



Upper Tribunal  
(Immigration and Asylum Chamber)

Appeal Number: DA/00247/2016

THE IMMIGRATION ACTS

Heard at Field House  
On 16<sup>th</sup> May 2018

Decision & Reasons Promulgated  
On 11<sup>th</sup> July 2018

Before

THE HONOURABLE MR JUSTICE EDIS  
DEPUTY UPPER TRIBUNAL JUDGE A.L. McGEACHY

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

MICHELE TERZAGI  
(ANONYMITY DIRECTION NOT MADE)

Respondent

Representation:

For the Appellant: Mr L Tarlow, Senior Home Office Presenting Officer  
For the Respondent: Ms L Benfield, Counsel instructed by Fursdon Knapper Solicitors

DECISION AND REASONS

1. This judgment is to be read together with our earlier judgment signed on 16<sup>th</sup> April 2018. We will not repeat here either facts which are set out there, or legal propositions there identified. The terminology will also reflect that used in that judgment. Although the decision of the first-tier judge was set aside, for ease of reference we will continue to refer

to Mr Terzaghi as the respondent and the Secretary of State as the appellant. This will enable the judgments to be read together, as we intend that they should be, more easily.

2. We allowed the appeal by setting aside the First-tier Tribunal (FTT) decision and directing a further hearing before us at which further evidence could be given. That hearing took place on 16<sup>th</sup> May 2018. There was before us a bundle of further evidence and a skeleton argument prepared by Ms. Benfield on behalf of the Respondent. There was no skeleton argument or further evidence produced by the SSHD.

3. The purpose of the further hearing was to allow an exploration of the extent of the Respondent's integrative links in the United Kingdom in the light of all the evidence, including, in particular, the letter from his General Practitioner dated 12<sup>th</sup> March 2015 which we described at paragraph 28 of the first judgment. It appeared to us that this letter cast doubt on some of the findings made by the FTT Judge and that she had not explained those findings in the light of its contents. That is why we allowed the appeal. We then decided that we would remake the decision ourselves and that fairness required that Mr. Terzaghi should have an opportunity to deal with that letter and we ordered a further hearing at which he could give and call such evidence as he wished and that submissions could be made on the rights of the appellant under regulation 21 (5) of the immigration (EEA) Regulations 2006. The facts as set out in the first judgment are the facts on which we will reach our decision, except in so far as we revise them in the light of the new evidence we have received and the documentary evidence to which we considered the FTT judge had given too little weight.

4. The further hearing took place on 16<sup>th</sup> May. We reserved judgment and, because there had been some incomplete evidence about how the Respondent had progressed while on licence, and in particular about the drug tests which had been administered, we directed

*If the Respondent files a report from the Probation Service by close of business on 6<sup>th</sup> June 2018 dealing with his performance while on licence, the results of any drug testing to which he has been subject and an up to date assessment of the risk of harm to the community which he poses, the Upper Tribunal will take that document into account in reaching its decision.*

5. The Respondent did file a report from Jeremy Thomas, Probation Officer, dated 25<sup>th</sup> May 2018 which we have taken into account. In general, it is optimistic about Mr. Terzaghi's present level of compliance with the terms of his licence, and about the present

level of risk to the public he poses, if drug free. It also contains some information about events during the period after his release on licence to which we must turn later in this judgment.

6. The bundle of evidence produced on behalf of the Respondent contained a witness statement by him and one by his father, Guido Terzaghi. Both of those witnesses confirmed their statements and were cross-examined on behalf of the SSHD after answering some supplemental questions by Ms. Benfield.

