



Upper Tribunal  
(Immigration and Asylum Chamber)

Appeal Number: DA/00078/2018

**THE IMMIGRATION ACTS**

Heard at Birmingham Employment Tribunal  
On 24 October 2019

Decision & Reasons Promulgated  
On 18 November 2019

Before

UPPER TRIBUNAL JUDGE HANSON

Between

Mr ISAAC  
AKA AHMAD JUSTIS  
AKA PELE  
AKA AHMED PELLE

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

**Representation:**

For the Appellant: In person.

For the Respondent: Mrs H Aboni Senior Home Office Presenting Officer.

**DETERMINATION AND REASONS**

1. On 1 March 2019 the Upper Tribunal found a judge of the First-Tier Tribunal and erred in law in a material manner in allowing the appellant's appeal against the respondent's decision to deport him from the United Kingdom.

## Background

2. The appellant appeared in person following his release on licence from his latest period of imprisonment.

3. The appellant confirmed as accurate his criminal history which is as follows:

25/08/11 Nottingham Crown Court - Incite/intentionally encourage/assist any combination of an either way offence 07/08/11 - 11/08/11. Serious Crime Act 2007 s44. Young Offenders Institution 33 months.

11/10/16 Nottingham Magistrates - theft - shoplifting and 18/08/16. The Theft Act 1968 s1. Fine £300 victim surcharge of £30 costs £85.

29/03/17 South and West Devon Magistrates - theft - shoplifting on 15/03/17. Theft Act 1968 s.1. Fine £161 costs £85 victim surcharge of £30.

27/04/17 North Yorkshire Magistrates - theft - shoplifting on 10/04/17. Community Order 26/04/18, costs £85, compensation £284.99, unpaid work requirement, victim surcharge £85.

05/12/17 Lincolnshire Magistrates - making false representations to make gain for self or another or cause loss to other/expose other to risk on 17/07/17. Fraud Act 2006 s.1(2)(a)+s.2. Community Order 12 months unpaid work requirement 60 hours must be completed by 04/12/18, costs £200, victim surcharge £85.

Failing to surrender to custody at an appointed time on 06/10/17. No separate penalty.

19/12/17 Snaresbrook Crown Court - making false representation to make gain for self or another or cause loss to other/expose other to risk on 17/11/17. Conditional discharge 12 months, victim surcharge £20.

18/01/18 Lincolnshire Magistrates. Theft - shoplifting on 17/01/18. Community order 17/01/19, costs £85, unpaid work requirement, victim surcharge £85.

Resist or obstruct Constable on 17/01/18. Community Order 17/01/19, unpaid work requirement.

Conviction for offence whilst Community Order is in force. Order revoked.

Breach of Conditional Discharge. No action on breach.

23/02/18 Failure to comply with the requirements of a Community Order on 18/01/19. Resulting from original conviction of 18/01/18. Order varied by adding unpaid work requirement 7 hours.

28/01/19 Chester Crown Court. Possess/control article for use in fraud. Imprisonment 15 months, victim surcharge £140, forfeiture of Audi motor vehicle registered to Ahmad Pelle, forfeiture of cash all proceeds of sale to be used by Chief Constable to fight crime.

Making false representation to make gain for self or another or cause loss to other/expose other to risk on 08/12/18. Imprisonment 6 months concurrent.

Permitting the use of uninsured vehicle on 08/12/18. Driving licence endorsed (6 points).

4. The offence that led to the decision to deport the appellant from the United Kingdom is that for which he was convicted on 25 August 2011. In his sentencing remarks of 25 August 2011 HHJ Milmo stated:

Ahmed Pelle is 18. He has a Facebook account with 2000 friends. On three occasions between Saturday 6<sup>th</sup> and Wednesday 10<sup>th</sup> August he posted three. First, "kill one black youth; will kill a million feds; riot till we own the cities." Second, "Notts riot, who's on it?" Third, "Rioting tonight; anyone want something from Flannels?"

