



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

Appeal Number: DA/00450/2016

THE IMMIGRATION ACTS

**Heard at Birmingham Civil Justice Centre
On 23 November 2018**

**Decision & Reasons
Promulgated
On 18 January 2019**

Before

UPPER TRIBUNAL JUDGE O'CONNOR

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

**MR DOMENICO PERSICO
(ANONYMITY DIRECTION NOT MADE)**

Respondent

Representation:

For the Appellant: Mr D Mills, Senior Office Presenting Officer

For the Respondent: Mr I Ali, instructed by Knightsbridge Solicitors

DECISION AND REASONS

(Given orally on 23 November 2018)

Introduction

I refer herein to Mr Persico as the claimant, the appeal before the Upper Tribunal having been brought by the Secretary of State for the Home Department.

The claimant is an Italian national, born 2 December 1966. He came to the United Kingdom, it appears, in or around 1985 and subsequently amassed

convictions for 24 offences between 5 November 1985 and 27 January 2016. The First-tier Tribunal summarises these offences thus, at [3]:

“...thefts, attempt/obtaining property by deception, failing to surrender to bail, possessing controlled drugs of Class A (Heroin), indecent assault, motoring offences, send offences/indecent/obscene menacing messages by means of public electronic communications.”

It records the claimant’s sentences for these offences as including periods of imprisonment, fines, payment of compensation, conditional discharges, community orders with work requirements and motoring penalties.

On 21 January 2016 the claimant was sentenced to fifteen months’ imprisonment, having been convicted of production of Class B controlled drugs (Cannabis).

By way a decision served on 2 September 2016, the Secretary of State decided to make a Deportation Order against the claimant pursuant to section 5(1) of the Immigration Act 1971. The Secretary of State’s consideration of whether to deport the claimant took place within the confines of the Immigration (European Economic Area) Regulations 2006 and, in particular, regulations 19 and 21 thereof.

The claimant’s appeal against such decision was allowed by the First-tier Tribunal in a decision promulgated on 31 October 2017. Upper Tribunal Judge Kekić subsequently granted permission to appeal on the 5 March 2018, in the following terms:

“The grounds focus on the issue of whether the [claimant] had demonstrated that he was resident in the UK. The [claimant’s] poor credibility is highlighted (at paragraphs 64-69 of the determination) and it is argued that in that context and given the absence of documentary evidence, the judge had failed to give adequate reasons for her finding that the appellant had been resident throughout the disputed period in excess of two years during that time.”

Discussion and Decision

The Secretary of State’s grounds of challenge focus on the First-tier Tribunal’s finding that the claimant was entitled to protection as a permanent resident in the UK, the consequence of this being that the Secretary of State was required to demonstrate that there are serious grounds of public policy or public security for deporting the claimant.

It is said that the First-tier Tribunal’s finding on this issue lacks a lawful adequacy of reasoning, given the claimant’s general lack of credibility and the lack of evidence to support a conclusion that he had not left the UK for a continuous period in excess of 2 years since he acquired permanent residence (the effect of which would be that the claimant loses his permanent residence).

Although the First-tier Tribunal found that the claimant had acquired permanent residence by 1994 [81] and did not go on to consider whether such permanent residence had been lost, even if this could be said to amount to error of law in its decision – and this is by no means clear – such error is not one capable of affecting the outcome of the appeal. This is so because the

First-tier Tribunal went on to consider the claimant's case in the alternative, i.e. on the basis that he was not a permanent resident in the UK and thus considered it on the basis that the Secretary of State had to demonstrate that deportation could be justified on the lower threshold of public policy or public security grounds. Having done so the First-tier Tribunal found in the claimant's favour on this issue [82-93].

