Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: DA/00583/2018

THE IMMIGRATION ACTS

Heard at Cardiff	**Decision & Reasons Promulgated**
On 31 October 2019	**On 19 November 2019**

Before

UPPER TRIBUNAL JUDGE GRUBB
DEPUTY UPPER TRIBUNAL JUDGE DAVIDGE

Between

Mr A Farinha
(ANONYMITY DIRECTION NOT MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Respondent: Mr C. Howells, Senior Home Office Presenting Officer
For the Appellant: Mr A. Joseph instructed by Turpin and Miller LLP (Oxford)

DECISION AND REASONS

1. There is no application to make an anonymity order and we see no reason to make one.

Appellant and these proceedings

2. The Appellant is a Portuguese citizen aged 30-year-old. He appeals against the decision of First-tier Tribunal Judge Trevaskis ("the Judge") promulgated on 7 July 2019 whereby he dismissed his appeal, brought on EEA and Article 8 grounds, against a decision dated 30 July 2018 to make a deportation order.

3. Permission to appeal was granted by Upper Tribunal Judge Sheridan on 16 August 2019 on the basis that it was arguable that the Judge had erred by failing to have regard to the letter from the appellant's offender manager dated 27 June 2019 where she said that the appellant is assessed as low risk of harm and low risk of reoffending when deciding whether the appellant (who was found to not have acquired a permanent right of residence) represents a genuine, present and sufficiently serious threat under regulation 27(5)(c) of the Immigration (EEA) Regulations 2016.

Discussion

4. In his grounds, the appellant contends that the Judge failed to undertake an adequate assessment of whether or not the appellant's personal conduct represents a genuine, present and sufficiently serious threat affecting one of the fundamental interests of society, namely public safety. In particular the judge failed to have any regard to the quality and quantity of rehabilitative courses that the appellant has successfully completed and the "extremely positive" and up-to-date letter in support of the appellant prepared by the appellant's offender manager dated 27 June 2019.

5. We find no merit here. As the grounds themselves point out, the Judge refers to the courses, and finds that progress has been significant and commendable, (see paragraph 12, 13, 22, and 43 of the determination). Accordingly, clearly the Judge has had regard to the courses. The grounds' assertion that the Judge has failed to take into account the letter from probation assessing the appellant as a low risk of reoffending overlooks the Judge's explicit reference to counsel's reliance on that evidence at paragraph 34 of the decision. We could not see, and counsel was unable to take us to, anything in the evidence in the Judge's decision which would indicate that he had taken a different view of the risk. A complete and fair reading of the decision shows that the Judge correctly self-directed at paragraph 9 in respect of the threshold test. At paragraph 41 the Judge has given adequate reasoning for finding that the appellant's personal conduct represents a genuine present and sufficiently serious threat. The Judge took into account the appellant's personal conduct of having been convicted of offences increasing in seriousness, culminating in what the sentencing judge described as "the very serious charge of conspiracy to commit fraud by false representation" with the defendants benefiting to the extent of just under £50,000, as well finding that because the appellant was subject to a suspended sentence order at the time of the commission of the offence there was an aggravating factor. The evidence of rehabilitation did not show that rehabilitation had been completed so that the appellant is of no risk. The Judge's conclusion was not argued as perverse. In short, the Judge was entitled to his conclusion that the personal conduct of the appellant represents a genuine, present and sufficiently serious threat.

6. The second limb to the grounds challenges the Judge's consideration of the issue of proportionality relevant both to the EEA Regulations and Article 8 of the ECHR. The Judge concluded there would be no very significant obstacle to the appellant's integration in Portugal. He rejected the Appellant's claim that he could not speak Portuguese or would be unable to acquire a working familiarity with the language very quickly and concluded that he would be able to find employment, and that he

has family in Portugal from whom he could expect support. The Judge found, in the context of the Immigration Rules vis à vis deportation of a foreign criminal of the appellant's order, that the children, who are in the care of the local authority, could remain in the UK and be placed for long term fostering or adoption without undue hardship in the event that the authorities decided they should not go with the father and, in the event that that children could accompany the father, that it would not be unduly harsh for them to do so. In terms of s 117C(5) of the Nationality, Immigration and Asylum Act 2002 it is the latter which is most relevant.

