



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

Appeal Numbers: PA/06555/2017
DA/00082/2017

THE IMMIGRATION ACTS

**Heard at The Royal Courts of Decision & Reasons Promulgated
Justice**

On 18 December 2017

On 07 February 2018

Before

UPPER TRIBUNAL JUDGE PITT

Between

**MT
(ANONYMITY DIRECTION MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr E Fripp, Counsel, instructed by Duncan Lewis & Co
Solicitors

For the Respondent: Mr S Kotas, Senior Home Office Presenting Officer

DECISION AND REASONS

**Direction Regarding Anonymity - Rule 14 of the Tribunal Procedure
(Upper Tribunal) Rules 2008**

Unless and until a Tribunal or court directs otherwise, the appellant is granted anonymity. No report of these proceedings shall directly or indirectly identify him or any member of their family. This direction applies both to the appellant

and to the respondent. Failure to comply with this direction could lead to contempt of court proceedings.

1. This is an appeal against the decision promulgated on 26 October 2017 of First-tier Tribunal Judge Pears. The decision refused the appellant's appeal against deportation under the Immigration (European Economic Area) Regulations 2006 ("the EEA Regulations") and his appeal on protection and human rights grounds.
2. The background is that the appellant was born in 1998 in Gambia. He arrived in the UK in 2010 at the age of 11 to join his mother who was in the UK on a non-EEA family member resident card, granted to her in 2010. When the appellant's mother was granted a permanent residence card in 2012, the appellant was also recognised as having permanent residence under EEA law.
3. On 22 February 2013 the appellant was convicted of using disorderly behaviour. He offended again whilst a minor on a number of occasions including assault on a constable, theft, possessing a knife or bladed article in a public place and resisting or obstructing a constable. On 15 April 2014 he was convicted of failing to comply with a detention and training order.
4. On 2 July 2014 the appellant was convicted of robbery and possessing a knife in a public place and was sentenced to 30 months in a Young Offenders' Institution. The offence was committed while the appellant was on bail.
5. On 2 August 2016 the respondent served the appellant with a notice of his liability to deportation. That decision was issued on the basis of the appellant's criminality, including both the index offence and the earlier offences and that since his conviction in July 2014 he had been recalled to prison on two occasions. Those recalls were on 7 October 2015 and 3 March 2016 for breaching his licence.
6. Further, on 16 August 2016 the appellant was again convicted, on this occasion of common assault and he was sentenced to four months' detention and a training order. That offence was committed when he was on a period of recall at Feltham Young Offenders' institute.
7. On 20 December 2016 the respondent served the appellant with a deportation decision. The appellant appealed that decision on 10 February 2017.
8. After lodging that appeal, the appellant claimed asylum on 17 March 2017. The asylum claim was made on the basis of the appellant being bisexual. The asylum claim was refused on 3 July 2017. The appellant also appealed that decision on 3 July 2017.
9. The appeal came before First-tier Tribunal Judge Pears on 19 October 2017. In summary, the First-tier Tribunal accepted that the appellant had

permanent residence under EEA law and so the relevant test to be applied was whether there were serious grounds of public policy justifying the appellant's expulsion. The judge found that the appellant's offending history and significant risk of reoffending met that test. The judge also found that it was proportionate for the appellant to be returned to Gambia in line with EEA legislation and that return would not be an interference with his Article 8 ECHR rights. The judge did not accept the appellant's claim that he was bisexual and therefore rejected the protection claim.