On arrest you suggested it was all a joke. In interview you frankly conceded that you wanted the riots to continue as a demonstration by black youths against authority, government and police so, to quote your own words, "the police can't do nothing to us no more."

You wanted to follow Shank so that youth would take over the streets so that government, police and society could do nothing. That is a recipe for anarchy.

You wanted to encourage the continuing rioting in the major cities of this country; blowing up police stations and government property and shutting them down.

You thought your posts might have encouraged people to do what they wanted to do anyway; interestingly, a number of the comments posted confirmed that they thought that you were a stupid idiot. The problem is that others may have taken your comments seriously.

You pleaded guilty to sending three messages on Facebook inciting contact to join and violent disorder, not, I emphasise, riot. I understand the Chester cases involved inciting contact to join in riot.

I have read the community impact statement by Superintendent Walker which evidences the extent of the public disorder on the streets of Nottingham over the 48 hours prior to 10<sup>th</sup> August. What is particularly significant is the emphasis he places on cooperation which the local police received from all the local communities.

The seriousness of what you did was to encourage, indiscriminately, those who are minded to take part in the violence and those who were not but who, on seeing your comments, might have changed their minds. I am satisfied that was your intention.

What you encouraged was not an attack on an individual, but attacks on the people of Nottingham as a whole and the people of other cities. Fortunately, those living in this city were, for the most part, too sensible to follow your lead. You went to the extent of posting a profile picture of boxes of Vans, Lacoste, Fred Perry and Adidas trainers, intending people to believe that you had looted them. You said later, which I fully accept, that you had bought them legitimately out of your jobseekers allowance.

I pay particular regard to the harm this offence could foreseeably have caused; clearly it was designed to and could well have led to increased numbers on the street intent on violence to persons and property.

5. The Judge notes when considering the appellants background that he claimed to have come to the UK from Cuba with his mother and two brothers when he was

only 3 years of age. This reference to Cuba has been a consistent theme throughout the appellant's case including providing a copy of a grant of Indefinite Leave to Remain (ILR) a number of years ago in which the appellant's nationality was described as 'Cuban'.

6. Before the Upper Tribunal the appellant provided a written statement described as "Further Grounds of Appeal" in the following terms:

With respect for the authority at the Immigration and Asylum First-Tier Tribunal.

With respect the law and justice with respect for the Geneva Convention and respect for the human rights.

I am not prepared to accept the Home Office decision to deport me fraudulently to Romania with a false identity alleged by the Home Office because I have some criminal offences in the UK and because I have some Romanian friends on the Facebook social media.

I have the human rights to make friends no matter what colour or what nationality they are no one shall violate my human rights.

I'm not prepared to accept my illegal deportation to Romania and no misdirection in law or wrong exercise of discretion because Romania is not my country of origin and because the Home Office they don't have any evidence about me to prove that I am a Romanian citizen.

I am not a Romanian citizen I was not born in Romania I'm not registered in Romania I never put my foot in Romania I don't speak Romanian language and I have nothing to do with Romania.

I have negative feelings about my illegal deportation to Romania because of the illegal matter and irregular documents enter into Romanian border.

I am prosecuted because of the human rights, race, religion, nationality and political opinion.

I'm unwell to travel fraudulently to Romania or any foreign country where my life and freedom will be threatened in the account of my race religion nationality and political opinion.

The Home Office shall not deport me fraudulently to Romania or any foreign country as there may be causing of political matter and tension between States according to the Geneva Convention act 1951.

My removal and my illegal deportation will be contrary to the UK obligations under the human rights Convention and Geneva Convention as there is a strong likelihood that I will be subjected to return to the UK if the Home Office deport me fraudulently to Romanian or any foreign countries.

I have claim asylum in the UK on 17 December 1996 and this is the UK obligations under the refugees Convention to protect me in the UK and not too endanger my life.

The Home Office they have granted me and my family UK immigration status indefinite leave to remain in the UK and permanent resident granted exceptionally outside the immigration rules and outside the international obligations.

I do not need to travel or be emigrated abroad.