7. The crux of the grounds is that the Judge failed to give adequate consideration to the documentary evidence concerning the two children, in particular to the final care plan written by a social worker for Newport City Council dated 12 February 2019, as well as a Cafcass report of 5 February 2019, and an earlier parenting assessment of the appellant dated October 2018.

8. We conclude that the decision shows the Judge was well aware of the background of the care proceedings and the fact the children are in foster care, not least because he makes several references to that position, including setting out at paragraph 6 the respondent's view that their best interests would be served by remaining in the care of the local authority until arrangements can be made for long-term foster care or adoption. The Judge sets out in some detail between paragraphs 21 and 26 the up-to-date evidence from the social worker who appeared before him, including the fact that, in the event the appellant were deported to Portugal, it would be possible for the children to go with him. We pause to note that her evidence echoes her final care plan report, where at pages 30-31 there is reference to Portuguese-based social services and continuing oversight from the Court out of jurisdiction. The Guardian also points out at 4.6 that, given his positive parenting assessment, any opposition to the children's going to Portugal would require justification. Mr Joseph was unable to take us to anything in the documentary evidence referred to in the grounds which was not adequately encompassed in the Judge's reasoning. Indeed, his submission at the First-tier Tribunal was to the point that the evidence was that it was in the children's best interests to stay with their father.

9. The grounds' challenge to the Judge's assessment of proportionality is essentially a reworking of the above points with explicit reference to the unduly harsh test in respect of the children set out in the Immigration Rules and section 117C(5) of the 2002 Act, and bring nothing new to the discussion.

10. Although not raised in the grounds, there was some discussion at the hearing before us as to whether or not the Judge's conclusion that it would not be unduly harsh on the children to go to Portugal was predicated on a mistaken belief that the children could be looked after by their abusive grandfather, which conclusion would run contrary to the evidence of the social worker opposing contact with the appellant's parents in the context of the history of domestic violence. The issue arose because the Judge refers to the support of family members without expressly excluding the grandfather. We consider it in some detail because of the priority of the interests of the children.

11. We conclude such an interpretation is not borne out when the decision is read in the context of how the case was argued before the Judge and the detail of the evidence. The content of the February 2019 reports before the Judge showed the appellant had complained of suffering violence at the hands of his father during his teenage years in the United Kingdom and had reported his father to the police. The appellant's parents are now separated and the network and family support to which the Judge refers is shown in the evidence not to include his father. In the context of discussions about taking the children to Portugal if he is deported, rather than their being fostered and adopted here, he disclosed that he could expect support from his sisters and his mother. In February 2019, the appellant was not considered suitable to look after the children alone and he put forward his mother and sisters as supportive and responsible carers and invited social services to assess them as such. It is clear that this was offered as an alternative to taking the children into long-term foster care/adoption in the United Kingdom, as the discussion between the social worker and the mother set out in the care plan show. In the event, things have moved on since then, as the appellant's own standing as a caring parent has increased. As the Judge notes, the social worker states in her evidence that there were no child protection issues in respect of the appellant, and there is no evidence he would not protect his children from his abusive father. All the evidence is that he actually has no contact, and would not contemplate contact, with his father. The Judge's conclusion must be read in the context of the evidence and the argument.

12. In summary, the Judge explained to the parties and provided adequate reasons for his findings, taking into account the personal circumstances, including the best interests of the children, that the deportation decision is proportionate, viewed through both the lens of the EEA Regulations and Article 8 ECHR.

Decision

13. We are satisfied that the decision is not flawed by a material error of law and the decision dismissing the appeal stands.

Signed  Date 13 November 2019
Deputy Upper Tribunal Judge Davidge