Upper Tribunal
(Immigration and Asylum Chamber) **Appeal Number: DA/00591/2017**

THE IMMIGRATION ACTS

Heard at Bradford	**Decision & Reasons Promulgated**
On 20th September 2018	**On 21st September 2018**

Before

UPPER TRIBUNAL JUDGE PLIMMER

Between

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

MR JONATHAN MBUNGU-MUNDELE

Respondent

Representation:

For the appellant: Mr Diwnycz, Senior Home Office Presenting Officer
For the respondent: Mr Karnik, Counsel

DECISION AND REASONS

Introduction

1. The respondent is a citizen of Belgium. In a decision dated 23 January 2018 the First-tier Tribunal ('FTT') allowed his appeal against a decision by the Secretary of State for the Home Department ('SSHD') dated 25 September 2016 to deport him pursuant to regulations 23 and 27 of the Immigration (EEA) Regulations 2016. The SSHD has appealed against that decision.

2. The respondent entered the UK in 2010 when he was a 13-year-old child with his parents. He acquired a right of permanent residence in the UK. On 23 September 2016 he was convicted of, inter alia, two offences of possession of class A drugs with intent to supply and sentenced to 40 months' imprisonment.

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Procedural history

3. The FTT heard the appeal on 8 January 2018, when it heard oral evidence from the respondent, his sister and his mother. The FTT accepted the respondent and his witnesses to be entirely credible and concluded that notwithstanding the respondent's serious criminal conviction there are no serious grounds of public policy or public security for removing the him from the UK.

4. The SSHD's application for permission to appeal was initially refused by FTT Judge Foudy before being granted by Deputy Upper Tribunal Judge Davey in a decision dated 28 March 2018. Judge Davey observed that the FTT had arguably not adequately reasoned its conclusion.

Hearing

5. At the beginning of the hearing Mr Diwnycz made it clear that he relied upon a single ground of appeal: the FTT's decision was inadequately reasoned, particularly in relation to the risk of reoffending. He then made very short submissions to the effect that the OASYS report was very brief and there was little evidence to support the FTT's finding that the OASYS report indicates a low risk of re-offending. Mr Karnik took me through the OASYS report and invited me to find that this finding was open to the FTT.

6. After hearing from both representatives, I announced that I would be dismissing the SSHD's appeal for reasons to follow.

Discussion

7. The FTT has given adequate reasoning for its findings. The decision may be concise, but this must be viewed in context. There was no real dispute regarding the factual matrix or the legal test to be applied. It was only necessary for the FTT to consider whether there were serious grounds of public policy or public security for removing the respondent from the UK. The FTT expressly directed itself to the fact that the respondent committed very serious offences. The FTT acknowledged and agreed with the SSHD's submission that the respondent's offending had a drastic effect on society.

8. The FTT was entitled to balance this with factors in the respondent's favour: he entered the UK as a child and acquired permanent residence; he has no significant links in Belgium; he had no previous convictions and was of previous good character; his offending was out of character; he was a model prisoner; the OASYS report indicates there is a low risk of reoffending; there were positive features in support of the low risk of reoffending: family support and he had been

offered a place at University; there are good prospects of the respondent being completely rehabilitated in the UK, where he will have the support of probation together with the emotional and financial support of his family in the UK – there was an express acknowledgment this could be provided long distance to Belgium but would not be as strong as if he lives with his sister in Sheffield, with his mother in the same city. It was also expressly acknowledged that the mother and sister could not be reasonably expected to leave the UK to reside in Belgium with the respondent, given their strong links to the UK.

9. I turn to the OASYS report because this was Mr Diwnycz's sole focus when making his oral submissions. I entirely accept Mr Karnik's submission that when the OASYS report is read as a whole it provides adequate evidence in support of the FTT's finding that it indicates there is a low risk of reoffending and there is family support. In particular, the OGRS scores for reoffending are at the lower end of the spectrum (9% within a year and 17% within two years), the author assessed the offending as excluding any aggravating features and also assessed the appellant as having recognised the impact and consequences of offending on the community.

10. The FTT was well aware of and took into account the serious nature of the respondent's offending but was entitled to conclude for the reasons provided, as summarised above, that there are no serious grounds of public policy or public security to justify the respondent's removal. In so doing the FTT was mindful of the need to comply with the principle of proportionality and the remaining factors set out at regulation 27(5).

Decision

The decision of the FtT does not contain a material error of law and is not set aside.

Signed Date

Ms Melanie Plimmer
Upper Tribunal Judge Plimmer 20 September 2018