The Home Office should forgive me for my criminal offences and for the mistakes that I have done because I was young aged and because I did not realise what I have done.

The Home Office should offer me help instead of endangering my life.

The Home Office should agree to let me stay in the UK because all my family they are living in the UK because I don't have a country of origin to return to.

My mother she is mentally ill she was diagnosed with psychosis paranoid schizophrenia in the UK in 2010 needs treatment for the rest of her life and she recently had an operation to the liver she had the gallbladder removed and she is feeling unwell I'm not prepared to accept the Home Office decision to travel fraudulently to Romania or any foreign countries or to leave my family behind.

I have been living in the UK from the age of 3.

I have been studying in the UK from 1997 to 2011 and I have learned the British culture for almost 23 years I don't know other countries apart from the UK.

I'm afraid to return to my country of origin because I don't have one.

I therefore ask to the immigration and asylum first-Tier Tribunal and to the Secretary of State to consider my appeal to stay in the UK in light of the Geneva Convention act 1951 and under the relevant human rights act 1998 because of my political reasons because of my humanitarian reason and because I'm in danger of dying if the Home Office deport me fraudulently to Romania or any foreign countries.

7. The statement is signed by Mr Ahmed Pelle the name by which the appellant currently wishes to be known.
8. The respondent in the reasons for deportation letter refers to further submissions made by the appellant as to why he should not be deported from the United Kingdom. In relation to the appellant's nationality the respondent writes at [4]:

"The Home Office have concluded that you are a Romanian national by descent as your mother Maria [M] (nee [F]) is a Romanian national. Following the removal of your family to Cuba on the 7 July 2001 you were returned to the UK as you had not been accepted as Cuban nationals, as you had claimed, by the Cuban authorities. Whilst interviewed by the Cuban authorities your mother stated her true name was Maria [M], a Romanian national and your name was Isaac [J] also a Romanian national. Examination of open source social media sites have revealed that Suzelle Pelle and Maria [M] (nee [F]) are one and the same person and that you operate your own accounts under the name of Isaac Pelle. Examination of these sources have revealed an extended family who conversed in Romanian."

9. In addition the First-Tier Tribunal in the determination of 25<sup>th</sup> May 2018 noted there was a dispute regarding the appellant's nationality and therefore the country to which he would be deported if his appeal was not successful. At [3] of the earlier determination, which is not a finding affected by the conclusion that Tribunal had erred in law, it is written:

“Mr Petryszyn referred me to the evidential report contained at pages C1 to C3 of the Respondent’s bundle. I do not propose to repeat all the evidence that is set out there. The Respondent has taken account there of the Appellant’s complicated family background and of the fact that his mother has claimed on different occasions that she and her sons were Cuban nationals or Romanian nationals. The Respondent has concluded that the Appellant is a Romanian national by descent from his mother, and that his true name is Isaac [J] and that his date of birth is 15 January 1993. Although I accept the Appellants evidence that he believes he was born in Germany, that would not, of itself, make him a German citizen. I found on the balance of probabilities that the Respondent’s conclusions about the Appellant’s identity were correct.”

10. The First-Tier Tribunal proceeded on the basis the appellant is a Romanian national with the above date of birth. Although the appellant denies he is Romanian the weight of the evidence, including the above unappealed finding, enables this Tribunal to proceed on the basis the respondent was entitled to issue a deportation order pursuant to the EEA Regulations on the basis of the appellant’s Romanian nationality.
11. The First-Tier Tribunal finding in relation to the level of protection to which the appellant is entitled to is also an unchallenged finding. The First-Tier Tribunal found that the appellant had not acquired a right of permanent residence in the United Kingdom and is therefore only entitled to the lower level of protection, namely that his removal is justified on the grounds of public policy, public security or public health. This remains the situation before the Upper Tribunal.
12. Regulation 27(5) of the Immigration (European Economic Area) Regulations 2016 (‘the 2016 Regulations’) states the public policy and public security requirements of the United Kingdom include restricting rights otherwise conferred by these Regulations in order to protect the fundamental interests of society and where a relevant decision is taken on grounds of public policy or public security it shall, (in addition to complying with the preceding paragraphs of the regulation,) be taken in accordance with the following principles –
  - (a) the decision must comply with the principle of proportionality;
  - (b) the decision must be based exclusively on the personal conduct of the person concerned;
  - (c) the personal conduct of the person concerned must represent a genuine, present and sufficiently serious threat affecting one of the fundamental interests of society taking into account past conduct of the person and that the threat does not need to be imminent;
  - (d) matters isolated from the particulars of the case or which relate to considerations of general prevention do not justify the decision;
  - (e) a person's previous criminal convictions do not in themselves justify the decision
  - (f) the decision may be taken on preventative grounds, even in the absence of a previous criminal conviction, provided the grounds are specific to the person.
13. Regulation 27(6) states that before taking a relevant decision on the grounds of public policy or public security in relation to a person who is resident in the United Kingdom the decision maker must take account of considerations such as the age, state of health, family and economic situation of the person, the