10. The grounds of appeal set out four main grounds of challenge. The first ground states that the First-tier Tribunal Judge erred in law in finding that the appellant posed the genuine, present and serious level of threat to society as someone who had permanent residence. The second ground argued that the First-tier Tribunal failed to address correctly the issue of rehabilitation. The third ground challenged the rationality of the proportionality assessment under Regulation 21 of the EEA Regulations. The fourth ground maintained that the judge erred in the credibility assessment in the asylum claim by placing improper adverse weight on the lateness of the claim.
11. First-tier Tribunal Judge Pears set out the legislation and case law relevant to the "genuine, present and sufficiently serious threat to society" and "serious grounds of public policy" tests at [4]-[11]. This included specific reference to **Straszewski v SSHD [2015] EWCA Civ 1245** at [10] and at [11] and to the principle that the criminal convictions alone cannot constitute grounds for deportation. At [35]-[48], the judge set out the professional evidence concerning the appellant's risk of reoffending, including an ASSET report and report from a Consultant Forensic Psychiatrist.
12. Having set out those matters, the findings of the First-tier Tribunal on whether the appellant here represented a "genuine, present and sufficiently serious threat to society" and whether there were "serious grounds of public policy justifying his expulsion" are at [72]-[79]:
 - "72. I accept that the Appellant is young and his offences occurred when he was a minor. I also accept that he has comprehension and communication difficulties. His family life has been troubled and there has been less support for him from the family than perhaps there should have been.
 73. I also accept that serious as his offences may be it is not difficult to imagine offending of a much more serious kind. However having considered the circumstances of this Appellant he has committed a series of offences involving assault against members of the public and two where offences have been committed against or involving police officers. He has committed an offence when on bail and when in detention. He has been recalled to detention on two occasions. He has denied to the doctor that he was responsible for some offences and as the ASSET report remarks there is escalation in seriousness and that he expresses concerning attitudes towards offending such as lack of insight into

the seriousness of his behaviour, not taking responsibility for it and tending to justify and minimise the violence. It reports that he has expressed no remorse and he 'perceives a sense of notoriety, and status through offending behaviour'. The ASSET report is clear about the high risk he presents of reoffending and despite the Appellant's Counsel's assertion that the doctor's report shows a much lower risk the doctor concludes that this is only the case if there is a period of stability in his personal and social life and with successful interventions to address a number of different issues but he offers no timeframes or indications of the prospect of success. Why should a period of personal and social stability appear and what interventions and what are the prospects of the Appellant engaging? The reality is that he agrees with the ASSET assessment of his current risk saying that the Appellant is emotionally unstable and has antisocial personality traits and that there are 'significant risk factors for future offending behaviour'. He says that 'in terms of risk prediction, past behaviour is usually the best predictor of future behaviour but there are also a number of other risk factors which increase the level of risk, namely denial and minimisation, low victim empathy and disregard for social norms and criminal justice sanctions and what is concerning about the Appellant's prognosis is the recurrent nature of antisocial behaviour with multiple convictions starting from an early age.

74. I conclude that the relevant personal conduct is (1) the behaviour that led to the convictions, (2) the breach of rules and terms relating to punishment imposed and (3) 'disregard for external restrictions around his behaviour' as it is put in the ASSET report.
75. The deportation is clearly based exclusively on the personal conduct of the Appellant and not just the convictions themselves.
76. The Appellant will in my considered view based on the two reports commit further serious offences against the person as well as other offences.
77. I have considered the issue of rehabilitation. The Appellant in his attitude to his previous offences as set out in the ASSET report has shown none of the requirements for rehabilitation. Neither of the experts expressly address the issue and there is no evidence that he has undertaken any rehabilitative work. His previous social and family links fail to prevent him from offending on repeated occasions and there is no evidence of the Appellant being willing to work to rehabilitate himself. He might express the correct formulas to me as he faces deportation but there is no evidence that he would in fact engage. In any event it is not clear to me that rehabilitation needs to take place in the UK.
78. I find that the Respondent has shown on the balance of probabilities that the Appellant represents a genuine, present and sufficiently serious threat to society and there are serious grounds of public policy justifying the Appellant's expulsion.
79. I accept that the Appellant has lived in the UK since 2010 and has only just ceased to be a minor. However his convictions date back several years and start less than three years after his arrival.

He is fit and healthy. I accept that he has family in the UK but it seems limited in relation to its connection with him. He has not lived with his family for sometime although his sister seems to be prepared to house him. His mother seems to be in Senegal according to the doctor's report but she has not provided a statement or played any part in these proceedings. He has friends in the UK. His road to employability will not be straightforward and some of his hopes such as joining the army seem unrealistic and therefore it is not likely that he will be economically self-reliant. He was in Gambia until 2010 and returned for a visit in 2012, he speaks Wolof but he may have difficulties in reading and writing it. There has to be a balance struck between the grounds of public policy and the consideration such as those set out in Regulation 21(6) of the EEA Regulations. I find that the deportation is appropriate and necessary for the attainment of the public policy objective sought and does not impose an excessive burden on the Appellant. I conclude that the public policy grounds outweigh the other considerations and the decision to deport is proportionate."

