of integration or reintegration into the host state. That more nuanced approach is not referred to in the respondent's grounds of appeal. Secondly, I agree with Miss Warren that the judge did provide an explanation for accepting the enrolment date as the beginning of the material period as indicated in the determination at [45] and also [59] (where the judge discusses the evidence of the appellant's sister). Thirdly, Miss Warren is right to point out that the judge found that both imperative' and 'serious' ground thresholds for deportation were not met in the appellant's case; even if she had erred in her calculations of the period of residence/integration, the judge's finding that neither threshold had been reached defeated the Secretary of State's challenge.
- 5.** The second ground of appeal asserts that the judge failed to give adequate reasons as to why the appellant did not represent a genuine present and sufficiently serious threat given that he had shown a propensity to commit crimes as indicated by 17 convictions for 27 offences, including offences involving class A and B drugs. The grounds refer to two cases in which the devastating effect of drugs upon the community had been emphasised (*Tsakouridis* C-145/09 and *Baghli* 34374/971 999 ECHR 135).
- 6.** Miss Warren referred to Regulation 21(5)(d-e):

(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.

- 7.** Matters isolated from the particulars of the case or, indeed, which relate to considerations of general prevention together with "previous criminal convictions" do not justify a decision. I agree with Miss Warren that the Secretary of State's ground seems to suggest otherwise. The judge has carried out a detailed and thorough assessment of all the relevant evidence. She was not compelled to reach a particular outcome in this appeal by reason of the seriousness of the appellant's previous criminal offending.
- 8.** Thirdly, the Secretary of State challenges the decision on the grounds that the judge had failed to take into account evidence showing that the appellant had not genuinely altered his lifestyle and was likely to commit further offences. I agree with Miss Warren that the judge was not required to find that the appellant shows no propensity to reoffend or does not pose a current risk. The judge accepted evidence from family members and concluded that the appellant did not pose a genuine, present and sufficiently serious threat. The Secretary of State's ground represents little more than a disagreement with that finding which was not perverse but which, indeed, was available to the judge on a rational assessment of the evidence.
- 9.** I find that the judge did not err in law for the reasons asserted in the grounds of appeal or at all. The appeal is dismissed.

Notice of Decision

- 10.** This appeal is dismissed.
- 11.** No anonymity direction is made.

Signed

Date 10 July 2017

Upper Tribunal Judge Clive Lane