person's length of residence in the United Kingdom, the person's social and cultural integration into the United Kingdom and the extent of the person's links with his country of origin.

14. Regulation 27(8) of the 2016 regulations says that a court or tribunal considering whether the requirements of this regulation are met must (in particular) have regard to the considerations contained in Schedule 1 (considerations of public policy, public security and the fundamental interests of society etc).
15. Schedule 1 provides:

#### SCHEDULE 1

#### CONSIDERATIONS OF PUBLIC POLICY, PUBLIC SECURITY AND THE FUNDAMENTAL INTERESTS OF SOCIETY ETC.

##### Considerations of public policy and public security

1. The EU Treaties do not impose a uniform scale of public policy or public security values: member States enjoy considerable discretion, acting within the parameters set by the EU Treaties, applied where relevant by the EEA agreement, to define their own standards of public policy and public security, for purposes tailored to their individual contexts, from time to time.

##### Application of paragraph 1 to the United Kingdom

2. An EEA national or the family member of an EEA national having extensive familial and societal links with persons of the same nationality or language does not amount to integration in the United Kingdom; a significant degree of wider cultural and societal integration must be present before a person may be regarded as integrated in the United Kingdom.

3. Where an EEA national or the family member of an EEA national has received a custodial sentence, or is a persistent offender, the longer the sentence, or the more numerous the convictions, the greater the likelihood that the individual's continued presence in the United Kingdom represents a genuine, present and sufficiently serious threat affecting of the fundamental interests of society.

4. Little weight is to be attached to the integration of an EEA national or the family member of an EEA national within the United Kingdom if the alleged integrating links were formed at or around the same time as –

- (a) the commission of a criminal offence;
- (b) an act otherwise affecting the fundamental interests of society;
- (c) the EEA national or family member of an EEA national was in custody.

5. The removal from the United Kingdom of an EEA national or the family member of an EEA national who is able to provide substantive evidence of not demonstrating a threat (for example, through demonstrating that the EEA national or the family member of an EEA national has successfully reformed or rehabilitated) is less likely to be proportionate.

6. It is consistent with public policy and public security requirements in the United Kingdom that EEA decisions may be taken in order to refuse, terminate or withdraw any right otherwise conferred by these Regulations in the case of abuse of rights or fraud, including –

- (a) entering, attempting to enter or assisting another person to enter or to attempt to enter, a marriage, civil partnership or durable partnership of convenience; or
- (b) fraudulently obtaining or attempting to obtain or assisting another to obtain or to attempt to obtain, a right to reside under these Regulations.

