



IAC-AH-KRL-V1

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

Appeal Number: DA/00304/2017

**THE IMMIGRATION ACTS**

**Heard at Field House  
On 14<sup>th</sup> January 2019**

**Decision & Reasons Promulgated  
On 11<sup>th</sup> February 2019**

**Before**

**UPPER TRIBUNAL JUDGE FRANCES**

**Between**

**THE SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Appellant

**and**

**F A**

**(ANONYMITY DIRECTION MADE)**

Respondent

**Representation:**

For the Appellant: Ms A Brocklesby-Weller, Home Office Presenting Officer

For the Respondent: In person

**DECISION AND REASONS**

1. Although this is an appeal by the Secretary of State I shall refer to the parties as in the First-tier Tribunal. The Appellant is a citizen of the Netherlands born on 25 August 1998. His appeal against deportation was allowed by First-tier Tribunal Judge I Howard on 27 June 2017 under the Immigration (EEA) Regulations 2016.

2. On 12 March 2018, I found that there was an error of law in this decision and set it aside. The case was relisted to be reheard. The matter came before me on 1 October 2018 and was adjourned to enable the Appellant to obtain legal representation.
3. In response to directions, the Respondent filed and served witness statements from the PC JC dated 8 November 2018 and PC WF dated 30 September 2017. Ms Brocklesby-Weller also filed and served a skeleton argument and an up to date PNC printout.
4. The Appellant did not submit any further evidence in response to directions and, at the hearing before me, produced two pages of typed and written submissions which he confirmed would stand as his evidence and as his skeleton argument.
5. The Appellant gave evidence-in-chief as follows. He relied on his statement before the First-tier Tribunal, which he signed (and dated 14 January 2019) before me in court. He gave the following further evidence. Since he was released from his eight-week sentence he had started a fresh page, which I took to mean that he had made a decision to reform. He stated that he was arrested for criminal activities which took place before he served his prison sentence. He was given a suspended sentence for his last conviction and had completed most of his probation and community service. He currently had a one bedroom flat and had not reoffended for the last two years. His term of imprisonment was a result of his failure to comply with a criminal behaviour order in which he explained that he was prevented from having contact with his friends at school and he foolishly disregarded that order.
6. The Appellant stated that he had not committed a serious offence since he became an adult. Robbery was his most serious offence. He was 16 years old and in the wrong place at the wrong time, having been with the person who took someone's iPhone. The conviction for possession of cannabis was the offence for which he was imprisoned for failing to comply with the sentences given on 9 October 2015. Again he was 16 years old at the time he committed that offence. There were several breaches of a community behaviour order which resulted in an eight-week sentence in March 2017. The last offence (arranging to facilitate the travel of another person with a view to exploitation) took place at the beginning of 2017 before his imprisonment. He pleaded guilty at the first opportunity and received a sentence of eight months' imprisonment suspended for twelve months on 15 June 2018. He had the lowest role in that offence and had been paid to protect the victim by someone else. He needed the money to support his cannabis addiction which was now being addressed through probation.
7. The Appellant has had a social worker for some time and he sees her every two weeks to do a pathway plan, which was helping him to get a council flat. He is now 20 years old. His mother is suffering from trauma in the back of her head and attended hospital. He had seen her only this morning. His father was at work. He worked as a rubbish man and the Appellant last saw him the other day. His brother was 12 years old and was born here. He sees him every day. His sister was 15 years old and both his brother and sister lived with his mum. His grandma and her kids

were also in the UK and he saw her every two or three weeks. His whole family lived in the UK. He came to the UK when he was 5 years old. He had never been back and he did not speak Dutch. He had no family in Holland at all.

8. The Appellant's father had been in employment as a rubbish man since he came to the UK. His mum worked part-time but was not working at the moment because of her illness. She was a teacher's assistant and did that on and off. He did not know if his mum and dad had got permanent residence cards.
9. At this point I asked Ms Brocklesby-Weller to check Home Office records to see if either of the Appellant's parents had permanent residence cards. I continued to take further evidence from the Appellant while she did so.
10. The Appellant started school in Hounslow, but the school burnt down and he then went to Edmonton. He attended primary school from years three to year six. He then went to secondary school for two years until his mum thought it was better that he be schooled at home because of the violence and trouble in the area. He spent three years at primary school and two years at secondary school and then he was home schooled. He attended at Best Tutors, a private school from January 2012. He was not sure if he had health insurance and had not come across it. He took GCSE equivalents at the private school in year eleven in 2014.
11. Ms Brocklesby-Weller confirmed that the Appellant's parents had been granted permanent residence on Friday 11 January 2019. It was on the basis of his father's employment status. She conceded that since he was under the age of 21 he was a dependant of an EEA national with permanent residence and, therefore, had obtained permanent residence. She accepted that the Appellant had lived in the UK for at least ten years and he was entitled to the highest form of protection, namely imperative grounds. She conceded, referring to her skeleton argument, that the Appellant's current criminal record was not sufficient to demonstrate imperative grounds for expulsion.

