Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: DA/00469/2017

THE IMMIGRATION ACTS

Heard at Field House	**Decision & Reasons Promulgated**
On 4th July 2019 and 12th November 2019	**On 18th November 2019**

Before

UPPER TRIBUNAL JUDGE COKER

Between

MAURICHE [B]

Appellant

And

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: No appearance
For the Respondent: Mr S Walker (4th July 2019);
Mr T Melvin (12th November 2019), Senior Home Office Presenting Officer

DETERMINATION AND REASONS

1. In a decision promulgated on 4th July 2019 I set aside the decision of First-tier Tribunal judge Bell for the following reasons:

> 1.In a decision promulgated on 11 December 2017, First-tier Tribunal judge Bell allowed Mr [B]'s appeal against the decision to deport made in

accordance with regulation 23(6)(b) and regulation 27 of the Immigration (European Economic Area) Regulations 2016. She allowed the appeal on the basis that Mr [B], date of birth 31st March 1996, was a British citizen by descent and that even if he were not, he would qualify for the highest level of protection against deportation because he had been resident in the UK for over 10 years.

2.The SSHD was granted permission to appeal on the grounds that it was arguable that in the absence of evidence before the First-tier Tribunal that Mr [B]'s mother (a Dutch citizen) and father (a British Citizen) had been married at the time of his birth, the finding that Mr [B] was a British Citizen by descent was legally flawed. Secondly permission was granted on the grounds that it was arguable that the judge had failed to properly consider and make findings on whether, if he were an EU national, he was entitled to imperative grounds of protection pursuant to his residence in the UK.

3.Mr [B] had been deported prior to the hearing of his First-tier Tribunal appeal. So far as I am aware, there is no forwarding address and he was not made aware of the outcome of his appeal before the First-tier Tribunal, the application for permission to appeal made by the SSHD or the hearing before me today.

4.It is plain from the file that there was no evidence before the First-tier Tribunal judge that Mr [B]'s mother and father were married at the time of his birth. The judge has erred in law in finding that Mr [B] is a British Citizen by descent in the absence of such evidence. That he may have been or be eligible for registration as a British Citizen because he has a British citizen father does not, of itself result in a finding that he is such a Citizen.

5.In so far as whether as a Dutch citizen the Mr [B] had acquired imperative grounds of protection from deportation, the First-tier Tribunal judge considered this only by referring to his length of residence in the UK and furthermore has not considered whether he had acquired a permanent right of residence.

6.For these reasons, the First-tier Tribunal judge has erred in law such that the decision is set aside to be remade.

Remaking the decision

7.Mr [B] has not had an opportunity to put forward his arguments in support of a claim that he should not be deported. It is not apparent from the file where he is or whether he can be contacted.

8.Mr Walker very fairly said that he would make such enquiries as he could to establish whether there was an address for Mr [B] in Holland. There are two possible sources, from the file, who may have some knowledge of his whereabouts and the Tribunal will attempt to contact them (an aunt and Peterborough City Council) to establish whether they have any continuing contact or knowledge of Mr [B]'s whereabouts.

Remaking the decision

2. The Tribunal established the appellant's last known address in Holland from solicitors instructed by the appellant in the past in a non-immigration matter. Although details of the appellant's current address were sought from his aunt, Ms Bussell, no response was received from her. The appellant was sent Notice of the Hearing on 12th November 2019; his aunt was sent notice

of the hearing to her last known address. No correspondence was received from either the appellant or Ms Bussell. In these circumstances I concluded that it was appropriate to proceed with the appeal in his absence.

3. Peterborough City Council Social Services confirmed in writing that the appellant had been known to Children's Services since August 2010. He was allocated a Personal Advisor with the Peterborough Leaving Care Team to provide the appellant with advice and guidance up to his 21st birthday or longer if he was in education. Their records indicate that he had been resident in the UK since 2004 when he arrived in the UK from Holland with his British Citizen father. The last known address that Children's Services had for him was HM Prison Lincoln. On 15th July 2019 they wrote to the Tribunal and said their involvement with the appellant ceased on 7th April 2017 when "involvement was closed".

4. The appellant was convicted on 6th March 2017 of burglary and sentenced to 21 months imprisonment. The deportation proceedings commenced after Peterborough had ceased involvement. I note that there is a detailed psychological report on file that predates the criminal conviction, but it appears that this did not result in any continuing involvement by Peterborough after the appellant reached the age of 21.

5. I am satisfied the appellant had permanent residence at the date of his arrest and conviction. He had been resident as a child in the UK from at least 2004 and, given the involvement of Peterborough and that he was subject to care proceedings on 2 occasions up to the age of 18, there is no evidence that he left the UK for any prolonged period of time. It is possible that he had established the third level of protective rights and that his conviction and imprisonment had not broken those integrated links: he had been in the UK since he was a young child; had attended school and college in the UK and this offence was his first offence. However, I have little evidence of any other links; his aunt has not given evidence other than a written statement to the First-tier Tribunal which is not particularly detailed. I cannot therefore on the evidence before me make a finding that the appellant has acquired 10 years residence such that he is entitled to the highest level of protection.

6. Nevertheless, as I indicated to Mr Melvin at the hearing, the evidence before me does confirm that he has been in the UK exercising Treaty Rights; he came as the dependant of his father from Holland (who had been working there since 1989) and undertook primary and secondary education in the UK. He had thus acquired permanent residence at the date of arrest, conviction and deportation.

7. Mr Melvin did not demur from this but submitted that because he has now been out of the UK for more than two years, such permanent residence has been lost. The appellant was deported on 5th October 2017. According to the First-tier Tribunal judge she was informed by the presenting officer that there was a note on the file that he was not to be deported prior to the hearing of his appeal but that note was overlooked because an earlier

hearing before the First-tier Tribunal had been adjourned. It therefore seems that the deportation of the appellant prior to his hearing before the First-tier Tribunal was an error.

8. In those circumstances, namely that the appellant did not leave voluntarily but was removed from the UK despite an agreement with the respondent that he would not be removed pending the outcome of his appeal I take the view that the two year period does not begin to bite until the statutory appeal process has been concluded.

9. Mr Melvin also submitted that even if the appellant retained his permanent residence, there was no evidence that he had not continued to commit further crimes in Holland. That is correct; but likewise there is no evidence that he has continued to commit crimes. It would have been open to the respondent to establish whether the appellant had acquired a criminal record in Holland but on the evidence before me, the appellant has committed only one crime in the lengthy period of time he was in the UK and there was no evidence in the psychologist report or other evidence that he had a propensity to commit further crime.

10. Accordingly, taking into account his lengthy residence, that he had at the time of the deportation no retained knowledge of Holland I am satisfied that there are no serious grounds of public policy or security such as require the appellant's deportation from the UK. The decision to deport the appellant is disproportionate.

11. I allow his appeal against deportation.

12. Although the appellant's former solicitors have said they are not acting for him in connection with immigration matters, it may be that they have some contact with him in relation to other matters. I have therefore authorised this decision be sent to them as well as to the last known addresses of the appellant and his aunt.

Conclusions:

The making of the decision of the First-tier Tribunal did involve the making of an error on a point of law.

I set aside the decision.

I re-make the decision in the appeal by allowing it.

Date 14th November 2019

Upper Tribunal Judge Coker