



**Upper Tribunal
(Immigration and Asylum Chamber)**

Appeal Number: DA/00310/2017

THE IMMIGRATION ACTS

**Heard at Birmingham Employment Tribunal
On 1 May 2018**

**Decision & Reasons
Promulgated
On 8 May 2018**

Before

UPPER TRIBUNAL JUDGE HANSON

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

**LOVPREET SINGH
(anonymity direction not made)**

Respondent

Representation:

For the Appellant: Mr Mills Senior Home Office Presenting Officer

For the Respondent: no appearance

ERROR OF LAW FINDING AND REASONS

1. The Secretary of State appeals with permission against a decision of First-tier Tribunal Judge E.M.M. Smith, promulgated on 30 November 2017, in which the Judge allowed the appellant's appeal against an order for his deportation from the United Kingdom.
2. There was no attendance by Mr Singh, who was removed from the United Kingdom in June 2017, a representative, or his family who live

in the United Kingdom. The Tribunal is satisfied there has been proper service of the notice of hearing and that it is appropriate and in the interests of justice and fairness for the matter to proceed in Mr Singh's absence.

Background

3. Mr Singh is a citizen of Portugal born on 22 May 1994 who entered the United Kingdom in 2013 with his parents and siblings. On 21 December 2016, at the Teesside Crown Court, Mr Singh admitted two offences of sexual assault committed on 1 November 2016. The Judge noted at [5] of the decision under challenge that on 19 January 2017 Mr Singh was sentenced to 22 weeks imprisonment, given a Sexual Harm Prevention Order for 10 years and required to sign the Sex Offenders Register for 7 years.
4. The Judge sets out his findings of fact from [14] of the decision under challenge including noting that very little information had been provided in relation to Mr Singh's history, other than the fact his parents live in Smethwick, West Midlands, and that his father is in employment. The Judge noted that Mr Singh has no previous convictions.
5. The core findings are set out between [27] - [29] in the following terms:
 - "27. I have no doubt that the impact upon the two victims was considerable. They were followed in the dark and one was accosted. They must both have feared what would befall them at that time. Whilst I have not been provided with any further information in regard to the facts I must take those aggravating features as those set out in the unhelpful and confusing sentencing remarks. There is no suggestion that other than that evening the appellant had come to the attention of the authorities for any such previous conduct. The evidence before me and accepted by Mr Evans is that the appellant falls to be considered for these two offences only. I have not been provided with any prison reports or pre-sentence reports. I have no evidence to suggest that the appellant did not behave in prison for the duration of the three months that he would have served. I have not been told that following his release in about March 2017 he did not conform to the Orders the court had imposed.
 28. Those Orders were stringent and imposed to keep a very close reign on this appellant; he is the subject of a 10-year Sexual Harm Prevention Order and a requirement to sign on the Sex Offenders Register for 7 years. These Orders were imposed to provide the public with an assurance that close supervision of this appellant would avoid the risk of further offences. Mr Evans acknowledges that there is no evidence this appellant would offend again over and above the two offences he has committed. If the appellant returns to the UK he would be subjected to these Orders.

29. Upon material before me I cannot conclude that this appellant is a risk to society and therefore the decision to deport him is disproportionate having taken into account the provisions of section 21 (5-6) of the Regulations.”
6. The respondent sought permission to appeal which was granted by another judge of the First-tier Tribunal on the basis it was arguable the findings the appellant presented no risk is not a finding open to the Judge in light of the requirement to sign the Sex Offenders register for seven years and Mr Singh having been made the subject of a Sexual Harm Prevention Order for 10 years.

Error of law

7. I find the Judge has erred in law in the manner pleaded by the Secretary of State in the application seeking permission to appeal and identified in the grant of permission. Whilst signing the Sex Offenders Register enables those in the criminal justice system to know where a sex offender is living and the opportunity for interaction, it was always recognised that that system only provided a limited supervisory regime. Accordingly, the UK government introduced a more stringent provision known as the Sexual Harm Prevention Orders (SHPO) which can be made in relation to a person who has been convicted, found not guilty by reason of insanity or found to be under a disability and to have done the act charged, or cautioned etc. for an offence listed in either Schedule 3 or Schedule 5 to the Sexual Offences Act 2003 either in the UK or overseas. This includes offenders whose convictions etc. pre-date the commencement of the 2003 Act.
8. Whilst acknowledging the fact that such order had been made, the Judge makes no reference in the decision under challenge to the circumstances which must be established before an individual can be made the subject of such provision. In order to make a SHPO, the court must be satisfied that the offender presents a risk of sexual harm to the public (or particular members of the public) and that an order is necessary to protect against this risk. The details of the offence are likely to be a key factor in the court's decision, together with the offender's previous convictions and the assessment of risk presented by the national probation service in any pre-sentence report. The court may take into consideration the range of other options available to it in respect of protecting the public.
9. In this case, the Judge had available to him at page A3 of the Secretary of States bundle a copy of the Trial Record Sheet which contained the following information:

