Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Numbers: EA/01305/2017
DA/00159/2017

THE IMMIGRATION ACTS

Heard at Bradford	**Decision & Reasons Promulgated**
On 11 July 2019	**On 26 September 2019**

Before

UPPER TRIBUNAL JUDGE LANE

Between

TAULANT [K]
(ANONYMITY DIRECTION NOT MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellant: Mr Hussain, instructed by Cale, solicitors
For the Respondent: Mr Mills, Senior Home Office Presenting Officer

DECISION AND REASONS

1. The appellant was born on 26 July 1981 and is a male citizen of Albania. By a decision dated 1 March 2017, a deportation order was made in respect of the appellant under the provisions of paragraph 27 of the Immigration (European Economic Area) Regulations 2016. The appellant appealed to the First-tier Tribunal which, in the decision promulgated on 2 April 2019 dismissed the appeal. The appellant now appeals, with permission, to the Upper Tribunal.

2. Granting permission, Judge Andrew wrote:

> "I am satisfied that there are unarguable errors of law in this decision in that the judge, although saying he took note of all the evidence, did not refer to the independent risk assessment of Ms N Newall or the social workers report in respect of the children. Further, the judge not analyse all the evidence available to him in respect of the children and the role [the appellant] played in their lives. Further, it is also arguable the judge did not make sustainable findings in relation to whether or not the appellant was exercising Treaty Rights."

3. The appeal had been returned to Judge Kelly of the First-tier Tribunal by an order of Upper Tribunal Judge Plimmer dated 15 August 2018. However, Judge Kelly had been unable to hear the case and had agreed that it be the transferred to Judge Moxon. Judge Moxon recorded the preserved findings of Judge Kelly as follows;

   a. The Appellant has daily contact with his daughter by Ms [P] and plays a significant role in her upbringing. Given her age, she could probably adapt to his removal with relative ease, it is in her long-term interest to remain in the United Kingdom;

   b. Given the absence of supporting evidence from Mrs [K], Judge Kelly was not satisfied that the Appellant continues to have contact with his children from that marriage;

   c. In the absence of a statement from Mrs [K], Judge Kelly was not satisfied that the Appellant continues to manage or operate his restaurant business. It is noted that the business documents all pre-date the Appellant's separation from his wife; and

   d. Judge Kelly was unable to assume that the Appellant continues to pose only a low risk of reoffending and causing significant harm to the public at large.

4. Judge Moxon also recorded Judge Plimmer's summary of the relevant case law and the questions to be addressed by the First-tier Tribunal when the appeal was returned to it:

> "14. The Appellant's initial appeal was dismissed by Immigration Judge Kelly within a determination promulgated on 30th October 2017. That decision was overturned by Upper Tribunal Judge Plimmer who found that there must be a consideration of the Appellant's integrative links in the United Kingdom, and at paragraph 10 she summarised the Attorney General's opinion in *Vomero* [2016] UKSC 49 as follows:
>
> > "(i) The acquisition of permanent residence is a prerequisite to qualify for enhanced protection.
> >
> > (ii) The 'previous ten years' residents required for enhanced protection must be continuous, subject to reasonable absences.
> >
> > (iii) Imprisonment allows doubt to be cast on integrative links but should not be excluded from calculation of the 10-year period.
> >
> > (iv) The expression 'the previous ten years' must be interpreted as referring to a continuous period, calculated by looking back from the precise time when the question of expulsion arises, that includes any

periods of absence or imprisonment, provided that none of those periods of absence or imprisonment had the effect of breaking integrative links with the host Member State.

(v) The overall assessment of integrative links cannot be confined solely to the criteria of long lasting settlement in the host Member State and the absence of any link with the Member State of origin. That assessment must instead take account of all the relevant factors of the individual case and must take place at the time when the authorities are ruling on the expulsion decision."

15. At paragraph 11 she detailed:

"… it is now sufficiently clear that the 10 year residency necessary for the grant of enhanced protection in Article 28(3)(a) must be calculated by counting back from the date of the decision ordering that person's expulsion and imprisonment does not break continuity provided that integrative links are not broken…"

16. At paragraph 12 she detailed, in relation to concessions by the Home Office representative before her:

"Mrs Patterson accepted that in this case that would mean counting back from the deportation order dated 1 March 2017 and that prima facie this appellant had the requisite 10 years because he arrived in the UK in May 2006. In these circumstances, she accepted that the FTT erred in law in not addressing imperative grounds and in particular whether in light of all consider all the relevant circumstances, integrity links could be said to be broken by the imprisonment in 2016 and 2017".

17. At paragraph 13 she details that the representatives agreed the matter should be remitted for up-to-date findings to be made. She details that:

"Mr Hussain had informed that there was substantial updating evidence available."

18. She detailed that completely fresh findings of fact in relation to the Appellant's integrative links in the United Kingdom are necessary but the findings that have already been made may require updating in light of further evidence. She directed that the appeal be remitted to Judge Kelly."

