



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: DA/00142/2017

THE IMMIGRATION ACTS

Heard at Field House
On 29 June 2018

Decision and Reasons Promulgated
On 23 August 2018

Before

UPPER TRIBUNAL JUDGE GLEESON

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

MR JOAO CARLOS SANTOS
(NO ANONYMITY ORDER MADE)

Respondent

Representation:

For the Appellant: Mr Ian Jarvis, a Senior Home Office Presenting Officer

For the Respondent: Mr Nigel Leskin, Counsel instructed by Birnberg Peirce & Partners

DECISION AND REASONS

1. The Secretary of State appeals with permission against the decision of First-tier Tribunal Judge Talbot who allowed the appellant's appeal against the Secretary of State's deportation decision under the EEA Regulations 2006.
2. The appellant is a Portuguese citizen who came to the United Kingdom when he was about 6 years old to join parents who had relocated here the previous year. He has attended both primary and secondary school in London leaving school at the age of 16. In 2010, he had a very serious motorcycle accident requiring hospital admission

for some three to four months and has not been regularly employed since then, living on the compensation that he received for his injury.

3. The appellant has a history of convictions in the United Kingdom beginning with a caution on 8 October 2000, when he would have been just 13 years old, and continuing with convictions for going equipped for theft, failing to surrender to custody, possession of cannabis on multiple occasions, in 2015 possession of a designated fighting dog and continuing to 2 November 2015 when he was convicted of possessing a control class B drug and sentenced to a 1-day detention.
4. There then came a group of offences in December 2015, resulting in two sentences of 8 weeks' imprisonment to run concurrently and a 15-month sentence and restraining order lasting 7 years, all arising out of conflict with the applicant's previous girlfriend and some extremely unpleasant text messages, 2000 of them, which he sent her over a very short period. The applicant went to prison on 21 December 2015.
5. On 20 April 2016, he was served with a deportation decision signed on 19 April 2016, certified under Regulation 24AA to the effect that there would be no real risk of serious irreversible harm to the appellant's human rights if the appellant were removed before an appeal was begun or determined against the removal decision. That deportation order is the subject of this appeal.
6. On 2 May 2016, having completed his custodial sentence, the appellant was detained under immigration powers. On 18 May 2016, he was granted bail pending the processing of an emergency travel document application. While on bail, on 9 August 2016 the appellant was recalled to prison having been found in possession of a firearm which he claimed had been planted on him.
7. The appellant served the rest of his 15-month sentence in custody thereafter. When his sentence expired, he was detained under the respondent's immigration powers. He was released again on bail on 11 January 2017.
8. Since January 2017, the appellant has had no further convictions. In September 2017 he entered into a new relationship.
9. In January 2018, the appellant was arrested for speeding. In cross-examination at the First-tier Tribunal in February 2018, the appellant admitted the arrest but said that he was not driving. It appears there has as yet been no prosecution in relation to that arrest.
10. Against that background, but without the benefit of the guidance later given by the Court of Justice in *B (Citizenship of the European Union - Right to move and reside freely - Enhanced protection against expulsion - Judgment)* [2018] EUECJ C-316/16 (17 April 2018) the First-tier Tribunal Judge found as a fact that the applicant was integrated into the United Kingdom. The Judge noted that the appellant had a permanent right of residence in the United Kingdom and considered at [19] whether the appellant should be considered under Regulation 21(3) of the Immigration (European Economic Area) Regulations 2006 (serious grounds of public policy), or whether he was entitled to the

protection in Regulation 21(4) for those with 10 years' residence before the decision to deport, who can be removed only on imperative grounds of public safety or public order.

11. The Judge made a careful assessment under Regulation 21(3) and 21(5) of the 2006 Regulations, finding as a fact that the appellant was integrated into the United Kingdom and that he had made progress towards rehabilitation, having given up drug taking and entered into a new relationship, such that there were no longer serious grounds of public policy or public security for which his deportation was necessary.
12. The First-tier Tribunal Judge did not go on to consider whether Regulation 21(4) (the imperative grounds protection) was applicable. There are no findings as to whether as a matter of law, the appellant achieved 10 years' residence prior to the decision to deport him.

Permission to appeal

13. I note that the Respondent's grounds for appealing both in the appeal to the First-tier Tribunal and the renewed appeal here do not challenge the finding of integration. The respondent asserts that the First-tier Judge overlooked the impending prosecution for the January 2018 driving offence, but it is clear from the decision that she did have regard to that as well as to the totality of all other relevant evidence before her.
14. The grounds of appeal submit that if the appellant's offending history had been properly considered the judge would have been obliged to find that he represented a genuine, present and sufficiently serious threat to the fundamental interests of society by virtue of his numerous convictions and that even a slight risk that he could offend again would be sufficient. No authority is given for that proposition.

Discussion

15. In *B (Citizenship of the European Union – Right to move and reside freely – Enhanced protection against expulsion – Judgment)* [2018] EUECJ C316/16, the Court of Justice of the European Union held that a permanent right of residence is a prerequisite of eligibility for the protection against expulsion provided for in Article 28(3)(a) of Directive 2004/38, and that the 10 years' residence required for the enhanced protection in Regulation 21(4) is not necessarily breached 'where an overall assessment of the person's situation, taking into account all the relevant aspects, leads to the conclusion that, notwithstanding that detention, the integrative links between the person concerned and the host Member State have not been broken. The Court confirmed that the relevant date is the date when the deportation decision is taken.
16. It is not in dispute that the appellant here has a permanent right of residence. The respondent is therefore required to show that there are serious grounds of public policy or public security for which he should be removed from the United Kingdom. Having regard to the appellant's lengthy residence in the United Kingdom, to the interruption in his offending history between January 2017 and February 2018, the explanation which the appellant produced in relation to his January 2018 arrest, which

has not yet been the subject of a prosecution, I am satisfied that it was open to the First-tier Tribunal Judge to find that the respondent had not discharged the burden upon him of showing that the appellant was a genuine, present and sufficiently serious threat to the fundamental interests of society, despite his poor criminal history.

17. In this case, the factual matrix identified by the First-tier Tribunal was that the appellant has remained integrated in the United Kingdom, that he has stopped using drugs and has a new girlfriend with whom he does not have the issues, or the lifestyle, which led to his previous offences, such that there are no longer serious grounds of public policy or public security for his removal. It would have been better if she had dealt with whether Article 21(4) was applicable, but as the appeal succeeded under Article 21(3), such error is not material.
18. I find therefore that the decision is adequately reasoned, and that it was open to the judge to reach the conclusion she did for the reasons given. It may be that this is a generous decision: the appellant should not expect that if he were ever to offend again the outcome would be the same.

DECISION

19. For the foregoing reasons, my decision is as follows:

The making of the previous decision involved the making of no error on a point of law I do not set aside the decision but order that it shall stand.

Signed: *Judith A J C Gleeson*
Upper Tribunal Judge Gleeson

Date: 15 August 2018