Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: PA/07669/2017

THE IMMIGRATION ACTS

Heard at Field House	**Decision & Reasons Promulgated**
On 9 September 2019	**On 16 September 2019**

Before

UPPER TRIBUNAL JUDGE PITT

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

PATRICK [T]
(ANONYMITY DIRECTION NOT MADE)

Respondent

Representation:
For the Appellant: Mr N Bramble, Senior Home Office Presenting Officer
For the Respondent: Ms R Head, Counsel, instructed by Duncan Lewis & Co Solicitors

DECISION AND REASONS

1. This is an appeal against the decision dated 15 March 2019 of First-tier Tribunal Judge S H Smith. The decision allowed Mr [T]'s appeal against the respondent's decision to deport him under the Immigration (European Economic Area) Regulations 2016 (the EEA Regulations).

2. For the purposes of this decision I refer to the Secretary of State for the Home Department as the respondent and to Mr [T] as the appellant, reflecting their positions before the First-tier Tribunal.

3. The background to this matter is as follows. The appellant is a national of Cote d'Ivoire, born on 13 November 1986. He entered the United Kingdom on 1 September 1994, then aged 7, as the dependant of his father who sought and was granted refugee status.

4. By 1998, the appellant's father had married a French national and the appellant applied for a residence card as her family member. It is not clear that this application was ever considered as the appellant was granted indefinite leave to remain (ILR) on 24 November 1999.

5. In May 2001 the appellant has his first dealings with the criminal justice system and received a reprimand, caution or warning for an offence of theft. There followed an extensive and sustained pattern of serious criminal offending. Between 8 November 2003 to 21 March 2014 the appellant accumulated twelve convictions for nineteen offences including taking a motor vehicle without consent, no insurance, driving without reasonable consideration, having an article with a blade or which was sharply pointed in a public place, intimidating witness or juror with intent to obstruct, pervert or interfere with justice, burglary with intent to steal, possessing an offensive weapon in a public place and possession of class A controlled drugs.

6. It is of note that offences in 2004, 2006, 2007 and 2009 led to periods of imprisonment for, respectively, ten months, twelve months, ten months and two years. The latter period of imprisonment was to prison rather than to a Youth Offenders' Institute.

7. On 21 March 2014 the appellant pleaded guilty to bringing, throwing or otherwise conveying a "List A" article into a prison (cannabis). He was sentenced to sixteen months in prison for that offence.

8. It was the conviction and sentence of imprisonment in 2014 which led the respondent to issue a liability to deportation letter on 25 April 2014.

9. The appellant did not appeal against the deportation decision at the time and a signed deportation order was served on him on 21 February 2015. On 2 April 2015 the appellant lodged a late appeal against the deportation decision. No extension of time was granted by the First-tier Tribunal and the appellant became appeal rights exhausted that day.

10. On 20 November 2015 and 9 January 2016 the appellant made further representations to the respondent. On 26 January 2017 the respondent rejected the additional representations and did not afford the applicant a right of appeal. The appellant therefore sought a judicial review of that decision but permission was refused on 8 March 2017.

11. Protection based submissions from the appellant led to a further decision from the respondent dated 1 August 2017 and it is that decision, refusing his protection claim and a human rights claim under Articles 3 and 8 and his opposition to deportation under the EEA Regulations which forms the basis of these proceedings.

12. The appellant appealed against that decision and his appeal was originally allowed by First-tier Tribunal Judge Housego in a decision dated 15 September 2017. The appeal was allowed on Article 3 ECHR grounds. However, in a decision dated 16 January 2018 Upper Tribunal Judge Kopieczek found an error of law in the decision of First-tier Tribunal Judge Housego. The decision was set aside and the appeal remitted to the First-tier Tribunal for a full rehearing. Thus, the appeal came before First-tier Tribunal Judge Smith on 1 March 2019.

13. The judge sets out the appellant's immigration history in paragraphs 2 to 7 of the decision. In paragraphs 8 to 10 he addresses procedural matters which included the appellant no longer intending to pursue a protection claim and the need for the appellant to be treated as a vulnerable witness.

14. In paragraphs 11 to 15 the judge set out the respondent's case against the appellant and the appellant's grounds for resisting deportation. In paragraph 11 the judge noted that "the appellant's case must be viewed against the backdrop of his significant offending history." In paragraph 12 he sets out in detail the appellant's criminal offences between 2003 and 2014. In paragraph 13 the judge set out the appellant's case that since the most recent index offence he had been diagnosed with a schizoaffective disorder and commenced medication which had had a significant impact on his behaviour and prospects for rehabilitation.