The key finding in this regard is found at [91] and [92] of the First-tier Tribunal's decision:

- "91. Taking into account the evidence, I find that there is no evidence before me to suggest that the appellant has a propensity to re-offend.
- 92. Having considered all the evidence in the round including the risk of re-offending, I find that there is insufficient evidence to suggest that the appellant represents a genuine, present and sufficiently serious threat affecting any of the fundamental interests of society",

The Secretary of State also brings challenge to these findings, for two reasons. First, it is asserted that the First-tier Tribunal erred in failing to give adequate reasons for its conclusion. It is further asserted that the aforementioned conclusions are irrational.

At the outset of the hearing, Mr Mills properly accepted that if the Secretary of State could not get over the hurdle of demonstrating that the First-tier Tribunal erred in its conclusions at [91] and [92] that would dispose of the appeal before the Upper Tribunal.

Turning then to this challenge. In order to analyse whether the First-tier Tribunal's decision is properly reasoned it is necessary to identify the reasons it gave for its decision, which were as follows:

- (i) At [84] the First-tier Tribunal, having previously summarised the claimant's offending pattern, concluded that there had been an escalation in the seriousness of the offences, as indicated by the sentences imposed. It is clear, therefore, that the First-tier Tribunal was aware and took account of the claimant's offending pattern and the nature of the specific offences;
- (ii) At [85] the First-tier Tribunal referred to the Secretary of State's submissions on this issue and, in particular, the assertion that in the absence of any evidence that there had been an improvement in the claimant's personal circumstances since his conviction, or that he had successfully addressed the issues that prompted him to offend, it is reasonable to conclude that there remained a risk of him re-offending and continuing to pose a risk of harm to the public;

In the following five paragraphs, the First-tier Tribunal carefully engage with both limbs of the Secretary of State's submission, i.e. by considering whether there had been any improvement in the claimant's personal circumstances and

whether he had done anything to address the issues that prompted him to re-offend;

- (iii) In [86] the First-tier Tribunal identifies, and accepts, that the claimant has undergone *“rehabilitation programmes in prison with alcohol and drug-related problems”* and that he has provided evidence that he is remorseful and wants to better himself so as not to be separated from his child;
- (iv) At [87] to First-tier Tribunal accepts that the claimant *“is currently undergoing the 12 steps programme with Narcotics Anonymous which he attends three times a week”* and that he has a sponsor for that programme with whom he keeps in touch;
- (v) The First-tier Tribunal then at [88] - [90] directly addresses, and rejects with reasons, the Secretary of State’s submission that the claimant had been unable to demonstrate that he would be able to financially support himself upon release from prison and that he would have fixed accommodation. The First-tier Tribunal thought it to be of significance, that:

“While the appellant has not submitted further documentary evidence, I accept that he is in business with Davante James as I had the opportunity of observing the appellant while he gave evidence and I find that he spoke with authority when describing the business and his commitment to it.”

In my conclusion, the First-tier Tribunal fully engaged with the case put by the Secretary of State and came to conclusions of fact which are not individually challenged and which, in any event, were entirely open to it on the available evidence. The First-tier Tribunal also undertook its consideration in the proper context of the claimant’s history of criminal offending, including identifying that such behaviour had escalated in more recent times.

Given these findings I am in no doubt that the First-tier Tribunal was entitled to conclude that the Secretary of State has not demonstrated that the claimant represented a genuine, present and sufficiently serious threat to the fundamental interests of society. It’s reasons for coming to such conclusion are not unlawfully inadequate. That is not to say that every judge would have come to the same conclusion, but that is not the issue I must consider. For all these reasons, I reject the Secretary of State’s grounds drawn in this regard.

That being so, as accepted by Mr Mills, I need not make any finding on the lawfulness of the First-tier Tribunal’s consideration of whether the claimant had permanent residence in the UK.

Notice of Decision

The Secretary of State’s appeal is dismissed. The decision of the First-tier Tribunal stands.

Signed:

A handwritten signature in black ink, appearing to read 'Michael O'Connor', with a horizontal line underneath.

Upper Tribunal Judge O'Connor

Date 9 January 2019