##### The fundamental interests of society

7. For the purposes of these Regulations, the fundamental interests of society in the United Kingdom include –

- (a) preventing unlawful immigration and abuse of the immigration laws, and maintaining the integrity and effectiveness of the immigration control system (including under these Regulations) and of the Common Travel Area;
- (b) maintaining public order;
- (c) preventing social harm;
- (d) preventing the evasion of taxes and duties;
- (e) protecting public services;
- (f) excluding or removing an EEA national or family member of an EEA national with a conviction (including where the conduct of that person is likely to cause, or has in fact caused, public offence) and maintaining public confidence in the ability of the relevant authorities to take such action;
- (g) tackling offences likely to cause harm to society where an immediate or direct victim may be difficult to identify but where there is wider societal harm (such as offences related to the misuse of drugs or crime with a cross-border dimension as mentioned in Article 83(1) of the Treaty on the Functioning of the European Union);
- (h) combating the effects of persistent offending (particularly in relation to offences, which if taken in isolation, may otherwise be unlikely to meet the requirements of regulation 27);
- (i) protecting the rights and freedoms of others, particularly from exploitation and trafficking;
- (j) protecting the public;
- (k) acting in the best interests of a child (including where doing so entails refusing a child admission to the United Kingdom, or otherwise taking an EEA decision against a child);
- (l) countering terrorism and extremism and protecting shared values.

## Discussion

16. The decision to deport was clearly taken on the basis of the appellant's personal conduct evidenced by the commission of the offence that led to his sentence on 25<sup>th</sup> August 2011. Inciting or encouraging others to commit violence to persons and property is clearly contrary to the fundamental values of the United Kingdom.
17. The First-Tier Tribunal Judge noted that this offence was the appellant's first and by far the most serious with gaps in his offending history. The First-Tier Tribunal also recorded that the appellant admitted the offences for which he had been convicted were only those for which he had been caught. When asked during the course of his evidence before the Upper Tribunal roughly how many other offences he had committed it is clear from the appellant's reply that he is a prolific offender who has embarked upon a systematic campaign of theft since his very early days at school. Although the appellant claimed that as a result of his upbringing he would steal food and other necessities this cannot provide an explanation for all his offending. Indeed the First-Tier Tribunal noted at [17] of the earlier decision:
  17. He has not been working since 2017. Instead he has been doing a course of flying lessons. He has been paying for his own flying lessons, which is why he has a criminal record since 2011. Basically, he has been funding his lessons by shoplifting. He said that the fact he was struggling to fund the lessons was no excuse for his behaviour.
18. The appellant's methodology is also sophisticated. His convictions for fraud are as a result of stealing goods and then taking them back to the same shop to try



- and obtain a cash refund, on occasions forging receipts to make it appear that the goods had been validly purchased. The appellant's evidence was that was the basis for his most recent conviction and period of imprisonment.
19. It is quite clear from the appellants evidence that he resorts to acts of criminality to fund his activities. The appellant's history shows he has worked when he was able to earn an income, but the history of criminality shows he presents a real risk of the commission of further offences if no lawful source of income is available to him. The number of actual offences committed is in excess of 100.
  20. I find the respondent has discharged the burden upon him to show the appellant's personal conduct represents a genuine, present and sufficiently serious threat affecting one of the fundamental interests of society taking into account past conduct of the appellant and high-level probability of continued acts of criminality in the future.
  21. The prolific nature of the appellant's offending also gives rise to the question of the applicability of preventative grounds for his deportation too.
  22. In relation to the proportionality of the decision, it is clear the appellant has integrated into the United Kingdom the country in which he has grown up and been educated.
  23. The appellant, based upon the finding his date of birth is 15 January 1993, is 26 years of age.
  24. There is no evidence the appellant suffers physical or mental ill health.
  25. The appellant lives with his mother and two brothers in Nottingham having no independent home of his own. The appellant's twin brother, who the First-Tier Tribunal Judge recorded was studying but in Birmingham, has in fact been sentenced to a period of imprisonment and is still in prison at the date of the appellant's hearing before the Upper Tribunal.
  26. Although the appellant has worked in the past the First-Tier Tribunal noted he had not worked since 2017 and his criminal record shows his arrest and serving of a further period of imprisonment mean he will not have worked since. The appellant's evidence was he was looking for a job and that he was studying media at Bournville College twice a week and enjoys the same but evidence of that was extremely limited beyond the appellant's oral evidence.
  27. The appellant has been resident in the United Kingdom since aged 3 with his social and cultural integration only being broken by periods of imprisonment.
  28. The appellant claims to have no links with Romania although there is evidence of the same through the electronic media referred to by the respondent in the reasons for refusal letter. It is not made out the appellant has no contact with extended family in Romania or that he could not turn to them for assistance when deported from the United Kingdom. It is not made out the appellant will be abandoned on return or become destitute.
  29. In relation to the appellant's mother the appellant claimed his mother suffers from mental health problems which is not disputed. The appellant has served two periods of imprisonment and is not made out his mother's situation deteriorated to the extent that she could not manage and function without the appellant. It is not made out the appellant does anything of a substantial nature to assist his mother and that whilst his presence may be of comfort to her she