5. Judge Moxon made the following findings [54]:

a. The Appellant has involvement with Ms [P] and their child as accepted by Judge Kelly;

b. The Appellant does retain a relationship with the other children but I do not accept that it is to the extent that he asserts;

c. All children would be distressed by their father being removed from the United Kingdom and their best interests are for him to remain;

d. The Appellant has had no interest in the restaurant since he was sentenced to custody, has not been buying and selling cars and is not employed. He has not been exercising treaty rights since he was imprisoned; and

e. As accepted by the Appellant, he is estranged from his wife and lives alone.

6. The judge concluded that the integrative links between the appellant and the United Kingdom had been broken for the following reasons:

   a. He was in custody, serving a sentence of 18 months;

   b. His criminal activity indicates a lack of integration to the laws of the United Kingdom. His efforts to mislead as to his involvement in the more recent offences, including his letter to the Home Office in response to the Notice of Liability for Deportation, also demonstrates a lack of honest engagement with authorities and therefore lack of integration into the country;

   c. He has not exercised treaty rights since imprisonment; and

   d. Whilst the Appellant retained contact with his wife, girlfriend and daughters whilst in prison, he was of course not living with them and, save for a short period upon release, has not lived with any of them and instead lives alone.

7. The judge concluded as follows:

> "58. It is accepted that he has permanent residence. He therefore benefits from middle-tier protection but not the enhanced level of protection.
>
> 59. I am satisfied that there is a genuine, present and serious threat of the fundamental interests of society, namely maintaining public order, preventing social harm, tackling offences likely to cause harm to society where an immediate or direct victim may be difficult to identify but where there is wider societal harm (such as offences related to the misuse of drugs…) and protecting the public, as prescribed at paragraph 7 of Schedule 1 of the 2016 Regulations.
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> 60. Whilst I have considered the documents adduced by the Appellant in his support, together with his lack of reoffending, I do not accept that the Appellant is a low risk of reoffending or has rehabilitated, given the various adverse credibility findings outlined above and his attempts to minimise his culpability for his offending. Given that I do not find him credible, I do accept his account that he has stopped contact with his brother.
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> 61. I therefore accept that deportation is necessary as there are serious grounds of public policy and public protection."

8. The grounds of appeal complain that the judge failed to consider all the evidence regarding appellant's exercise of Treaty Rights, in particular in relation to his self-employment and his business of selling and buying cars. Further, the grounds complain that the judge ignored a significant amount of material evidence relating to the nature of the appellant's daily parental role with the children. The appellant claims that the judge ignored evidence and witness statements of the appellant and his wife and that no specific findings were made on the 'corroborative witness statements' of Ms Kamolli and Ms [P]. Further, the judge failed to have proper regard to the social worker report, making only a 'passing reference to it.'

9. Mr Mills, who appeared for the Secretary of State, submitted that the judge had provided a 'considered view' of all the relevant evidence. He had not rejected the claimed parental relationship between the appellant and his daughters although he had found that the relationship was not a strong or of such importance to the children as the appellant claimed; in particular, the judge had correctly attached

weight to the fact that the appellant does not live with his children. As regards the appellant's claimed that he runs a business buying and selling cars, it was open to the judge [47] to conclude that there was no reliable documentary proof to support the appellant's claims. The judge had recorded that a probation report indicated that the appellant's risk of reoffending was low.

10. Mr Mills acknowledged that the judge had not carried out a detailed examination of the social worker report adduced by the appellant in support of his appeal. He submitted, however, that, given the timing of that report, it added little, if anything, to the other evidence. The social worker report detailed conclusions which had been quickly overtaken by events, in particular the breakdown of the appellant's marriage.

11. I find that I agree with Mr Mills as regards the probative value of the social worker's report for the reasons which I have summarised at [10] above. I accept that the judge has not assessed the contents of the report in any detail. I do not accept that, given the events which, shortly after the report was prepared, occurred in the relationships of the appellant, his partner and the children, the report added anything material to the remaining evidence. As regards evidence generally, I find that the judge has had regard to the totality of the evidence in reaching his decision. As he states at [24]:

> "Whilst I am bound to be selective in my references to evidence within this document I have nevertheless taking into account all the evidence in the round when reaching my conclusions."

12. I see no reason to go behind that statement by the judge. I am satisfied that he has considered all the relevant evidence in reaching its decision. He was not obliged to provide an exhaustive description or summary of each item of evidence. I am satisfied that the judge was also entitled to find that the appellant was not exercising Treaty Rights as he claims. In reaching that conclusion, I am again satisfied that the judge has considered all relevant evidence. He was not obliged to find that the appellant was a truthful witness and has given adequate reasons for finding otherwise.

13. It follows from what I have said that the judge applied the relevant law to findings of fact which were open to on the evidence and therefore sound. The judge did not err in law by concluding that the appellant had failed to prove that he is entitled to the highest level of protection from deportation. The judge's finding that there exist serious grounds of public policy and public protection concerned with the deportation of this appellant is not flawed by legal error. It follows that the appeal should be dismissed.

Notice of Decision

The appeals are dismissed.

Signed Date 2 September 2019

Upper Tribunal Judge Lane