15. In paragraphs 16 to 20 the judge set out the legal provisions to be applied in the appeal. There was no dispute that the appellant qualified for the "serious" level of protection as he had acquired permanent residence; see paragraph 20.

16. In paragraphs 25 to 52 the judge set out his findings on why he did not consider that the appellant represented a genuine present and sufficiently serious threat affecting one of the fundamental interests of society and so could not be deported under the EEA Regulations.

17. In paragraphs 26 to 29 the judge reviewed the appellant's criminal offending, that consideration clearly expressing the judge's understanding that the criminal history was serious and committed over "a sustained period of time" and that, until recently the appellant had shown no remorse and minimal rehabilitation. He considered the full range of the appellant's offending. He considered the seriousness of the offending; see paragraphs 26, 27 and 28. In paragraph 29 the judge concludes that the nature of the appellant's offending was sufficient in theory to meet the initial requirement for there to be a "serious" threat to public policy and security.

18. In paragraph 31 the judge turns to the appellant's case that the decision to deport him was not proportionate where he no longer posed a risk because of the proper diagnosis of treatment of his mental health disorder.

19. In paragraph 33 the judge addresses the appellant's relationship with a British national which he found had provided "a stronger and more stabilising influence in his life" since the index offence in 2014. This was because since then the couple had had two children and been given permanent, appropriate accommodation.

20. In paragraph 34 the judge considered the sentencing remarks from the index offence. In 35 the judge concluded that the appellant had finally heeded the comments of the sentencing judge in complying with the conditions of his licence and not reoffending.

21. In paragraph 37 the judge considered that a particular factor weighing against the appellant was his two convictions for drugs offences which in his view were serious, having "an impact that is broad and deep at many levels of society". The judge also refers in paragraph 37 to the "unpleasant nature of the escalation in the appellant's offending between his 2009 and 2014 custodial sentences".

22. In paragraph 39 the judge addresses the appellant's submission that "whatever the risk posed by the appellant was in the past, it has subsided now". This was put forward on the basis that he had not reoffended since March 2014 and that even though there had been similar gaps in his offending prior to the index offence the circumstances were distinguishable because of his diagnosis of a schizoaffective disorder and appropriate treatment. The psychiatric evidence indicated that his impulsivity and involvement with alcohol and substance abuse had remitted since he had commenced mental health medication. He had become more stable, gained more insight into his condition and been provided with further stability because of the family home he shared with his partner and children.

23. In paragraph 42 the judge addressed the fact that the appellant had not provided any evidence of formal rehabilitative courses. He did not find that this meant that the appellant could not show that he had been rehabilitated however. The judge considered that the appellant's diagnosis and treatment for his mental health condition and the stability of his family life demonstrated "a degree of rehabilitation".

24. In paragraph 44 the judge assessed the appellant's absence of family connections in Cote d'Ivoire. In paragraph 45 he found that the appellant's limited ability to speak French would be of some assistance in Cote d'Ivoire. In paragraph 46 the judge considers the difficulties the appellant will face in Cote d'Ivoire as a result of his diagnosis of schizoaffective disorder and need for regular medication. The judge noted as part of the proportionality assessment that provision in Cote d'Ivoire was very limited, there being only three psychiatric facilities catering for a population of 21 million people.

25. In paragraph 47 the judge set out that in his view the impact of removal for the appellant would be "grave" as he would be returning to a country:

> "… with which he has no connections, in which he has no remaining family or people who could be expected to rate his return, and, most significantly, it is very unlikely that he would be able to secure anything like the medical assistance and treatment he requires for his condition".

In the same paragraph the judge weighed that assessment against the respondent's legitimate purpose in seeking to deport the appellant on grounds of public policy and security. The judge concluded that where the appellant did not, on balance, pose

a genuine present and sufficiently serious threat at the "serious" level, his deportation could not be seen to be proportionate.

26. In paragraph 48 the judge went on to consider the appellant's personal circumstances in the UK where he is in a partnership with a British national and has two British children. The judge found that the applicant's deportation would have a "significant" effect on his partner and children. The judge found that the best interests of the children were to be in the UK with both parents. In paragraph 50 the judge found that it was not possible to expect the British partner and two British children to accompany the appellant to Cote d'Ivoire.