- did not prevent the appellant offending in an escalating manner. It was not established the emotional ties between the appellant and his mother include an element of dependency. The appellant's mother has received treatment and has a care worker who assists in managing her depression and that her schizophrenia is controlled by medication which has continued during the appellant's absence as a result of his imprisonment.
30. Existence of family in the UK has clearly not been a deterrent factor to the appellant. In 2018 before the First-Tier Tribunal the appellant claimed he would take responsibility for his actions and indicated that he will not offend in the future leading the Judge on that occasion to believe the appellant's claim that he will change; shortly after which the appellant was arrested and convicted before the Chester Crown Court for which he received a further period of imprisonment for similar offences of dishonesty to those he committed in the past.
  31. In relation to the issue of rehabilitation, whilst it is accepted it will be difficult for the appellant to establish himself in Romania, a country which will appear alien to him, he fails to establish on the evidence that any problems will be insurmountable such as to make his deportation disproportionate on the facts. The appellant has provided no evidence that has undertaken any rehabilitative work in the UK of his own initiative any such work having been undertaken as a result of the condition of a Community Order although the fact the appellant has continued to offend is clear evidence that he has not become rehabilitated and is and remains a persistent offender.
  32. It was not made out the appellant would not be able to work towards rehabilitation in Romania or that if contact is made with the relevant authorities that his deportation would not prejudice the prospects of rehabilitation.
  33. Considering the appellant's immigration history, real risk of continued reoffending in the future, the genuine present and sufficiently serious threat the appellant poses to at least one of the fundamental interests of the United Kingdom, having regard to the proportionality of the decision in light of the appellant's personal circumstances, I find that the decision to deport pursuant to the EEA Regulations 2016 is proportionate in accordance with the principles of regulations 27(5) and (6).
  34. The appellant makes a claim pursuant to the Refugee Convention but fails to establish any real risk of harm for a Convention reason if removed to Romania where he has never experienced any such risk in the past and fails to properly make out any reason why he should be at risks sufficient to entitle him to a grant of international protection even if he has little experience of living in that country, especially in light of the assistance that he has not shown will not be available from extended family members there. The appellant fails to make out an entitlement to be recognised as a refugee, to a grant of Humanitarian protection, or leave pursuant to articles 2 or 3 ECHR.
  35. In relation to appellants article 8 ECHR claim, the appellant has private life in the United Kingdom based upon his time in the UK and integration including his education and relationship with his mother and brothers all of whom reside in the UK. The appellant does not have a child and has not established family

life with a partner in the UK sufficient to entitle him to satisfy an exception set out in paragraphs 399(a) or 399(b) of the Immigration Rules.

- 36. Considering whether the appellant has established very compelling circumstances which outweigh the public interest in his deportation, such that it would be disproportionate pursuant to article 8 ECHR, the appellant fails to establish very compelling circumstances sufficient to outweigh the public interest in his deportation.
- 37. The appellant's claim in his further ground that his removal will be a breach of a protected right is not made out as any such interference is proportionate to the public interest which includes the protection of those within the United Kingdom from criminal acts, the economic well-being of the United Kingdom, and the fact the appellant's deportation has been shown to be proportionate pursuant to the EEA Regulations 2016.

**Decision**

- 38. **I remake the decision as follows. This appeal is dismissed.**

Anonymity.

- 39. 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 13 November 2019