7. In his evidence given on 16<sup>th</sup> May, the Respondent accepted that the GP's letter was accurate. He told us, as well, that on the night of the offences he had taken one too many substances and had no excuses. He said that this was completely out of character. He said that he had got in with the wrong crowd, that he could not fit in and had rebelled against his parents. He had not liked it when his parents had moved house, and he found it difficult to fit in at a school where there were, in his words, not many "coloured children". He explained that he had been employed for a few months in October 2010 and that he had worked as a carpet fitter for about half a year a little later. He had formed a relationship with the mother of his child in October 2012 but this had broken down by December 2013 because he was partying and being irresponsible and had been unfaithful to her. Their son was born on 2<sup>nd</sup> July 2014, 4 months before the offences for which he was later imprisoned. He said that since his release on licence he has had quite a few jobs, and now works 3 or 4 days a week. He told us that he had last used recreational drugs in November 2014 when he was arrested. He said all his voluntary drug tests since release had been clear but that he had no evidence of this with him. He said that he now has visiting contact with his son every three weeks and that he has managed to rehabilitate himself with the help and support of his parents.

8. Mr. Guido Terzaghi told us that they had had concerns about their son's mental health before the November 2014 incident. He gave an account of the incident when the offence occurred which, again, placed blame on the police for handling his son's case inappropriately. We have referred to a letter he wrote to the Crown Court judge in similar terms at paragraph 28 of the first judgment. He told us that his son had not wanted to sign on and that, during the lengthy periods of unemployment before November 2014 he had given him £10 per week. The Respondent had been late for signing on one day and was

taken off the list. This caused him to be upset because a friend who was with him was treated more leniently and he decided to avoid contact with the benefit system.

9. The position is, therefore, that the FTT Judge appears to have thought that the Respondent was either in work or claiming Job Seekers Allowance after he completed his education, see her paragraph 12. In fact, he was barely in work at all and did not claim benefits to any substantial extent. His decision not to claim benefits, in itself, is not material except that the reason why he did not claim benefits is that he felt alienated by the system. Despite the lack of any income at all, he was able to develop a substantial drug abuse habit which included, as he admitted to us, cocaine as well as cannabis.

10. On his release in November 2016 it appears from the Probation Report of Mr. Thomas, written in May 2018, that he had a "strained relationship" with those who were supervising him until December 2017. There was a positive drug test for cocaine in September 2017 and he refused any assistance with drug treatment and support. He also refused a drug test in October 2017. Since he re-located to Basingstoke in December 2017 things have gone more smoothly and he now has a positive relationship with those who supervise him. He has taken 4 tests between December 2017 and May 2018 which have all been negative. The first test of which there is a record is that for September 2017. These records are therefore not entirely consistent with what Mr. Terzaghi told us. We cannot accept that Mr. Terzaghi could have forgotten the positive test for cocaine in September 2017 when he gave evidence to us that they had all been negative. It was obviously the source of a problem between him and the Probation Service at Peterborough at the time, and it is not very long ago. It is not surprising that a person in the position of Mr. Terzaghi might seek to present a better picture of himself than the truth requires, and the mere fact that he may have done so does not mean that he must lose this appeal. On the other hand, apart from the negative voluntary drug tests there is very limited independent evidence about the level of risk he poses. There is also very limited evidence, except his, about the extent of his integrative links now and before his imprisonment. He is an important witness in his own case and he has procured overly favourable findings of fact from the FTT and sought to do so again from us. This sequence of events substantially reduces the level of confidence we have in what he told us. We prefer to base our decision, as far as we can, on the documents.

11. The documents show that Mr. Terzaghi had no significant work record before he was imprisoned in November 2014. There has been no new material on this subject beyond that which was before the FTT Judge and which we have summarised in paragraph 10 of the first judgment. We find as a fact that this is the position. The FTT judge's conclusion quoted in paragraph 11 of the first judgment that "the majority of his life has been spent in the United Kingdom where he has lived, worked and formed friendships" is therefore right in one respect: he had lived for the majority of his life in the United Kingdom. It is also true that he was educated at school here until July 2008. However, the references to work and forming friendships simply misstate the facts. He left school in July 2008 and between then and November for the most part lived with his parents and did not work. During that time, he became alienated from society except that he formed friendships with criminals from whom he bought drugs. As he put it in his evidence summarised at paragraph 7 above, he "got in with the wrong crowd".