13. The appellant sought to rely on **Straszewski** to challenge the findings of the First-tier Tribunal on his representing a "serious" risk. Mr Straszewski, who also had permanent residence, had committed offences of unlawful wounding and two counts of robbery and received sentences of 15 months' and 42 months' imprisonment. The Court of Appeal found that those offences in themselves were not capable amounting to the "serious" level of threat, the question of deterrence and public revulsion normally playing no part in the assessment. Where this appellant's offences were less serious, it was argued, the First-tier Tribunal erred in finding that he was a genuine, present and sufficiently serious threat.
14. The difficulty for this appellant is that the First-tier Tribunal here did not rely on the past offending as the sole or even principle basis for the finding that he was a "serious" threat. The consideration at [73] shows that the First-tier Tribunal found that the appellant had not expressed responsibility for his actions and that the offending had escalated. Judge Pears goes on to conclude, based on the ASSET report and the psychiatric report, that where there was little likelihood of the stability that would be required for the risk of reoffending to diminish, it remained significant and met the threshold. The judge refers to the correct approach for assessing the "personal conduct of the Appellant and not just the convictions themselves" at [75]. The assessment here of whether there was a genuine, present and sufficiently serious threat is entirely in line with the ratio of **Straszewski** in which the Court of Appeal indicates clearly at [17], [20] and [23] that future conduct and risk of reoffending are critical aspects of the assessment of whether a "genuine, present and sufficiently serious" threat.
15. The second ground challenges the approach in [77] to the question of rehabilitation and has no merit. The First-tier Tribunal did compare the

prospects for rehabilitation in the UK and Gambia and the evidence here entitled him to find that they were negligible in either country.

16. The third ground is a challenge to the EEA proportionality assessment. It is argued that the FTTJ mentioned to but failed to weigh appropriately the appellant's learning difficulty into account. That is not arguable where the judge indicated that this factor was taken into account throughout the decision. He noted the appellant's learning disability at [38], stating "I bear that out in assessing his evidence as well as in the proportionality exercises". A further indication of the attention given to this feature is at [43] of the decision where the First-tier Tribunal sets out the evidence from the psychiatric report on the appellant's learning disability and states "I bear that in mind during this decision". At [72] he refers again to having taken this aspect of the appellant's profile into account. The difficulties with reading and writing are taken into account expressly at [79]. This ground also argues that it was irrational or unreasonable to conclude that the appellant was not likely to be financially independent. Given his history and risk of reoffending this was a conclusion open to the judge, however, the grounds really only seeking to reargue the point. It is unarguable that the judge applied the correct test in the proportionality assessment, deciding where the balance lay between public policy and the relevant aspects of the appellants' profile; see [79].
17. The fourth ground of appeal states that the judge acted unlawfully in placing adverse weight on the late disclosure of the appellant's claim to be bisexual. Paragraph 24 of the grounds also states that the judge failed to take into account the appellant's young age as a way of explaining his reticence of disclosing his bisexuality. The case law relied on by the appellant in the grounds at paragraphs 22 and 23 of the grounds, **ABC v Staatssecretaris van Veiligheid en Justitie C-148/13 to C-150/13**, does not preclude a delay in claiming as being a relevant factor at all, however, but calls for a sensitivity to this being a potentially more likely credible explanation in the case of sexuality. Further, the judge here does not make an adverse credibility finding simply because of the late claim. The late disclosure was in the context of the appellant claiming asylum in March 2017 only two days prior to his scheduled removal to Gambia. This was after the appellant was informed in August 2016 that he was going to be removed and served with a s.120 Notice specifically asking him to provide any basis of stay, in response to which he mentioned nothing about his sexuality. Secondly, only a month prior to the asylum claim he had referred to having been in a relationship with a woman and stated that he was not in a relationship with a man. Further, the First-tier Tribunal Judge sets out at [50]-[63] the manifestly inconsistent evidence of the appellant and his witness, the evidence including statements as to being in a relationship that had lasted four years but also to not being in a relationship. It is therefore my conclusion that in the context of all of evidence and findings here, it was open to the First-tier Tribunal Judge to draw an adverse inference from the late claim.

18. For these reasons I did not find that the grounds of appeal showed a material error of law in the decision of the First-tier Tribunal which shall stand.

Notice of Decision

19. The decision of the First-tier Tribunal does not disclose a material error on a point of law and shall stand.

Signed: 
Upper Tribunal Judge Pitt

Date: 5 February 2018