27. The First-tier Tribunal concluded in paragraph 52 that the appellant did not represent a sufficiently serious genuine and present threat to one of the fundamental interests of society, based in particular on the evidence of rehabilitation following his proper diagnosis and treatment for his schizoaffective disorder. The judge also highlighted in paragraph 53 that the decision would be disproportionate because of the impact on the appellant and his partner and children.

28. The respondent was granted permission to appeal in a decision of the Upper Tribunal dated 6 August 2019.

29. The substance of the grounds is contained in paragraphs 8 to 13 as follows:

> "8. It is submitted that the FTTJ errs at [50] in finding that the Appellant does not pose a genuine present and sufficiently serious threat to one of the fundamental principles of society and that therefore 27(5)(c)) is not satisfied, in so doing it is submitted that he has failed to have adequate regard to the provisions of Schedule 1 of the EEA Regulations 2016.
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> 9. The Appellant received a sentence of sixteen months' imprisonment for bringing, throwing or otherwise conveying cannabis into a prison. It is submitted that the FTTJ has failed to have regard to the fact that the Appellant had already in effect been given a second chance following the first deportation order following a period of criminality which lasted some ten years and included a two year period of imprisonment for the supply of a Class A drug. Although he makes reference to Schedule 1 of the Regulations it is submitted that the FTTJ did not have adequate regard to its provisions.
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> 10. At [39] the FTTJ has regard to the Appellant's submission that he has not offended since 2014. It is submitted that at best this is a neutral consideration and that some of this period would have been spent in custody in any event. The appellant has had gaps in his offending in the past, the FTTJ has considered this point, however it is submitted that the FTTJ has placed an over reliance on claimed protective factors. The Appellant's criminality is blamed on his medical condition, the FTTJ has failed to consider that should the Appellant's condition deteriorate, or should he fail to comply with his treatment that his propensity to reoffend

becomes a distinct possibility. It is submitted that the FTTJ errs in failing to take this possibility into account.

11. Furthermore, there is no finding that the Appellant has undertaken any form of rehabilitation to address his offending behaviour and therefore, it is submitted that he remains a serious threat to the fundamental interests of society, particularly in respect of sections (b), (c), (f), (g) and (h) of Schedule 1.

12. It is submitted that the Appellant's deportation is proportionate in light of his prolific criminality and that past conduct is indicative of future behaviour. The FTTJ notes the provision that the risk "need not be imminent" that may indeed be the case, however it is submitted that the FTTJ has failed to consider that the Appellant's correct period without convictions is an anomaly and is vastly outweighing (sic) by the length of time during which he could accurately be described as a persistent offender.

13. Furthermore, there is no evidence that the Appellant's age, state of health or any other consideration prevents his deportation to Cote d'Ivoire. The health facilities may be less favourable that (sic) they are in the UK, but that in itself is not a justification. The Appellant's partner has the support of public services and there is no reason why this should not continue in the Appellant's absence. While the Appellant's relationship with his family will change such separation is an inevitable consequence of deportation."

30. It is not my view that the grounds of appeal have merit. The summary of the decision of the First-tier Tribunal set out above shows that all of the matters that are referred to in the grounds, the provisions of Schedule 1 of the EEA Regulations, the appellant's index offence, the duration and seriousness of his criminal history, the offending including drugs offences, lack of evidence of formal rehabilitation and circumstances in Cote D'Ivoire. Having taken account of those material factors, it was for the judge to decide what weight to place on them.

31. The First-tier Tribunal took a rational approach in finding that the diagnosis and treatment of the appellant's mental disorder since the index offence in 2014 was a significant factor and the grounds only disagree rather than showing an error on a point of law. The grounds only speculate that the appellant might not remain stable on his medication or that he might default. It is clear that the judge took into account and, quite properly, weighed against the appellant his serious criminal offending. He says so quite clearly in paragraphs 26 to 29 and paragraph 37. Again, that approach cannot be characterised as irrational and the grounds only seek to reargue the case. Those were the matters at the core of this decision and the findings of First-tier Tribunal Smith are not shown to be in error.

32. For these reasons, it is not my view that the decision of the First-tier Tribunal discloses error on a point of law.

33. The decision of the First-tier Tribunal was based on the material before the Tribunal in March 2019. The appellant should be aware that any further offending will be likely to lead to the respondent considering deportation again and that, if so, another Tribunal would not be bound by this decision.

Notice of Decision

34. The decision of the First-tier Tribunal does not disclose an error on a point of law and shall stand.

Signed:  Date: 9 September 2019

Upper Tribunal Judge Pitt