12. That evidence confirms the content of the GP letter which we summarised at paragraph 28 of the first judgment and which Mr. Terzaghi accepts is true. The doctor's note there referred to from February 2014 summarises the history quite graphically. There was then an incident in March 2014 when he tried to hang himself, having taken "a lot of cocaine". The offences in November 2014 were not therefore an isolated occurrence at all.

13. As far as the evidence reveals, therefore, in the period up to his imprisonment Mr. Terzaghi had maintained links with his family in the UK but otherwise had no integrative links at all, unless that phrase means simply "had lived here". He had a relationship for a while with the mother of his child, but that was over. The child was born after that and he had no significant relationship with his son before he went to prison. The offending in November was not, as he suggested to us, a "one off" and out of character. It was part of a pattern of escalating problematic behaviour which had gravely worried his parents and which he had been offered, and refused, some assistance to resolve. We are, therefore, not persuaded in the light of the new evidence we have now received that our provisional assessment of the position in paragraph 30 of the first judgment was wrong. That is what the records show, and they are accurate. For these reasons we conclude that the appellant is not entitled to the enhanced protection set out in Regulation 21 (4) of the Immigration (EEA) Regulations 2006.

14. We must now consider the deportation of the respondent under the provisions of Regulation 21 (3): that is whether or not there are serious grounds of public policy or public security which would mean that it is appropriate that he be deported. That consideration must be taken within the context of the factors set out in Regulations (5) and (6). Taking into account the respondent's history of serious offending largely caused by drug abuse, As well as the terms of the NOMS report we can only conclude that serious grounds of public policy and indeed of public security exist. It appears that in the period after his release Mr Terzaghi has worked more regularly than before and he is also making a real effort to lead a more constructive life generally. However, the decision of the SSHD under appeal was made while he was still in prison and before those events occurred. The focus was on the period of residence prior to imprisonment, the links formed during it, and the effect of the sentence on those links, see paragraph 8 and 9 of our first judgment. The evidence continues to show that those links were, in reality, confined to links with his parents. He had lived here for many years without ever contributing in any positive way to society beyond his own family. The links with his parents were not without their problems but did constitute real ties to this country. The relationship with his son has developed after his release from prison and is now a tie to this country and the child's relationship with his father is a relevant consideration. The weight of this is affected by the fact that the child's mother refused to allow contact after Mr. Terzaghi moved to Basingstoke and he is now contemplating litigation to secure contact. That information appears in the Probation Service Report and is not the same as Mr. Terzaghi's evidence to us. He told us that he had contact with his son by agreement every three weeks.

15. These were, however, the only real ties to this country. His bonds to society more generally were slender and easily broken, indeed part of the purpose of imprisonment was to try to disrupt the life he was living so that he did not return to it. When considering the issue of proportionality, we have taken into account the appellant's long residence in this country and of the fact that he would be returning to Italy where he has spent only short periods of time. However, we also take into account the facts set out in paragraphs 10 onwards above. His ties to Britain, apart from his relationship with his parents, are weak. It appears that contrary to what he told us at the hearing he is not at present exercising access to his child and that that child is being brought up by his mother who has a new partner. The fact that the appellant appears to be working now on a casual basis is a factor

to be taken into consideration. We regret to say that, for the reasons given above about Mr. Terzaghi's credibility as a witness, we are unable to accept his evidence that he has entirely stopped abusing controlled drugs. We do accept that he has made an effort to address his drug abuse problem, but cannot say with confidence what the results of that effort have been. His criminality was caused by his drug taking and the seriousness of the index offence lead us to conclude that we cannot exclude the existence of a serious risk that the appellant would commit other crimes in the future. We can only conclude, therefore that his removal would not be disproportionate. We base our decision not on his previous criminal convictions but because of our concerns of the threat that we consider he faces to the interests of society now. Mr. Thomas has known Mr. Terzaghi for only a short time and his assessment of risk is heavily based on what he is told by him. As we have said, what Mr. Terzaghi says is not reliable.

16. We therefore, having set aside the determination of the FTT judge, remake the decision and dismiss the appeal of Mr Terzaghi.

**Notice of Decision**

The appeal is dismissed.

No anonymity direction is made.

Signed

Date

Mr Justice Edis