



**Upper Tribunal
(Immigration and Asylum Chamber)
DA/00620/2016**

Appeal Number:

THE IMMIGRATION ACTS

**Heard at Field House
On 3 January 2018**

**Decision Promulgated
On 10 January 2018**

Before

UPPER TRIBUNAL JUDGE PLIMMER

Between

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

IKECHUKWU OKORO

Respondent

Representation:

For the Appellant: Ms Everett, Senior Home Office Presenting Officer

For the Respondent: Mr Farhat, Counsel

DECISION AND REASONS

1. This is an appeal by the Secretary of State for the Home Department ('SSHD') against a decision of the First-tier Tribunal ('FTT') dated 18 September 2016, in which it allowed Mr Okoro's appeal against the SSHD's decision to make a deportation order.

2. Mr Okoro is a German national and therefore an EEA citizen, in relation to whom the Immigration (EEA) Regulations 2006 ('the 2006 Regulations') are applicable.

FTT decision

3. In a detailed and carefully drafted decision the FTT expressly acknowledged the seriousness of and escalation in Mr Okoro's offending. This includes a sentence on 20 February 2015 of four years imprisonment for attempting to export class A drugs and an offending history dating back to 1999, including convictions relating to illegal drugs in Germany and the USA. The FTT accepted that at the time of the offence, Mr Okoro's conduct represented a genuine, present threat affecting one of the fundamental interests of society but that since that time there has been substantial, credible rehabilitation, which together with his family's links to the UK, is such that there are no longer serious grounds of public policy or security for his deportation at the date of hearing. The appeal was therefore allowed under the 2006 Regulations.
4. The FTT heard detailed oral evidence from Mr Okoro, his wife, his pastor and a friend, and its findings of fact are based upon the oral evidence together with the detailed documentary evidence relating to the offending history and subsequent rehabilitation, and the description of the likely impact of deportation upon his two children (aged 13 and 12), as contained in the report of a consultant clinical psychologist.

Grounds of appeal and submissions

5. The SSHD appealed against the FTT's decision on two grounds initially. In ground one the SSHD submitted that the FTT did not provide adequate reasons for the finding that Mr Okoro's attitude to offending was sufficiently positive to rule out a risk of reoffending. In ground two the SSHD submitted that the FTT failed to take into account the seriousness of the offending. The FTT refused to grant permission to appeal, observing that the grounds merely disagree with the FTT's findings. In her very brief oral submissions before me Ms Everett acknowledged that these grounds as drafted, tended to disagree with the decision and did not identify any error of law on the part of the FTT and therefore said no more about them.

6. Her oral submissions focussed entirely upon two matters to be gleaned from the renewal grounds of appeal to the Upper Tribunal ('UT'), which I set out below. When granting permission to appeal UT Judge Kekic observed that the renewal grounds raise several compelling points, which she summarised as follows:

“(1) failing to appreciate that the appellant had lost his permanent residence under the EEA Regulations on account of his absence from the UK whilst serving a prison sentence in the USA so that the enhanced right of protection did not apply, (2) failing to give weight to the fact that the appellant’s previous offending history had not been known to the sentencing judge, his representative or to the officer who prepared the Oasys report, (3) failing to give weight to the appellant’s serious and numerous lies over a prolonged period of time, and (4) failing to resolve inconsistencies between the evidence of the appellant and his witnesses.”

7. Ms Everett focussed almost entirely upon the first issue. She submitted that the FTT erred in law in not considering, of its own motion, whether Mr Okoro remained entitled to permanent residence as at the date of hearing. She acknowledged that this is a difficult submission to maintain as it is clear that the SSHD’s own position at the FTT hearing was that he had permanent residence (but had not resided in the UK for 10 years) and accordingly the FTT applied the test the SSHD considered to be appropriate at the time. Ms Everett did not take me to any authority to support her submissions.
8. The only other ground relied upon by Ms Everett relates to the third issue identified by the UT when granting permission. She submitted that the FTT failed to adequately explain what weight was attached to Mr Okoro’s lies.
9. Mr Farhat reminded me that the burden of proof lay on the SSHD and that it was not open to the SSHD to argue that permanent residence was lost, when that was not the position advanced before the FTT and Mr Okoro was re-issued with permanent residence in October 2016, after his offending history and time out of the UK was known to the SSHD.
10. At the end of the hearing I reserved my decision, which I now provide with reasons.

Discussion

Permanent residence

11. I accept Mr Farhat's submissions and reject Ms Everett's submissions on this issue. It is important to bear in mind that the SSHD's case was set out in a very detailed (147 paragraphs) decision letter, served on 6 December 2016. This sets out the relevant chronology. This expressly acknowledges at [4] that Mr Okoro was issued with a residence permit for an indefinite period on 8 June 2006 and this was re-issued on 26 October 2016. At this stage, the SSHD was well aware that Mr Okoro had spent a significant period in the USA, having been sentenced to 27 months imprisonment there in 2010 - see [10]. The SSHD directed herself to the relevant law on the threshold required to deport an EEA citizen at [14-18]. At [24] the SSHD accepted that by 8 June 2006 Mr Okoro had been living in the UK for a period of five years in accordance with the 2006 Regulations and was issued with a residence permit to that effect. The SSHD did not however accept that he had been continuously resident in the UK for 10 years and as such consideration was not given to whether deportation is justified on *imperative* grounds [25 and 26]. The SSHD then said this at [27]:

"As you have acquired permanent residence under the 2006 Regulations consideration has been given to whether your deportation is justified on *serious* grounds of public policy."
(my emphasis)

12. At the hearing the SSHD relied upon the decision letter - see the FTT decision at [23]. Mr Farhat reminded me that at a case management hearing the level of protection afforded to Mr Okoro was directly considered and it was agreed that he had permanent residence but not 10 years residence. The FTT hearing therefore proceeded on the accepted basis that Mr Okoro retained permanent residence, and as such the correct test to apply was as summarised in the decision letter i.e. whether there are *serious* grounds of public policy justifying deportation.
13. Regulation 15(2) of the 2006 Regulations makes it clear that once acquired, the right of permanent residence shall be lost only through absence from the UK for a period exceeding two consecutive years. Ms Everett argued that Mr Okoro *probably* spent two consecutive years outside of the UK at the time he was sentenced by a USA court in 2010. The renewal grounds assert that his claim that he served 23 of 27 months of his sentence is not supported by evidence and that in any event he returned to the UK via Germany and *probably* spent a month there.

14. In my judgment, the submission that the FTT failed to consider whether Mr Okoro lost his right to permanent residence meets a number of insuperable hurdles. First, the FTT was entitled to not enquire any further into the issue as it was agreed in writing and orally that Mr Okoro continued to benefit from permanent residence as at the date of hearing. Second, the factual matrix remained the same for the purposes of the chronology relevant to Mr Okoro's residence at all material times. When drafting the decision letter and agreeing the issues at the case management hearing, the SSHD knew that he was imprisoned in the USA in 2010. The SSHD re-issued him with permanent residence in October 2016. The bland statement in the renewal grounds that the SSHD was not aware of the offending history when he applied for permanent residence is difficult to reconcile with the full chronology set out in the decision letter.
15. Third, and in any event, there was simply no evidence that Mr Okoro was absent from the UK for over two years. His evidence is summarised at [11] of the decision: he served 23 months imprisonment in the USA before returning to the UK via Germany, where he spent a few days. The SSHD's assertion in the renewal grounds that it is "*probable*" he spent more time in Germany is wholly speculative, in circumstances wherein the burden of proof remains upon the SSHD.
16. It follows that in applying the test that it did, i.e. the *serious* grounds of public policy justification, the FTT has not erred in law.

Other grounds of appeal

17. I have no hesitation in concluding that the FTT decision is adequately reasoned. It is clear from reading the carefully drafted decision as a whole that the FTT was fully aware of and accorded weight to all relevant matters.
18. The FTT was well-aware of and took full account of the seriousness of Mr Okoro's offending history, which it described at [25] as "*deplorable and serious*". The FTT correctly directed itself at [26] that the offending got worse and escalated, and that his entire offending history, as summarised at [1-3] was relevant. The FTT expressly accepted the serious consequences of the offending on society and found that without rehabilitation

there would have been serious grounds for finding his conduct to represent a genuine and present threat at [27 to 28]. The FTT did not underplay the significant public interest considerations in support of deportation.

19. The case however turned on FTT's acceptance that Mr Okoro was "*well advanced*" in his rehabilitation and does not constitute a threat [31] such that "*what started out as a genuine and present serious threat to the fundamental interest of society, has been counteracted by the substantial weight to the appellant's rehabilitation*", together with the principles of proportionality [32]. The FTT has provided detailed reasoning for this. In particular, the FTT accepted much of Mr Okoro's evidence as summarised at [5] to [15] and made the following findings at [29] and [31]:

(i) Mr Okoro has genuinely changed after his last offence. This can be explained by the fact that he had life threatening surgery as a result of swallowing the illegal drugs and that he has successfully participated in offending behaviour coursework not previously available to him.

(ii) This change has been evidenced by his commitment to his family "*this time round*", genuine remorsefulness, rehabilitation, further education, training and settled employment with good prospects at London Underground and is corroborated by family members, friends, his continued successful employment and his pastor.

20. The findings reached might be described as generous given that Mr Okoro was released from his prison sentence relatively recently and there was therefore a short period of time in which to test his commitment to rehabilitation, but they are not perverse. In any event, it has not been submitted that the findings are perverse or irrational. Rather it is claimed that the findings are inadequately reasoned and weight has not been attached to relevant matters.

21. The FTT acknowledged that Mr Okoro was not honest when relaying the full extent of his offending for the purposes of the Oasys report [26]. The FTT accepted the submission that the full extent of the offending was not known to the sentencing judge and his sentence may have well been higher had the judge known [27 and 29]. It therefore cannot be said that the FTT did not attach any

weight to the lies told by Mr Okoro.

22. Finally, the FTT was entitled to accept the wife's evidence, which was supported by a report prepared by a consultant clinical psychologist.

Decision

23. The FTT decision does not contain an error of law.

Signed:

Ms M. Plimmer
January 2018

Date: **5**

Judge of the Upper Tribunal