



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

Appeal Number: DA/00752/2017

THE IMMIGRATION ACTS

**Heard at Field House
On 8th March 2019**

**Decision & Reasons Promulgated
On 10th April 2019**

Before

UPPER TRIBUNAL JUDGE FRANCES

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

E S

(ANONYMITY DIRECTION MADE)

Respondent

Representation:

For the Appellant: Mr T Melvin, Senior Home Office Presenting Officer

For the Respondent: No appearance

DECISION AND REASONS

1. Although this is an appeal by the Secretary of State for the Home Department, I shall refer to the parties as in the First-tier Tribunal. The Appellant's appeal against deportation under the Immigration (EEA) Regulations 2016 was allowed by First-tier Tribunal Judge Law on 10 May 2018.
2. The Respondent appealed and Upper Tribunal Judge Pitt set aside the First-tier Tribunal decision in relation to the assessment of proportionality at paragraph 30 onwards. Her decision is dated 15 November 2018 and sets out the Appellant's history and background to this appeal.

3. In summary, the Appellant is a Czech national born in January 1972. The Appellant has seventeen convictions for twenty offences in the Czech Republic between 1988 and 2009. On 29 February 2009 he was convicted of aiding and abetting robbery and received a sentence of four years' imprisonment. He came to the UK after his release from prison in January 2013 and continued to commit offences. He received a caution for possession of a controlled drug, a caution for going equipped for theft and shoplifting, and he was convicted of driving whilst disqualified and using a vehicle without insurance and ordered to pay a fine. On 20 June 2017 he was convicted of handling stolen goods for which he received a twelve months' community order. He was served with notice of liability to deportation on 4 September 2017.

4. The relevant law is Regulation 27 of the EEA Regulations 2016 which states:

'Decisions taken on grounds of public policy, public security and public health

27. — (1) In this regulation, a "relevant decision" means an EEA decision taken on the grounds of public policy, public security or public health.

...

(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 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.'

5. When assessing proportionality account must be taken of the age of the person, state of health, family and economic situation and length of residence, social and cultural integration and links to the country.
6. The Appellant came to the UK in 2013 and first came to the attention of the authorities in November 2013 when he received a caution. He has been working for some time in local restaurants in Skegness. He is married to a Czech national and they have two children. The Appellant attends church in Skegness and one of his children is attending school. The Appellant is now 47 years of age having spent the first 40 years of his life in the Czech Republic and therefore he has cultural links to his country of origin. The Appellant's partner is also from the Czech Republic and they have children born in the UK in 2016 and in 2013. There were two other children in their care born to the Appellant's stepdaughter. It is clear from the evidence that social services were involved until 2017 with the children as the family were destitute.
7. The facts relevant to the assessment under Regulation 27 are as follows: The Appellant has lived the majority of his life in the Czech Republic having come to the UK in 2013. He has an extensive criminal record having seventeen convictions prior to coming to the UK, one including a sentence of imprisonment for four years, and having several cautions and two minor convictions since coming to the UK. The Appellant's wife and children for whom he is responsible in his household are all Czech citizens and could return to the Czech Republic.
8. There was evidence in the preserved findings from Reverend Middleton, who attended and gave oral evidence before the First-tier Tribunal, that the Appellant was a reformed character and his period of imprisonment in Morton Hall prior to deportation had been a wakeup call. Notwithstanding, the First-tier Tribunal judge's finding that the Appellant was a genuine, present and sufficiently serious threat to one of the fundamental interests of society was preserved. The judge's finding that the Appellant had achieved a significant degree of social integration by having worked in the UK and particularly from the strength of his association with the Storehouse Church and numerous letters from members of the congregation was not preserved.
9. The First-tier Tribunal Judge found that the Appellant was the centre of a family unit of seven people including four children none of whom have any basis for remaining in the UK if the Appellant was deported since there was no evidence that any of them are exercising Treaty rights.
10. I find that the Appellant is not sufficiently integrated into the UK given that he has continued to reoffend. His family have no right to reside in the UK and there was no reason to believe that remaining in the UK will assist his rehabilitation. The Appellant's very serious offences in the past and the continued offending do not support a finding that the Appellant's rehabilitation was more likely in the UK than in the Czech Republic.

11. Having regard to paragraph 3 of Schedule 1 the Appellant is a genuine, present and sufficiently serious threat. There was no additional evidence before me, the Appellant having failed to submit any further evidence or to attend the hearing, to take into account in the proportionality assessment.
12. The Appellant has a long history of offending including dishonesty, possession and supply of drugs, and robbery. He has continued to offend whilst in the UK. He can speak English, has a history of some employment and the support of community members. There was insufficient evidence before me to show that the Appellant would be discriminated against as a gypsy. Notwithstanding the evidence from Reverend Middleton that he has had 'a wakeup call' the Appellant's deportation was proportionate taking into account all the facts of the case. Accordingly, I find that the Appellant's deportation is justified under Regulation 27(5) and I dismiss his appeal against deportation.

Notice of decision

The Appellant's appeal against deportation is dismissed 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: 8 April 2019

Upper Tribunal Judge Frances

TO THE RESPONDENT
FEE AWARD

I have dismissed the appeal and therefore there can be no fee award.

J Frances

Signed

Date: 8 April 2019

Upper Tribunal Judge Frances