6 months imprisonment consecutive to serving sentence SOR 7 years. Sentence Amended under to the Slip Rule. Judge ordered time served to be taken into account. SOR 7 years as previously ordered on 18.1.17.

This disposal has been amended.

10. The above is a reference to an error made in the original sentencing exercise when it was thought Mr Singh had committed offences whilst on bail which was later shown to not be the case; as the information relating thereto applied to a different individual with the same name as Mr Singh.

11. In relation to the Sexual Harm Prevention Order the Trial Record before the Judge reads:

Sexual Harm Prevention Order (SHPO) for a period of 10 years under s.103 of the Sexual Offences Act 2003. 1 having any contact or communication directly or indirectly by whatever means with [MY], 19/10/1994 2. Having any contact or communication directly or indirectly by whatever means with [HW], 29/09/1997 3. Residing or staying for more than 12 hours at a household or other private place where a female over the age of 16 years resides or stay, unless that female is fully aware of your convictions and this has been verified by a Police risk management officer within the Public Protection Unit (or equivalent Department) within the Force Area she resides.

12. Prohibitions such as those set out above can only be imposed by a SHPO which are those which are necessary for the purpose of protecting the public from sexual harm from the defendant. It is the offender's previous offending behaviour and subsequent demonstration that they may pose a risk of further such behaviour, which will make them eligible for an order.

13. The Sentencing Judge noted aggravating features present in Mr Singh's offending which are recorded in the following terms:

"On the night I am concerned with, you set about stalking, that is following, young women. You were determined to follow and to approach attractive young women. By acting in the way that you did, you caused two women to be frightened. Women are entitled to be able to walk the streets at night without being followed by people like you, and molested by people like you, and frightened by people like you, and there are a number of aggravating features in this case. Before I come to them, it is right to point out that the assault involved you touching this lady over her clothing and you did not touch her naked flesh nor any part of her genitalia.

That being said, and that placing it in category 3B, there are a number of aggravating features. Firstly, the persistence involved in this case; your determination to commit this offence. Most significantly, you were stopped and warned by the Police at about 10 o'clock, and having received that advice and that warning by the Police in relation to your conduct in respect of the first girl, you then followed a second girl, the victim of this offence. This was an offence committed at night. Selecting women who are on their own. The offence being committed in the streets when they were vulnerable. At the time you are on bail in relation to those matters for in respect of which you received 13 months, which is a significant aggravating feature in the case.

14. As noted above, the reference to Mr Singh committing offences on bail was erroneous but the other aggravating features did apply to his offending behaviour.