### **Relevant law**

12. Regulation 27 of the Immigration (EEA) Regulations 2016 states:
  - '27. (1) In this Regulation a relevant decision means an EEA decision taken on the grounds of public policy, public security or public health.
  - (2) A relevant decision may not be taken to serve economic ends.
  - (3) A relevant decision may not be taken in respect of a person with a right of permanent residence under Regulation 15 except on serious grounds of public policy and public security.
  - (4) A relevant decision may not be taken except on imperative grounds of public security in respect of an EEA national who

- (a) has resided in the UK for a continuous period of at least ten years prior to the relevant decision; or
  - (b) is under the age of 18 unless the relevant decision is in the best interests of the person concerned as provided for in the Convention of the Rights of the Child adopted by the General Assembly of the United Nations on 20<sup>th</sup> November 1989.
- (5) 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 must also 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 must represent a genuine, present and sufficiently serious threat to 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 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.
- (6) Before taking a relevant decision on the grounds of public policy and public security in relation to a person P 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 P, P's length of residence in the UK, P's social and cultural integration into the UK and the extent of P's links with P's country of origin.
- [(7) relates to a decision taken on grounds of public health and is not relevant.]
- (8) A court or Tribunal considering whether the requirements of this Regulation are met must in particular have regard to the considerations in Schedule 1, considerations of public policy, public security and the fundamental interests of society.

### **Discussion and Conclusions**

13. The Appellant was born in August 1988 in the Netherlands and claims to have entered the UK on 11 November 2004. It is clear from the documentary evidence

produced that he was present in the UK by September 2005. He has been resident in the UK for at least ten years.

14. The Respondent brought deportation proceedings on the basis of the Appellant's criminality. He had eight convictions for eleven offences as follows:
  - (a) 22 September 2014: attempted robbery and robbery. He was sentenced to a youth rehabilitation order, compensation and curfew requirement;
  - (b) 9 October 2015: possession with intent to supply class B cannabis. He was sentenced to a supervision requirement, youth rehabilitation order, criminal behaviour order for three years, costs and an unpaid work requirement 50 hours, curfew requirement, electronic tagging, an exclusion requirement from the London Borough of Enfield;
  - (c) 8 April 2016: destroying or damaging property and given a conditional discharge;
  - (d) 14 November 2016: breach of a criminal behaviour order and fined;
  - (e) 9 February 2017: breach of a criminal behaviour order on two occasions and given a community order with an unpaid work requirement;
  - (f) 16 March 2017: breach of a criminal behaviour order and given a further community order with an unpaid work requirement;
  - (g) 24 March 2017: breach of a criminal behaviour order and imprisoned for eight weeks. This is the index offence which led to the deportation proceedings;
  - (h) 15 June 2018: conspiring or arranging or facilitating the travel of another person with a view to exploitation. He was given a sentence of imprisonment of eight months suspended for twelve months. There was an unpaid work requirement and a rehabilitation activity.
15. Given the grant of permanent residence to his parents on 11 January 2019, the Appellant is entitled to the highest level of protection. He has shown that he has permanent residence and that he has resided in the UK for at least ten years. His level of criminal activity and imprisonment for eight weeks was not sufficient to show that he was not integrated in the UK and, therefore, I find that he is entitled to the highest level of protection under the EEA Regulations 2016.
16. I have taken into account all the circumstances of his case, including the Appellant's oral evidence that: he has lived in the UK since the age of five; he has attended state school for five years and thereafter went to a private school and has taken GCSEs; all his family live in the UK; and he has no family in Holland and does not speak Dutch; I have considered his assertion that he has finally come to terms with his offending behaviour and decided to make a fresh start. I hope that he continues to co-operate with probation and with the assistance of his social worker he will stay out of trouble and move on with his life.
17. Applying Regulation 27, I find that the Appellant is entitled to the highest form of protection and looking at all the factors listed in Regulation 27(5) the Respondent has

failed to show that there are imperative grounds of public policy which warrant the deportation of the Appellant. Accordingly, I allow the Appellant's appeal.

**Notice of decision**

**The Appellant's appeal against deportation is allowed under the Immigration (EEA) Regulations 2016.**

**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 her or any member of her 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.

*J Frances*

Signed

Date: 7 February 2019

Upper Tribunal Judge Frances