15. What the Judge did not have is any explanation for what led Mr Singh to commit the offences or any report indicating that those issues that led him to behave in the way in which he did had been properly addressed, such as to reduce the risk of further offences.
16. I set aside the decision of the First-tier Tribunal on the basis the Judge does not appear to have properly or adequately considered the material available to that Tribunal or to have given adequate or sufficient reasons in support of the conclusion that Mr Singh does not present a risk to the public.
17. The Upper Tribunal is able to remake the decision today.
18. There is no further evidence available, in particularly no evidence that Mr Singh has undertaken any rehabilitative work whilst in custody or since his release either in the United Kingdom or in Portugal.
19. There appears on the basis of the information to be a credible real risk to the public in the United Kingdom of further offences of a sexual nature being committed by Mr Singh.
20. It has not been made out that if Mr Singh wishes to seek assistance from professionals to enable his rehabilitation this could not be undertaken in Portugal with the support of family members living there. It is not made out that Mr Singh needs to remain in the United Kingdom for the purposes of adequate rehabilitation/treatment.
21. Mr Singh's situation is that he has not lived in the United Kingdom for a continuous period of five years exercising treaty rights as he has only been resident since 2013. Although there is evidence of some employment there is not sufficient to establish the exercise of treaty rights for the required continuous period of five years required to secure a right of permanent residence. The level of protection available to Mr Singh is therefore at the lower level on the grounds of public policy or public security. There is no public health issue that arises on the facts of this case.
22. The assessment of threat is clearly based exclusively on the personal conduct of Mr Singh which has been found on the evidence to represent a genuine, present and sufficiently serious threat affecting one of the fundamental interests of society, namely the prevention of crime and the protection of the public and particularly young women from unwanted sexual advances and sexual assault by him.
23. In relation to the proportionality of the decision, when considering Mr Singh's rights as an EU national to exercise free movement within the European Community, this Tribunal finds that the respondent's decision is proportionate. Mr Singh was born in 1994 and is therefore 23, nearly 24 years of age. He entered the United Kingdom in 2013. Mr Singh was born in India where he spent his formative years although spent part of those formative years and his youth in Portugal. Mr Singh has family in the UK but it was not made out he would not be able to source accommodation and seek employment in Portugal as he has in the United Kingdom.
24. Mr Singh has failed to provide sufficient evidence to warrant a finding he is socially and culturally integrated into the United Kingdom or to provide evidence that he has made any positive contribution to the

society and, other than to his family, there is no evidence of significant ties to the community in the United Kingdom.

25. Mr Singh's offence is directly against members of the community.
26. There is insufficient evidence to warrant a finding there will be very significant obstacles to Mr Singh's integration into Portugal where he and his family have significant knowledge of living together with cultural links.
27. The availability of rehabilitation in Portugal is commented upon above where Mr Singh maybe able to undertake and complete programs equivalent to the UK Probation Service Sex Offender Treatment Program which is a specific victim awareness course to address the issues that led Mr Singh to commit the offences and which might reduce the risk of him reoffending in the future. There is no evidence Mr Singh has undertaken such a program to date, as noted above.
28. This tribunal finds that the decision to deport Mr Singh is proportionate in accordance with the principles and regulations 27 (5) and (6) of the Immigration (European Economic Area) Regulations 2016.
29. In relation to Article 8 ECHR, it is not made out that Mr Singh is able to satisfy the Immigration Rules and the Secretary of State has discharged the burden of proof upon her to the required standard to establish that any interference with a protected right in the United Kingdom is proportionate.
30. It is accepted Mr Singh has formed a private life in the United Kingdom but has not made out there are very significant obstacles to integration into Portugal. Although paragraph 398 of the Immigration Rules and section 117C(6) of the Nationality, Immigration and Asylum Act 2002 do not apply to Mr Singh directly, as he is an EEA national, the issue of whether there are very compelling circumstances that warrant his not being deported is still a relevant factor as this informs the proportionality of the decision.
31. Mr Singh fails to establish that ties with his mother, father, and siblings are sufficient to be recognised as family life pursuant to Article 8 as it is not made out that such relationships involving the further element of dependency beyond normal emotional ties. Mr Singh has also not provided any evidence to show that other family members could not join him in Portugal should they wish to do so. It is noted no family member attended the Upper Tribunal to support Mr Singh's case.
32. The public interest based upon the need to protect the public from the risk presented by Mr Singh tips the balance substantially in favour of the Secretary of State warranting his removal from the United Kingdom.
33. The reasons for the making of a deportation order notice, dated 27 April 2017, confirmed the Secretary of States intention to remove Mr Singh from the United Kingdom before the appeal process was heard or finally determined. That document contained information advising Mr Singh that pursuant to regulation 41 of the 2016 Regulations he may apply from outside the United Kingdom for permission to re-enter

the UK in order to make submissions in person at his appeal hearing if the stated conditions set out were met. There was no evidence that Mr Singh made any such application or chosen to any extent to be involved in these proceedings.

34. I therefore substitute a decision dismissing Mr Singh's appeal.

Decision

35. **The Immigration Judge materially erred in law. I set aside the decision of the original Immigration Judge. I remake the decision as follows. This appeal is dismissed.**

Anonymity.

36. The First-tier Tribunal did not make an order pursuant to rule 45(4)(i) of the Asylum and Immigration Tribunal (Procedure) Rules 2005.

I make no such order pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008.

Signed.....
Upper Tribunal Judge Hanson

Dated the 1 May 2018